

# **TORBAY COUNCIL**

## **TORBAY COUNCIL AGREEMENT FOR THE PROVISION OF SERVICES**

### **FRONT SHEET**

#### ***Agreement between***

##### **The Authority**

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

#### ***And***

##### **The Supplier**

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

#### ***Agreement Number and Title***

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

#### ***Date***

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

#### ***Commencement Date***

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

#### ***Termination Date***

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

#### ***Summary of Services***

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

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

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

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

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

## Schedule 1 Key Provisions

### 1 BACKGROUND

- 1.1 The Authority has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this Agreement.
- 1.2 Documents that form part of this Agreement are:
- (a) The completed tender documents including the Specification, Supplier's RFQ Part Response and RFQ Part 3 Pricing and any other supporting documentation; and
  - (b) The front sheet and its associated schedules.

### 2 TERM

- 2.1 This Agreement shall take effect on the Commencement Date and shall continue for the Term unless terminated early or extended as appropriate in accordance with the terms and conditions or clauses of this Agreement.

### 3 ORDER OF PRECEDENCE

- 3.1 Should there be a conflict between any other parts of this Agreement the order of priority for construction purposes shall be:
- (a) the provisions of the Front Sheet of this Agreement;
  - (b) Schedule 1 Key Provisions;
  - (c) Schedule 3 Specification;
  - (d) Schedule 5 Payment Schedule;
  - (e) Schedule 4 Supplier's Tender Response Document;
  - (f) Schedule 2 Definitions and Interpretations; and
  - (g) the order in which all subsequent schedules, if any, appear.

### 4 NOTICES

- 4.1 At the Commencement Date:
- (h) the Authority Authorised Representative is:  
**[insert name and role of the Authority's Authorised Representative]**
  - (i) the Supplier Authorised Representative is:  
**[insert name and role of the Supplier's Authorised Representative]**.
- 4.2 Notices served under this Agreement are to be delivered to:
- (j) for the Authority:  
**[complete name and/or role (this is normally going to be the Authorised Representative identified at 3 above) and postal address that they shall be contacted at – please note the address may be different to the registered office address of the Authority above]**  
**[insert e-mail address of the person identified above]**
  - (k) for the Supplier:  
**[complete name and/or role (this is normally going to be the Authorised Representative identified at 3 above) and postal address that they shall be contacted at – please note the address may be different to the registered office address of the Supplier above]**  
**[insert e-mail address of the person identified above]**

### 5 NOT USED

### 6 BUSINESS CONTINUITY

- 6.1 The Supplier shall have an organisational business continuity plan and shall submit that plan to the Authority upon request.

- 6.2 The business continuity plan shall address, as applicable to the business of the Supplier and the services provided under this agreement::
- (a) the impact of COVID-19 or any other similar crisis;
  - (b) destruction or loss of computer data / hardware;
  - (c) loss of business premises, including accommodation provided to service users under the contract;
  - (d) major accidents or incidents or Force Majeure Events;
  - (e) safeguarding issues;
  - (f) loss of professional registrations / accreditations without which the provider cannot legally deliver the contract;
  - (g) staffing issues;
  - (h) supply chain issues;
  - (i) impact of legislative changes – e.g. Brexit;
  - (j) any other reasonably foreseeable events that could prevent the delivery of the contract in full or in part.

## **7 CHARGES AND PAYMENT**

- 7.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this Agreement, the Authority shall pay the Charges to the Supplier.
- 7.2 The Charges shall be calculated as set out in the Payment Schedule.
- 7.3 Unless otherwise stated in the Payment Schedule the Charges:
- (a) shall be payable from the Commencement Date;
  - (b) shall remain fixed during the Term unless agreed by both parties; and
  - (c) are the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier Personnel.
- 7.4 The Authority shall pay each properly submitted invoice received by the Supplier within 30 days of the date when Authority has determined that the invoice is a valid and undisputed invoice. The Supplier shall accept payment electronically via BACS.
- 7.5 The Supplier shall invoice the Authority in respect of Services in accordance with the requirements of the Payment Schedule. Each invoice shall at all times be accompanied by supporting documentation reasonably required by the Authority from time to time.
- 7.6 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid.
- 7.7 Interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.8 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier shall at all times comply with the requirements relating to VAT. The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this Agreement. Such records shall be retained for inspection by the Authority for six years from the end of each year to which the records relate.
- 7.9 The Authority may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this Agreement.
- 7.10 Where IR35 regulations may apply to an individual, sole trader or personal services company, the Authority will conduct an employment status check to find out if such entity or individual should be classed as employed or self-employed for tax purposes (CEST). Where applicable a Status Determination Statement will be issued which will declare the Supplier's deemed employment status following the IR35 assessment and provide reasons for reaching this conclusion. Please note that this may affect the way in which the Supplier is paid and could include the possible deduction of Tax and National Insurance.

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

8.1 At all times, the Supplier shall ensure that:

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

## **9 SUB-CONTRACTING AND ASSIGNMENT**

- 9.1 The Supplier shall not be entitled to assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the Authority. If the Authority consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 9.2 The Supplier shall not sub-contract the whole or any part of its obligations under this Agreement nor shall it replace a Sub-Contractor approved under this Agreement or permit a Sub-Contractor approved under this Agreement to assign, novate or otherwise dispose of any or all of its rights and obligations under the Sub-Contract, except with the express prior written consent of the Authority.

## **10 INSURANCE**

- 10.1 During the term of this Agreement, the Supplier shall at its own cost effect and maintain in force, with a reputable insurance company, the insurances referred to in the key provisions (or if no insurance is specified, then such insurance to cover reasonably foreseeable liabilities that may arise under or in connection with this Agreement including public liability insurance, professional indemnity insurance and employers' liability insurance) and the Supplier will provide the Authority with evidence of such insurance on reasonable request.

## **11 FREEDOM OF INFORMATION AND TRANSPARENCY OBLIGATIONS**

- 11.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and transparency obligations under the Public Contracts Regulations 2015, and shall assist and co-operate with the Authority (at the Supplier's expense) to enable the Authority to comply with its obligations under the FOIA and the EIRs and its transparency obligations under the Public Contracts Regulations 2015.
- 11.2 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.
- 11.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this Agreement.

## **12 DATA PROTECTION**

- 12.1 The parties acknowledge and agree that the allocation of the role of data controller, joint data controller or data processor (as such terms are defined in the Data Protection Laws) is a question of fact rather than being determined by contractual agreement. However, the parties agree that circumstances may arise in connection with the provision of the Services whereby:
- (a) both parties are independent data controllers of Contract Personal Data;
  - (b) the parties are joint data controllers of Contract Personal Data;
  - (c) one party acts as a data processor on behalf of the other party in relation to Contract Personal Data; or
  - (d) a combination of two or more of the circumstances set out above.

- 12.2 The parties agree to confirm the role of each party (as described in 12.1 above) prior to the commencement of the processing of personal data in respect of any Services in the relevant SOW or otherwise in writing.
- 12.3 Depending on the roles of each party in relation to any Project or any processing of Contract Personal Data, the parties agree in each case to comply with the terms of this clause 12.
- 12.4 The parties shall each be responsible for their own costs of compliance with this clause 12 save where any data protection related audit carried out by or on behalf of the Authority reveals any material non-compliance by the Supplier in relation to the Supplier's obligations under this clause 12 or the Data Protection Laws, in which case Supplier shall promptly reimburse the Authority's reasonable costs incurred in relation to such audit.
- 12.5 The Supplier shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profits, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by, or awarded against the Authority arising from any breach of the Supplier's obligations in this clause 12 except and to the extent that such liabilities have resulted directly from the Authority's instructions.

### **13 CONFIDENTIALITY**

- 13.1 Each party shall keep the other party's Confidential Information confidential and shall not use such Confidential Information except for performing its rights and obligations under this Agreement.
- 13.2 The provisions of this clause shall not apply to Confidential Information that:
- (a) is required for disclosure by any applicable law;
  - (b) is or becomes generally available to the public;
  - (c) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - (d) is disclosed by the Authority to any other department, office or agency of the Government.

### **14 AUDIT**

- 14.1 The Authority may conduct audits of the Supplier from time to time and the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit during the Term and for a period of 7 years after the Termination Date.
- 14.2 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Agreement in any material manner by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 14.3 If an audit identifies that:
- (a) the Supplier has failed to perform its obligations under this Agreement in any material manner; the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;
  - (b) the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within 20 Working Days. The Authority may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
  - (c) the Authority has underpaid any Charges, the Authority shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Supplier in relation to invoicing within 20 Working Days.

### **15 TERMINATION**

- 15.1 The Authority may terminate this Agreement with immediate effect by the service of written notice on the Supplier in the following circumstances:
- (a) if the Supplier is in breach of any material obligation under this Agreement which breach is irremediable or (if such breach is remediable), fails to remedy that breach within a period of 30 calendar days after being notified in writing to do so;

- (b) if a Service Failure Default has occurred;
  - (c) if a Catastrophic Failure has occurred;
  - (d) if an Insolvency Event has occurred;
  - (e) if the Supplier ceases or threatens to cease to carry on business in the United Kingdom;
  - (f) if the Supplier ceases or threatens to cease to meet its obligations under this Agreement for any reason;
  - (g) if there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Supplier to which the Authority reasonably objects;
  - (h) if the Supplier is in breach of its obligations under the Modern Slavery Act 2015; or
  - (i) if the Supplier is in breach of its obligations under the Bribery Act.
- 15.2 The Authority may terminate this Agreement by giving not less than 30 days written notice on the Supplier in the event that the Government announces or instigates a national or local lockdown which has the effect of materially impacting the provision of the Services or the Authority's ability to effectively use or apply the output of the Services; and
- 15.3 If this Agreement is terminated by the Authority for cause in accordance with clause 15.1 or 15.2 such termination shall be at no loss or cost to the Authority.
- 15.4 The Authority may terminate this Agreement, or any part of the Agreement or the Services at any time by giving not less than 30 days written notice to the Supplier.
- 15.5 Either party may terminate this Agreement pursuant to the provisions and in accordance with the notice periods set out in this clause.

## **16 CONSEQUENCES OF TERMINATION**

- 16.1 On termination or expiry of this Agreement for any reason, the Supplier shall:
- (a) immediately cease to use and deliver to the Authority copies of information, documentation and Data relating to the Services as remains in the possession or control of the Supplier or where reasonably stipulated by the Authority held on the Authority's behalf in accordance with the terms of this Agreement in respect of the security and confidentiality of such Data;
  - (b) immediately repay to the Authority all Charges that it has been paid in respect of Services not provided by the Supplier as at the date of expiry or termination or any other sums due to the Authority in accordance with this Agreement;
  - (c) certify to the Authority that it has not retained any copies of any Authority documentation or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 13; and
  - (d) vacate any Authority Premises.
- 16.2 On termination of this Agreement for whatever reason or in the case of any suspension of this Agreement (or part thereof), the Supplier, subject to any other relevant clauses in this Agreement, will only be entitled to the payment of Charges relating to the Services provided properly and in accordance with the terms of this Agreement up to the date of termination or expiry or suspension (as the case may be).
- 16.3 On termination or expiry of this Agreement for any reason:
- (a) any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry, shall not be affected;
  - (b) the Supplier shall pay to the Authority any amounts that are then outstanding immediately (including any overpayments for Services not yet provided or where the Authority has not received deliverables or the Services in accordance with this Agreement) and the Authority shall not be liable to the Supplier for any of the following:
    - (i) any costs expenses or payments to any Supplier's Personnel or a Supplier Party in respect of the redeployment or reallocation of their respective Supplier's Personnel or Supplier Party including any other costs of redeployment of the same;
    - (ii) any costs or expenses, including any contractual penalties, in respect of the termination, novation or assignment of any contracts with any third party suppliers

or any sub-contracts incurred following and as a result of termination or expiry of the Agreement;

- (iii) the cost of any assets, equipment, connectivity, infrastructure or other materials purchased, leased or otherwise procured by the Supplier in order to facilitate the provision of the Services or its other obligations under this Agreement;
- (iv) any other additional shutdown costs, expenses or liabilities that may be incurred in relation to the termination or expiry of this Agreement;
- (v) any sums incurred by the Supplier under this Agreement (but not yet invoiced to the Authority up to the date of termination) that the Supplier has used its best endeavours to avoid paying to any sub-contractor or any third party suppliers or Supplier Party in relation to the Services (or part thereof);
- (vi) any sums paid or payable by the Authority to the Supplier under this Agreement for Services or any other deliverables or any other materials provided (whether invoiced or not and/or paid or outstanding) for which the Authority has not received any benefit under this Agreement. In the event that the Authority has paid the Supplier for such amounts, the Supplier shall refund the Authority for any such sums immediately and/or upon written request (including any pro rata amounts paid by the Authority for an unexpired period during which the Services would have been supplied if the termination had not occurred); and
- (vii) any termination or cancellation fees or other breakage costs (including anything similar to any third party suppliers or any Supplier Party).

16.4 The provisions of clauses 10 (Insurance), 11 (Freedom of Information), 12 (Data Protection), 13 (Confidentiality), 14 (Audit), 15 (Termination) and this clause 16 shall survive termination or expiry of this Agreement.

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

## **17 SEVERABILITY**

17.1 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.

17.2 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.

## **18 PARTNERSHIP OR AGENCY**

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

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

## **19 THIRD PARTY RIGHTS**

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

## **20 PUBLICITY**

20.1 The Supplier shall not:

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

without the prior written consent of the Authority.



## 21 NOTICES

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

- (a) first-class mail,
- (b) e-mail (provided that the e-mail is sent to the e-mail address of the Authorised Representative of the receiving party as set out at clause **Error! Reference source not found.** of the Key Provisions, or as notified by one party to the other in writing from time to time.

21.2 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 21.3:

Delivery method	Deemed delivery date and time
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.
E-mail.	At the time of transmission provided that they are confirmed as set out above.

21.3 For the purpose of clause 21.2 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.

## 22 CHANGES TO THE AGREEMENT

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

22.2 No amendment or variation to the terms of this Agreement shall be valid unless previously agreed in writing between the Authority and the Supplier. Notwithstanding the provisions of this clause, the Authority may request an emergency Change to this Agreement which the Supplier shall not unreasonably refuse to accommodate any Change required as a result of a Force Majeure event.

## 23 ENTIRE AGREEMENT

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

## 24 COUNTERPARTS

24.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together

constitute the same Agreement. No counterpart shall be effective until each party has executed at least one counterpart.

## **25 GOVERNING LAW AND JURISDICTION**

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

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

## Schedule 2 Definitions and Interpretation

### 1 Definitions and Interpretation

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

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

**Brand Guidelines:** means those guidelines set out in Schedule 7 .

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

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

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

**Charges:** means the charges referred to in clause **Error! Reference source not found.** of the General Terms and more particularly set out in the Payment Schedule.

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

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

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

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

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

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

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

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

**Data Protection Laws:** Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (commonly referred to as the "GDPR"), the Data Protection Act 2018, the UK GDPR (as defined by the Data Protection, Privacy and Electronic Communications (amendments etc.) (EU Exit) Regulations 2019 (SI 2019/419)), the Privacy and Electronic Communications (EC Directive) Regulations 2003, , the Investigatory Powers Act 2016, the Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018/356, the Electronic Communications Data Protection Directive 2002/58/EC, together with any and all other laws, regulations or other statutory instruments relating to the protection of personal data applicable to either party in any relevant jurisdiction.

**Default Notice:** is defined in clause **Error! Reference source not found.** of the General Terms.

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

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

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

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

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

**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 Supplier 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 Supplier 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 Supplier 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 Supplier (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (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 Supplier or a receiver is appointed over the assets of the Supplier;
- (g) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Supplier 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 Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (k) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

**Key Provisions:** the terms set out in **Error! Reference source not found..**

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

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

(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Authority; or

(iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

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

**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 Supplier to provide the Services in accordance with the Service Level Arrangements.

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

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

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

**Supplier's Tender Response:** the tender response document submitted by the Supplier and other associated documentation set out in Schedule 4.

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

**Specification:** the specification detailed in Schedule 3

**Sub-Contract:** (except in clause **Error! Reference source not found.** of the General Terms) any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

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

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

(a) any extensions to this Agreement which are agreed pursuant to clause **Error! Reference source not found.** of the Key Provisions; or

(b) the earlier termination of this Agreement in accordance with its terms.

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

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

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

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

1.4 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.

1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

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

### **Schedule 3** **Specification**

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



**Schedule 4 Supplier's Tender Response Document**

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

## Schedule 5 **Payment Schedule**

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

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

## Schedule 6 Performance Monitoring

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

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

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

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

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

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

6 The Supplier shall report on the Outputs and Outcomes for the entire duration of the Agreement or until the level of Outputs and Outcomes set out at paragraph 2 above are achieved, whichever is the soonest.

### 7 Default and Remedies

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

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

7.2 The Default Notice will set out:

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

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

7.4 The Remedial Action Plan must set out:

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

- 7.5 Should the Supplier fail to remedy the issue referred to in a Default Notice then the Authority shall have power to rely on the provisions of clause 15 Termination of the Key Provisions depending upon the nature and seriousness of the breach.
- 7.6 The Authority reserves the right to notify the Supplier's Chief Executive and/or Board of Directors or any relevant Regulatory Body of the default in order that each of them may take whatever steps they think are appropriate.
- 7.7 If the Supplier breaches a Remedial Action Plan:
- (a) the Authority may withhold, in respect of each milestone not met, up to 2% of the aggregate monthly sums payable by the Authority, from the date of issuing the Default Notice in respect of the breach and for each month the Supplier's breach continues, subject to a maximum monthly withholding of 10% of the aggregate monthly sums payable by the Authority in relation to each Remedial Action Plan;
  - (b) the Authority must pay the Supplier any sums withheld under paragraph 7.7(a) above within 10 Working Days following the Authority's confirmation that the breach of the Remedial Action Plan has been rectified. Subject to paragraph 7.8 below no interest will be payable on those sums.
- 7.8 If the Authority withholds sums under paragraph above and within 20 Working Days of the date of that withholding the Supplier produces evidence satisfactory to the Authority that the relevant sums were withheld unjustifiably, the Authority must pay those sums to the Supplier within 10 Working Days following the date of the Authority's acceptance of that evidence, together with interest at the Default Interest Rate for the period for which the sums were withheld. If the Authority does not accept the Supplier's evidence the Supplier may refer the matter to dispute resolution.
- 7.9 If the Supplier does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this Agreement, the Authority may retain permanently any sums withheld under paragraph 7.7.7 above.

## **Schedule 7 Brand Guidelines / Not Used**

**Guidance: Mark this schedule as not used if the Supplier will not be using Council branding.**

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