



Standing List Agreement between

Torbay Council

and

**Name, Address, Company No of
Supplier**

In respect of

**Standing List of Independent Second
Opinion Advisers on Property
Investments - TFIN3819**

Date of Commencement

01 October 2020

Contents

1. Definitions & Interpretations
2. Terms of Standing List Agreement
3. Scope of Standing List Agreement
4. Award Procedures
5. Contract Performance & Precedence of Documents
6. Prices for Services
7. Warranties & Representations
8. Service Pre-Requisites
9. Records & Audit Access
10. Confidentiality
11. Insurance
12. Data Protection
13. Freedom of Information
14. Publicity
15. Guarantee
16. Termination
17. Suspension of Adviser's Appointment
18. Consequences of Termination & Expiry
19. Complaints handling & Resolution
20. Dispute resolution
21. Prevention of Bribery
22. Subcontracting & Assignment
23. Variations to Standing List Agreement
24. Third Party Rights
25. Severance
26. Rights & Remedies
27. Waiver
28. Entire Agreement
29. Notices
30. Governing Law & Jurisdiction

Schedules

1. Specification
2. Award Criteria
3. Adviser's Tender Submission
4. Order Form
5. Call Off Terms and Conditions
6. Standing List Agreement Variation Procedure
7. Data Processing Agreement

This agreement is dated as front page.

PARTIES

(1) **Torbay Council** whose principal place of business is at the Town Hall Castle Circus Torquay Devon TQ1 3DR (**Authority**).

(2) **[insert Adviser name]** incorporated and registered in England and Wales with company number **[insert company number]** whose registered office is at **[insert registered office address]** (**Adviser**).

BACKGROUND

(A) The Authority placed a contract notice **2020/S** xxx-xxxxx in the Official Journal of the European Union seeking expressions of interest from potential contractors for the provision of services to itself under a Standing List agreement.

(B) Following receipt of expressions of interest, the Authority invited potential suppliers (including the Adviser) on **xx xxx 2020** to tender for a place on this Standing List in relation to the provision of Independent Second Opinion Property Investment Advice.

(C) On the basis of the Adviser's Tender, the Authority selected the Adviser 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 Adviser under this Standing List Agreement.

(E) It is the Parties' intention that the Authority has no obligation to place Orders with the Adviser under this Standing List Agreement or at all.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

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

Approval: means the prior written approval of the Authority.

Audit: means an audit carried out pursuant to Clause 10

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

Authority means Torbay Council

Authorised Representative: means the persons respectively designated as such by the Authority and the Adviser.

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

Call-off Terms and Conditions: means the terms and conditions in Schedule 5.

Change of Control: means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.

Collateral Warranty means a document in the form set out in Schedule 8

Commencement Date: means **1 October 2020**.

Complaint: means any formal complaint raised by the Authority in relation to the performance under the Standing List Agreement or any Contract in accordance with clause 20.

Confidential Information: means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Adviser, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

Contract: means a legally binding agreement (made pursuant to the provisions of this Standing List Agreement) for the provision of Services made between the Authority and the Adviser comprising an Order Form, its appendices, and the Call-off Terms and Conditions (as may be amended pursuant to clause 4.3).

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.

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

FOIA: means the Freedom of Information Act 2000 and any subordinate legislation made under that 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.

Standing List Agreement: means this agreement and all Schedules to this agreement.

Standing List Agreement Variation Procedure: means procedure set out in Schedule 6.

Standing List Providers: means the Adviser and other Advisers appointed as Standing List providers under this Standing List Agreement.

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

Guarantee: or **Indemnity** means the deed of guarantee in favour of the Authority entered into by the Guarantor (which is in the form set out in Clause 16) or any guarantee acceptable to the Authority that replaces it from time to time.

Guarantor: means the organisation providing the Guarantee or Indemnity.

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

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

Initial Term: means the period commencing on the Commencement Date and ending on 30 September 2025 or on earlier termination of this Standing List Agreement.

Intellectual Property Rights: means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off.

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.

Month: means a calendar month.

Order: means an order for Services sent by the Authority to the Adviser in accordance with the award procedures in Clause 4.

Order Form: means a document setting out details of an Order in the form set out in Schedule 4 or as otherwise agreed in accordance with Clause 4.7.

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

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 Adviser.

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;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Standing List Agreement or any other contract with the Authority; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Authority.

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

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.

Requests for Information: means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

Staff: means all persons employed by the Adviser together with the Adviser's servants, agents, suppliers and subcontractors used in the performance of its obligations under this Standing List Agreement or Contracts.

Standard Services: means the standard Services referred to in Schedule 1.

Standard Services Award Criteria: means the award criteria to be applied for the award of Contracts for Standard Services as set out in Schedule 2.

Subcontract: means; any contract between the Adviser and a third party pursuant to which the Adviser agrees to source the provision of any of the Services from that third party and includes any contract between two or more Advisers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

Subcontractor: the Advisers or service providers that enter into a Subcontract with the Adviser.

Supplemental Tender: means the documents submitted to the Authority in response to the invitation to Standing List Providers for formal offers to supply it with Competed Services.

Tender: means the tender submitted by the Adviser to the Authority when calling off from this Standing List.

Termination Date: means the date of expiry or termination of this Standing List Agreement.

Working Days: means any day other than a Saturday, Sunday or public holiday in England and Wales.

Services: means the Services detailed in Schedule 1 and any subsequent Further Competition.

Year: means a calendar year.

1.2. The interpretation and construction of this Standing List Agreement shall all be subject to the following provisions:

(a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;

(b) words importing the masculine include the feminine and the neuter;

(c) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

(d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

(e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

(f) 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;

(g) 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;

(h) 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;

(i) 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

(j) reference to a clause is a reference to the whole of that clause unless stated otherwise.

STANDING LIST ARRANGEMENTS AND AWARD PROCEDURE

2. 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 Initial Term.

3. SCOPE OF STANDING LIST AGREEMENT

- 3.1 This Standing List Agreement governs the relationship between the Authority and the Adviser in respect of the provision of the Services by the Adviser to the Authority.
- 3.2 The Authority appoints the Adviser as a Standing List Adviser and the Adviser shall be eligible to receive Orders for such Services from the Authority during the Term.
- 3.3 The Authority may, at its absolute discretion and from time to time, order Services from the Adviser 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.
- 3.4 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 Adviser for these Services materially in accordance with the terms of the Contract; and
 - (b) comply with the ordering procedure in Clause 4.
- 3.5 The Adviser 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 Advisers for the provision of any or all Services which are the same as or similar to the Services.
- 3.6 The Authority may, at its absolute discretion and from time to time, re-open the Tendering process for further places to be awarded on this Standing List.

4. AWARD PROCEDURES

Awards under the Framework Agreement

- 4.1 If the Authority decides to source Services through the Standing List Agreement then it may:
 - (a) satisfy its requirements for the Standard Services by awarding a Contract in accordance with the terms laid down in this Standing List Agreement without re-opening competition.

Standard Services (awards without re-opening competition)

- 4.2 Where the Authority is ordering Standard Services under the Standing List Agreement without re-opening competition it shall:
 - (a) identify the relevant project which its Standard Services requirements fall into;

- (b) send an Order in line with the Schedule of Rates to the Standing List Adviser on a rotational basis;
- (c) if the Standing List Adviser who is selected on a rotational basis is not able to undertake the Services, send an Order to the Standing List Adviser next on the rotational basis;
- (d) repeat the process set out in Clause 4.2(c) until the Order is fulfilled or there are no further Standing List Advisers qualified to fulfill it.

Competed Services (awards following further-competitions) - Not Used

~~4.3 Any Customer ordering Competed Services under the Standing List Agreement shall:~~

- ~~(a) identify the relevant Lot(s) that its Competed Services requirements fall into;~~
- ~~(b) identify the Standing List Advisers capable of performing the Contract for the Competed Services requirements;~~
- ~~(c) supplement and refine the Call-off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;~~
- ~~(d) invite tenders by conducting a further competition for its Competed Services requirements in accordance with the Regulations and Guidance and in particular:

 - ~~(i) consult by electronic means with the Standing List Advisers capable of performing the Contract for the Competed Services requirements and invite them within a specified time limit to submit an expression of interest and then if successful a Supplemental Tender;~~
 - ~~(ii) set a time limit for the receipt by it of the Supplemental Tenders which takes into account factors such as the complexity of the subject matter of the Contract and the time needed to submit tenders; and~~
 - ~~(iii) keep each Supplemental Tender confidential until the expiry of the time limit for the receipt by it of the Supplemental Tenders;~~~~
- ~~(e) apply the Competed Services Award Criteria to any compliant Supplemental Tenders submitted through the further competition; and~~
- ~~(f) subject to Clause 4.5 place an Order with the successful Standing List Adviser.~~

~~4.4 The Supplier agrees that all Supplemental Tenders submitted by the Supplier in relation to a further competition held pursuant to this Clause 4 shall remain open for acceptance for 30 days (or such other period specified in the invitation to tender issued by the Authority in accordance with this Clause 4).~~

4.5 Notwithstanding the fact that the Authority has followed the procedure set out above for ~~Competed 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.

4.5.1 The Adviser agrees that all Supplemental Tenders submitted by the Adviser in relation to a further competition held pursuant to this Clause 4 shall remain open for acceptance for 30 days (or such other period specified in the invitation to tender issued by the Authority in accordance with this Clause 4).

4.6 Form of Order

4.6.1 Subject to Clause 4.7, the Authority may place an Order with the Adviser by serving an order in writing in substantially the form set out in Schedule 4 or such similar form agreed with the Adviser including systems of ordering involving e-mail or other online solutions.

4.7 Accepting and declining Orders

4.7.1 Following receipt of an Order, the Adviser shall promptly and in any event within a reasonable period determined by the Authority and notified to the Adviser in writing at the same time as the submission of the Order (which in any event shall not exceed one Working Day) acknowledge receipt of the Order and either:

- (a) notify the Authority 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.

4.7.2 If the Adviser:

- (a) notifies the Authority that it is unable to fulfil an Order; or
- (b) the time limit referred to in Clause 4.7 has expired;

then the Order shall lapse and the Authority may then send that Order to the Adviser placed second or the Authority shall re-tender the Services.

4.7.3 If the Adviser 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 Adviser's response as notification of its inability to fulfil the Order and the provisions of Clause 4.7.2 shall apply.

4.7.4 The Parties acknowledge and agree that the placement of an Order is an "invitation to treat" by the Authority. Accordingly, the Adviser shall sign and return the Order Form which shall constitute its offer to the Authority. The Authority shall signal its acceptance of the Adviser's offer and the formation of a Contract by counter-signing the Order Form.

5. CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS

5.1 The Adviser 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.

5.2 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 Contract;
- (b) the Order Form except Appendix 2 (Adviser's Tender) and Appendix 3 (Supplemental Tender) to the Order Form;

- (c) the terms of the Standing List Agreement, the Schedules to the Standing List Agreement and the appendices to the Order Form, except Appendix 2 (the Adviser's Tender), and Appendix 3 to the Order Form (Supplemental Tender);
- (d) any other document referred to in the clauses of the Contract; and
- (e) Appendix 2 to the Order Form (the Adviser's Tender), and Appendix 3 to the Order Form (Supplemental Tender).

6. PRICES FOR SERVICES

The prices offered by the Adviser shall be in accordance with the Schedule of Rates or as set out in the further competition response.

ADVISER'S GENERAL STANDING LIST OBLIGATIONS

7. WARRANTIES AND REPRESENTATIONS

The Adviser warrants and represents to the Authority 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 Adviser;
- (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;
- (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 Adviser 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 Adviser's assets or revenue.
- (h) In performing its obligations under the agreement, the Adviser 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)

8. SERVICE PRE-REQUISITES

The Adviser 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.

ADVISER'S INFORMATION OBLIGATIONS

9. RECORDS AND AUDIT ACCESS

- 9.1 The Adviser shall keep and maintain until six 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 Adviser shall keep the records and accounts referred to in Clause 9.1 above in accordance with good accountancy practice.
- 9.3 The Adviser 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 Adviser shall provide such records and accounts (together with copies of the Adviser's published accounts) during the Term and for a period of 12 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 Adviser or delay the provision of the Services pursuant to the Contracts, save insofar as the Adviser 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 Adviser 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 Adviser 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 Adviser in which case the Adviser 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 11.1 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 10.1;
- (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 Adviser has given its prior written consent to disclosure.

11. **INSURANCE**

The Authority shall specify its Insurance Requirements when it issues its request for Competed Services.

12. **DATA PROTECTION**

12.1 The Adviser shall (and shall procure that any of its Adviser's Personnel involved in the provision of the agreement 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 agreement.

12.2 Notwithstanding the general obligation in Clause 12.1, where the Adviser is processing Personal Data as a Data Processor for the Authority, the Adviser 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 Adviser is complying with its obligations under Data Protection Legislation;
- (b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to Clause 12.2; 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 Data Protection Legislation.

12.3 Intellectual Property

- 12.3.1 The Adviser 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 Adviser 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 Adviser acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Adviser 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 Adviser 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 Adviser. The Authority shall take reasonable steps to notify the Adviser 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 Adviser 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 Adviser 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 the Authority, the Adviser shall procure that the Guarantor shall:

- (a) execute and deliver to the Authority the Guarantee;
- (b) deliver to the Authority 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 Adviser with effect from the date specified in such notice:

- (a) where the Adviser commits a material breach and:
 - (i) the Adviser 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 Adviser under this Standing List Agreement as a consequence of a material breach by the Adviser;
- (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 17.1 (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 Adviser if:

- (a) the Adviser 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 Adviser 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 Adviser with one or more other companies or the solvent reconstruction of the Adviser];
- (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 Adviser (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 Adviser (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Adviser (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 Adviser or a receiver is appointed over the assets of the Adviser;
- (g) a creditor or encumbrancer of the Adviser 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 Adviser'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 Adviser 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 Adviser suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

16.4 The Adviser shall notify the Authority immediately if the Adviser undergoes a Change of Control. The Authority may terminate the Standing List Agreement by giving notice in writing to the Adviser 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 Adviser and all other Standing List Advisers. 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 Advisers.

17. SUSPENSION OF ADVISER'S APPOINTMENT

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 Adviser's right to receive Orders from the Authority in any or all Adviser's Lots by giving notice in writing to the Adviser. If the Authority provides notice to the Adviser in accordance with this Clause 17, the Adviser's appointment shall be suspended for the period set out in the notice or such other period notified to the Adviser by the Authority in writing from time to time.

18. CONSEQUENCES OF TERMINATION AND EXPIRY

- 18.1 Notwithstanding the service of a notice to terminate the Standing List Agreement, the Adviser 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 Adviser 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 Adviser'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 Adviser'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 7, 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 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 Adviser to take remedial action under the provisions of the Standing List Agreement or a Contract, the Adviser shall use its best endeavours to resolve any Complaints within ten Working Days of the Complaint being received 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 Adviser shall attempt in good faith to resolve the Dispute;
- (b) if the Standing List Manager of the Authority and Standing List Manager of the Adviser 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 Executive Head of Assets and Business Services and **Director** of the Adviser who shall attempt in good faith to resolve it; and
- (c) if the Executive Head of Assets and Business Services and **Director** of the Adviser 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 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 Adviser:

- (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 Adviser shall:

- (a) if requested, provide the Authority with any reasonable assistance, 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 Adviser) compliance with this Clause 21 by the Adviser and all persons associated with it or other persons who are supplying goods, services or works in connection with this

Standing List Agreement. The Adviser shall provide such supporting evidence of compliance as the Authority may reasonably request.

- 21.3 The Adviser 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 22.1 is suspected or known, the Adviser must notify the Authority immediately.
- 21.5 If the Adviser notifies the Authority that it suspects or knows that there may be a breach of Clause 22, the Adviser 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 Adviser, its Staff or Sub-Contractors (in all cases whether or not acting with the Adviser'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 Adviser 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 20, 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, neither 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 Adviser 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 Adviser shall be entitled to novate the agreement where:

- (a) the specific change in Adviser 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 Adviser, 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 Adviser shall be entitled to novate the agreement where:

- (a) the specific change in Adviser 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 Adviser, 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 the this condition (c) as follows:
 - (i) The Adviser acknowledges by executing this agreement that in any of the circumstances set out in (a) and (b) that any organisation or Adviser 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 Adviser 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.
 - (ii) 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 Adviser. 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 Regulation 113 of the Public Contract Regulations 2015;

The Adviser shall include in every Sub-contract;

- (a) a right for the Adviser 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 Advisers, 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 Variation Procedure set out in Schedule 6.

24. THIRD PARTY RIGHTS

- 24.1 Except as provided in Clause 3, Clause 4 and Clause 7, 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 electronically, by hand, post, registered post or by the recorded delivery

service). 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 sooner where the other Party acknowledges receipt of such letters, or e-mail.

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

(a) For the Authority:

XXXXXXXXXX

Address: Town Hall, Castle Circus, Torquay, TQ1 3DR

For the attention of: XXXXXXXXXXXX

Tel: 01803 20

E-mail: @torbay.gov.uk

(b) For the Adviser:

[NAME OF ADVISER'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).

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

Signed by [INSERT AUTHORISED OFFICERS NAME]

for and on behalf of TORBAY COUNCIL

.....

Standing List Manager

Signed by [NAME OF DIRECTOR]

for and on behalf of [NAME OF ADVISER]

.....

Director

**SCHEDULE 1
SPECIFICATION**

SCHEDULE 2
AWARDED PLACES AND AWARD CRITERIA

PART 1

Places on this Standing List have been awarded as follows:

PART 2

Places have been awarded based on the following criteria:

Quality 60%

Price 40%

PART 3

Competed Services Award Criteria – Not Used

SCHEDULE 3
ADVISER'S TENDER SUBMISSION

**SCHEDULE 4
ORDER FORM**

ORDER FORM

Standing List Agreement

FROM

Authority:

Project address:

Invoice address:

Authorised Representative:

Phone:

E-mail:

Order number:

To be quoted on all correspondence relating to this Order:

Order date:

TO

Adviser:

[ADVISER'S NAME]

For the attention of:

E-mail:

Telephone number:

Address:

SCHEDULE 5
CALL-OFF TERMS AND CONDITIONS

All contracts awarded under this Standing List will be subject to the Confidentiality Agreement at the discretion of Torbay Council, or any update thereof in force at the time of the award.

SCHEDULE 6

STANDING LIST AGREEMENT VARIATION PROCEDURE

1. INTRODUCTION

- 1.1. Schedule 7 details the scope of the variations permitted and the process to be followed where the Authority proposes a variation to the Standing List Agreement.
- 1.2. The Authority may propose a variation to the Standing List Agreement under Schedule 6 only where the variation does not amount to a material change in the Standing List Agreement or the Services.

2. PROCEDURE FOR PROPOSING A VARIATION

- 2.1 Except where Paragraph 5 applies, the Authority may propose a variation using the procedure contained in this Paragraph 2.
- 2.2 In order to propose a variation, the Authority shall serve each Standing List Provider with written notice of the proposal to vary the Standing List Agreement (**Notice of Variation**).
- 2.3 The Notice of Variation shall:
 - (a) contain details of the proposed variation providing sufficient information to allow each Standing List Adviser to assess the variation; and
 - (b) require each Standing List Adviser to notify the Authority within 28 days of any proposed changes to the variation.
- 2.4 On receipt of the Notice of Variation, each Standing List Adviser has 14 days to respond in writing with any objections to the variation.
- 2.5 Where the Authority does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Authority may then serve each Standing List Adviser with a written agreement detailing the variation to be signed and returned by each Standing List Adviser within 7 days of receipt.
- 2.6 On receipt of a signed agreement from each Standing List Adviser, the Authority shall notify all Standing List Advisers in writing of the commencement date of the variation.

3. OBJECTIONS TO A VARIATION

In the event that the Authority receives one or more written objections to a variation, the Authority may:

- (a) withdraw the proposed variation; or
- (b) propose an amendment to the variation.

4. VARIATIONS THAT ARE NOT PERMITTED

In addition to the provisions contained in paragraph 1.2, the Authority may not propose any variation that:

- (a) may prevent one or more of the Standing List Advisers from performing its obligations under the Standing List Agreement; or
- (b) is in contravention of any Law.

SCHEDULE 7