



TORBAY COUNCIL TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

Contract 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]**

Date

[Insert the date when signed by both parties]

Commencement Date

Monday 3 December 2018

Termination Date

[Insert the date on which the Services shall end]

Summary of Services

Radio Link Service

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

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

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

Schedules

Guidance: Where a Schedule has been used, delete Not Used from the box below. Where a Schedule has not been used, delete the wording so that the box reads Not Used. If appropriate, add additional Schedules in the table. Ensure that you insert automatic cross-referencing for any Schedules that you add.

Schedule 1	Key Provisions
Schedule 2	General Terms
Schedule 3	Definitions and Interpretations
Schedule 4	Specification
Schedule 5	Supplier's Tender Response Document
Schedule 6	Payment Schedule
Schedule 7	Further Information/Not Used
Schedule 8	Data Processing Agreement/Not Used
[Insert Schedule reference of any additional schedule that is added]	[Insert title of any additional schedule that is added]

Guidance: Before signing please ensure that you:

- Update all cross-references by pressing Alt+Shift+U or right clicking on a cross-reference and selecting update all;
- Search for the term Error! in the document to ensure that all automatic cross-references have worked. If the term Error! is present in the document, then the clause that the cross-reference is trying to refer to has been deleted. You should not be deleting clauses – if a clause is not required the wording should be replaced with Not Used;
- Search for square brackets in the document to see that you have considered everything that is required and removed any unnecessary wording/notes;
- Ensure that all yellow highlighting is removed from the document; and
- Search for Guidance and remove all guidance text in the document.

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

.....

[Name]

[COMMON SEAL]

[Position]

Signed by the Authorised Representative of THE SUPPLIER

Name:		Signature	
Position:			

Schedule 1 Key Provisions

Background

- (A) The Authority published a contract notice with contract reference **[insert the contract notice reference that will be found on the Authority's contract notice for this Contract]** on **[insert date that the contract notice was published]** in the Official Journal of the European Union seeking expressions of interest from potential providers for a Radio Link Service.
- (B) The Authority has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this Contract.
- (C) Documents that form part of this Contract are
- (i) the completed tender documents including the Specification, Supplier Tender Response Payment Schedule, and any other supporting documentation; and
 - (ii) the Front Sheet and its associated Schedules.

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at clauses 1 to 5 of these Key Provisions shall apply to this Contract.
- 1.2 The optional Key Provisions at clauses 6 and 7 of these Key Provisions shall apply to this Contract if they are set out in the section below. The tick boxes are purely for administrative purposes and have no bearing on the terms of this Contract.
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.

2 Term

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

3 Authorised Representatives

At the Commencement Date:

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

4 Names and addresses for notices

Notices served under this Contract are to be delivered to:

- (a) for the Authority:
[complete name and/or role (this is normally going to be the Authorised Representative identified at 3 above) and postal address that they shall be

contacted at – please note the address may be different to the registered office address of the Authority above]

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

(b) for the Supplier:

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

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

5 Order of precedence

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

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

Optional Key Provisions

<input type="checkbox"/>	6	Not used
<input type="checkbox"/>	7	Not used
<input checked="" type="checkbox"/>	8	Insurance
	8.1	The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover: (a) public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims; (b) employer's liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims; (c) professional indemnity insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims; and

	(d) product liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims.
<input checked="" type="checkbox"/>	<p>9 Extending the Initial Term</p> <p>9.1 The Authority may extend this Contract beyond the Initial Term by a further period or periods of up to two years (Extension Period), awarded in increments of up to one year. If the Authority wishes to extend this Contract, it shall give the Supplier at least three months' written notice of such intention before the expiry of the Initial Term or Extension Period.</p> <p>9.2 If the Authority or any individual member of the Authority gives such notice then the Term shall be extended by the period set out in the notice.</p> <p>9.3 If the Authority does not wish to extend this Contract beyond the Initial Term this Contract shall expire on the expiry of the Initial Term.</p>
<input type="checkbox"/>	10 Not Used

Additional Key Provisions

Schedule 2 General Terms

1 Supply of Services

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

2 Service levels

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

3 Compliance

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

3.2 Without prejudice to clause 2, the Supplier shall provide the Services, or procure that they are provided:

- (a) with all reasonable skill and care and in accordance with Best Industry Practice;
- (b) in all respects in accordance with the Authority's requirements set out in the Specification which may from time to time be amended in accordance with this Contract by the Authority ; and
- (c) in accordance with all applicable laws.

4 Authority Premises

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

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

4.3 The Supplier shall ensure that:

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

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

5 Health and safety

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

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

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

6 Charges and payment

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

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

6.3 Unless otherwise stated in the Payment Schedule the Charges:

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

6.4 The Authority shall pay each 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.

6.5 The Authority will consider and verify any invoices submitted by the Supplier for payment in a timely fashion and agrees that undue delay in doing so is not to be regarded as sufficient justification for failing to treat an invoice as valid and undisputed.

6.6 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 10. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 30 days after resolution of the dispute between the parties.

6.7 Subject to clause 6.6, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Supplier shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this Contract under clause 19 for failure to pay undisputed charges.

6.8 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier shall at all times comply with the requirements relating to VAT as more particularly detailed in this Contract and the Specification. The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this Contract. Such records shall be retained for inspection by the Authority for six years from the end of each year to which the records relate.

6.9 The Authority may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this Contract.

6.10 In this clause 6.10, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract. Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:

- (a) provisions having the same effect as clauses 6.4 and 6.5 above; and
- (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 6.4 and 6.5 above.

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

7 **Due diligence**

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

7.2 The Supplier as at the Commencement Date, warrants and represents that all information contained in the Supplier's Tender Response remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract; and shall promptly notify the Authority in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet the Service Level Arrangements.

8 **Supplier's Personnel used to provide the Services**

8.1 At all times, the Supplier shall ensure that:

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

8.2 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the

Authority on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

9 **Monitoring**

9.1 The Authority may monitor the performance of the Services by the Supplier at its discretion.

9.2 The Supplier shall co-operate with the Authority in carrying out the monitoring referred to in clause 9.1 at no additional charge to the Authority.

10 **Dispute Resolution**

10.1 If a Dispute arises then except as expressly provided in this Contract, the parties shall follow the procedure set out in this clause:

(a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives of both the Authority and the Supplier shall attempt in good faith to resolve the Dispute;

(b) if the Authorised Representatives of the Authority and the Supplier are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to senior officers of both the Authority and the Supplier who shall attempt in good faith to resolve it; and

(c) if the senior officers of the Authority and the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

10.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

10.3 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 34 and 35 which shall apply at all times.

10.4 If the Dispute is not resolved within 60 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 34 and 35 of these General Terms.

11 **Sub-contracting and assignment**

11.1 The Supplier shall not be entitled to assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the Authority. If the Authority consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.

11.2 The Supplier shall not sub-contract the whole or any part of its obligations under this Contract nor shall it replace a Sub-Contractor approved under this Contract or permit a Sub-Contractor

approved under this Contract to assign, novate or otherwise dispose of any or all of its rights and obligations under the Sub-Contract, except with the express prior written consent of the Authority.

11.3 In the event that the Supplier enters into any Sub-Contract in connection with this Contract it shall:

- (a) remain responsible to the Authority for the performance of its obligations under the Contract notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors and shall indemnify and keep indemnified the Authority against any loss or claim arising from the failure of the Sub-Contractor or an employee of the Sub-Contractor in the performance of the duties of the Sub-Contractor to provide the Services on behalf of the Supplier under this Contract;
- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Contract and shall procure that the Sub-Contractor complies with such terms and, if necessary, imposes obligations on any further sub-contractors in its sub-contract pursuant to this Contract; and
- (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.

11.4 The Authority shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Authority.

11.5 The Authority may, by notice in writing to the Contractor, require the Contractor immediately (or as specified in the notice) to cease to engage a specified Sub-Contractor for the performance of any of its obligations under this Contract where any of the circumstances specified in Regulation 57(1) or (8) of the Public Contracts Regulations 2015 applies to the Sub-Contractor.

12 **Limitation of liability**

12.1 Subject to clause 12.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

12.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.

12.3 Notwithstanding any other provision of this Contract neither party limits or excludes its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under any applicable law.

13 **Insurance**

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

14 **Freedom of information and transparency obligations**

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

14.2 The Supplier shall and shall procure that its Sub-Contractors shall:

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

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

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

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

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

retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

- 14.6 The Supplier acknowledges that the United Kingdom Government's transparency agenda, including the transparency obligations under the Public Contracts Regulations 2015, requires that contracts, such as the Contract, and any tender document, such as the invitation to tender and certain other information, are published on a designated, publicly searchable website and the Supplier consents to such publication.
- 14.7 The Supplier acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of the Contract is not Confidential Information. The Authority shall be responsible for determining in their absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of FOIA.
- 14.8 Notwithstanding any other term of the Contract, the Supplier hereby consents to the Authority publishing the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted) including from time to time agreed changes to the Contract, to the general public.
- 14.9 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this Contract.

15 **Data protection**

- 15.1 Both Parties shall duly observe all their obligations under Data Protection Legislation which arise in connection with the Contract.
- 15.2 Notwithstanding the general obligation in clause 15.1, where the Supplier is processing Personal Data as a Data Processor for the Authority, the Supplier 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 by the Data Protection Act; and
- (a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Supplier is complying with its obligations under Data Protection Legislation;
 - (b) within 24 hours of the Supplier becoming aware of the breach occurring, notify the Authority of any breach and of the security measures required to be put in place pursuant to this clause 15.2;
 - (c) co-operating with the Authority and/or any relevant regulatory body in carrying out any investigation by providing information requested by the Authority and/or relevant regulatory body within the timescales required;
 - (d) allow the Authority's and/or the regulatory body's representatives access to Supplier premises, systems and data for the purposes of any investigation, inspection or audit; and
 - (e) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under Data Protection Legislation.

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

15.4 The Supplier shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profits, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by, or awarded against the Authority arising from any breach of the Supplier's obligations in this clause 15 except and to the extent that such liabilities have resulted directly from the Authority's instructions.

16 **Confidentiality**

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

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

- (a) is required for disclosure by any applicable law;
- (b) is or becomes generally available to the public;
- (c) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (d) is disclosed by the Authority to any other department, office or agency of the Government.

17 **Audit**

17.1 The Authority may conduct audits of the Supplier from time to time and the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit during the Term and for a period of 7 years after the Termination Date.

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

17.3 If an audit identifies that:

- (a) the Supplier has failed to perform its obligations under this Contract in any material manner; the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;

- (b) the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within 20 Working Days. The Authority may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
- (c) the Authority has underpaid any Charges, the Authority shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Supplier in relation to invoicing within 20 Working Days.

18 **Intellectual property**

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

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

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

19 **Termination**

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

- (a) if the Supplier is in breach of any material obligation under this Contract which breach is irremediable or (if such breach is remediable), fails to remedy that breach within a period of 30 calendar days after being notified in writing to do so;
- (b) if a Service Failure Default has occurred;
- (c) if a Catastrophic Failure has occurred;
- (d) if an Insolvency Event has occurred;
- (e) if the Supplier ceases or threatens to cease to carry on business in the United Kingdom;
- (f) if there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Supplier to which the Authority reasonably objects; or
- (g) in accordance with clause 22.7.

19.2 The Authority may terminate this Contract by giving not less than 30 days written notice on the Supplier in any of the following circumstances:

- (a) the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;

- (b) at the Commencement Date one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015 (including as a result of the application of regulation 57(2)) applied:
 - (i) to the Supplier such that it should have been excluded from the procurement procedure; or
 - (ii) to a Sub-Contractor on which the Supplier relied in its tender to the Authority for this Contract and the Supplier does not cease to engage that Sub-Contractor within 30 days of a notice from the Authority requiring the Supplier to cease to engage that Sub-Contractor; or
 - (c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the EU in a procedure pursuant to Article 258 of TFEU.
- 19.3 If this Contract is terminated by the Authority for cause in accordance with clause 19.1 or 19.2 such termination shall be at no loss or cost to the Authority.
- 19.4 The Authority may terminate this Contract, or any part of the Contract or the Services at any time by giving not less than 30 days written notice to the Supplier.
- 20 **Consequences of Termination**
- 20.1 On termination or expiry of this Contract for any reason, the Supplier shall:
- (a) immediately cease to use and deliver to the Authority copies of information, documentation and Data relating to the Services as remains in the possession or control of the Supplier;
 - (b) immediately repay to the Authority all Charges that it has been paid in respect of Services not provided by the Supplier as at the date of expiry or termination or any other sums due to the Authority in accordance with this Contract;
 - (c) certify to the Authority that it has not retained any copies of any Authority documentation or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 16 of the General Terms; and
 - (d) vacate any Authority Premises.
- 20.2 The provisions of clauses 12 (Limitation of Liability), 13 (Insurance), 14 (Freedom of Information), 15 (Data Protection), 16 (Confidentiality), 17 (Audit), 18 (Intellectual Property Rights), 19 (Termination for Breach) of the General Terms and this clause 20 shall survive termination or expiry of this Contract.
- 20.3 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

21 **Force majeure**

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 30 calendar days, the party not affected may terminate this agreement by giving 30 calendar days' written notice to the affected party.

22 **Prevention of bribery**

22.1 The Supplier:

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

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

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

22.3 The Supplier shall:

- (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- (b) within 30 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 22 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request.

22.4 The Supplier shall establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, an anti-bribery policy (which shall be disclosed to the

Authority) to prevent any Supplier Party or Supplier Personnel from committing a Prohibited Act and that are compliant with the Bribery Act and shall enforce it where appropriate.

22.5 If any breach of clause 22.1 or clause 22.2 is suspected or known, the Supplier must notify the Authority immediately.

22.6 If the Supplier notifies the Authority that it suspects or knows that there may be a breach of clause 22.1 or clause 22.2, the Supplier must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation.

22.7 The Authority may terminate this Contract by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches clause 22.1 or clause 22.2. The expression "not acting independently of" (when used in relation to the Supplier or a Sub-Contractor) means and shall be construed as acting:

(a) with the Authority; or,

(b) with the actual knowledge;

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

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

22.8 Any notice of termination under clause 22.7 must specify:

(a) the nature of the Prohibited Act;

(b) the identity of the party whom the Authority believes has committed the Prohibited Act; and

(c) the date on which this Contract will terminate.

22.9 Despite clause 10, any dispute relating to:

(a) the interpretation of clause 22; 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.

22.10 Any termination under clause 22.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

23 **Non-solicitation**

Neither party shall (except with the prior written consent of the other) during the term of this Contract, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this Contract.

24 **Waiver**

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual

terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Authority to the Supplier in respect of the Services or any omission on the part of the Authority to communicate such prior acceptance or approval shall not relieve the Supplier of its obligations to deliver the Services in accordance with the provisions of this Contract.

25 **Accumulation of remedies**

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

26 **Severability**

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

27 **Partnership or agency**

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

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

28 **Third party rights**

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

29 **Publicity**

The Supplier shall not:

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

without the prior written consent of the Authority.

30 **Notices**

30.1 Notices shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this Contract. Notices may be sent by first-class mail or e-mail.

30.2 Notices will be deemed to have been received:

- (a) if hand delivered, on the day delivered;

(b) if sent by registered post, on the second business day after being sent;

(c) if sent by email, at the time of transmission.

31 **Changes to the Contract**

No Change to this Contract shall be effective unless it is in writing and signed by the parties (or their Authorised Representatives). Such Change shall be made only where permitted by Regulation 72(1)(b) – (f) of the Public Contracts Regulations 2015.

32 **Entire agreement**

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

33 **Counterparts**

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

34 **Governing law**

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

35 **Jurisdiction**

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

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

Schedule 3 Definitions and Interpretation

1 Definitions and Interpretation

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

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

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

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services.

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

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

Change: any change to this Contract including to any of the Services.

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

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

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

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

Contract: means this agreement and no other.

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

Data Processor: shall have the same meaning as set out in the Data Protection Act.

Data Protection Act: the Data Protection Act 1998.

Data Protection Legislation: the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

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

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

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

Front Sheet: the front sheet of the Contract.

General Terms: the provisions set out in Schedule 2.

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

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

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

Key Provisions: the terms set out in Schedule 1.

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

Payment Schedule: the document set out at Schedule 6.

Personal Data: shall have the same meaning as set out in the Data Protection Act.

Prohibited Act: the following constitute Prohibited Acts:

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

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

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

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

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

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

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

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 5.

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

Specification: the specification detailed in Schedule 4.

Sub-Contract: (except in clause 6.10 of the General Terms) any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

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

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

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

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

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

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract includes the schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to statute, legislation, regulations or a statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to writing or written includes facsimile transmission and e-mail.
- 1.10 Any obligation in this Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Contract) at any time.

Schedule 4 Specification

Schedule 5 Supplier's Tender Response Document

Schedule 6 Payment Schedule

Schedule 7 Not Used

Schedule 8 Not Used