



Standing List Agreement between

**(1) Torbay Council
(The Authority)**

and

**(2) [Insert Name of Contractor]
(The Contractor)**

In respect of

**Contractors for Highways and Marine
Engineering Schemes**

Dated

2018

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This agreement is dated [X XXX 2018]

PARTIES

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

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

BACKGROUND

(A) The Authority placed a contract notice [insert OJEU reference number and publication date] in the Official Journal of the European Union seeking expressions of interest from potential contractors for the provision of works (divided into Lots) to itself under a Standing List agreement.

(B) Following receipt of expressions of interest, the Authority invited potential contractors (including the Contractor) on [insert ITT issue date] to tender for a place on this Standing List in relation to the provision of Lot 1 – Highways Schemes and/or Lot 2 – Marine Engineering Schemes.

(C) On the basis of the Contractor's Tender, the Authority selected the Contractor to enter a Standing List agreement to provide works, in accordance with this Standing List Agreement, to the Authority.

(D) This Standing List Agreement sets out the procedure for ordering Works, the main terms and conditions for the provision of the Works and the obligations of the Contractor under this Standing List Agreement.

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

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 Contractor.

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 25 September 2018.

Competed Works: means the competed works set out in Part 1 of Schedule 1.

Competed Services Award Criteria: means the award criteria to be applied to Supplemental Tenders received through mini-competitions held for the award of Contracts for Competed Services as set out in Schedule 2 and the Order Form.

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 Contractor, 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 Works made between the Authority and the Contractor 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.

Data Protection Legislation: means the Data Protection Act 1998 (DPA), 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, GDPR 2018 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.

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 the procedure set out in Schedule 7.

Standing List Providers: means the Contractor and other contractors 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.

ICC: means The Infrastructure Conditions of Contract, Measurement Version.

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

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.

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

Management Information: means the management information specified in Schedule 6.

Month: means a calendar month.

NEC 3: means New Engineering Contract 3rd Edition

OJEU Notice: means the contract notice published in the Official Journal of the European Union.

Order: means an order for Services sent by the Authority to the Contractor in accordance with the award procedures in Clause 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 Contractor and which is either responsible directly or indirectly for the business activities of the Contractor or which is engaged in the same or similar business to the Contractor.

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

Party: means the Authority and/or the Contractor.

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 Contractor together with the Contractor's servants, agents, suppliers and subcontractors used in the performance of its obligations under this Standing List Agreement or Contracts.

Standard Works: means the standard works referred to in Schedule 1.

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

Subcontract: means; any contract between the Contractor and a third party pursuant to which the Contractor agrees to source the provision of any of the Works from that third party and includes any contract between two or more contractors, 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 contractors or service providers that enter into a Subcontract with the Contractor.

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 Works.

Contractor's Lots: means the lots to which the Contractor has been appointed under this Standing List Agreement as set out in Schedule 2.

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

Term: means the period commencing on the Commencement Date and ending on 24 September 2020 or on earlier termination of this Standing List Agreement.

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.

Works: means the works 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 Term.

3. SCOPE OF STANDING LIST AGREEMENT

- 3.1 This Standing List Agreement governs the relationship between the Authority and the Contractor in respect of the provision of the Works by the Contractor to the Authority.
- 3.2 The Authority appoints the Contractor as a Standing List Provider of the Works and the Contractor shall be eligible to receive Orders for such Works from the Authority during the Term.
- 3.3 The Authority may, at its absolute discretion and from time to time, order Works from the Contractor in accordance with the ordering procedure set out in Clause 4 during the Term. The Parties acknowledge and agree that the Authority has the right to order Works 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 Works under this Standing List Agreement are required the Authority shall:
 - (a) Enter into a contract with the Contractor for these Works materially in accordance with the terms of the Contract; and
 - (b) comply with the ordering procedure in Clause 4.
- 3.5 The Contractor acknowledges that, in entering this Standing List Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for the Works and that the Authority is at all times entitled to enter into other contracts and arrangements with other contractors for the provision of any or all works which are the same as or similar to the Works.

4. AWARD PROCEDURES

4.1 Awards under the Standing List Agreement

- 4.1.1 If the Authority decides to source Works through the Standing List Agreement then it may satisfy its requirements for Competed Works by awarding a Contract following a further competition conducted in accordance with the requirements of Clause 4.2.

4.2 Competed Works (awards following further-competitions)

- 4.2.1 The Authority when ordering Competed Works under the Standing List Agreement shall:
 - (a) identify the relevant Lot(s) that its Competed Services requirements fall into;
 - (b) identify the Standing List Providers capable of performing the Contract for the Competed Works 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 Works requirements in accordance with the Regulations and Guidance and in particular:
 - (i) consult through an electronic portal with the Standing List Providers capable of performing the Contract for the Competed Works 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 Works 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 Provider.

4.2.2 The Contractor agrees that all Supplemental Tenders submitted by the Contractor 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).

4.2.3 Notwithstanding the fact that the Authority has followed the procedure set out above for Competed Works, the Authority may cancel, postpone, delay or end the procedure without placing an Order for Works or awarding a Contract. Nothing in this Standing List Agreement shall oblige the Authority to place any Order for Works.

4.3 Form of Order

4.3.1 Subject to Clause 4.1 to Clause 4.4, the Authority may place an Order with the Contractor by serving an order in writing in substantially the form set out in Schedule 4 or such similar or analogous form agreed with the Contractor including systems of ordering involving fax, e-mail or other online solutions.

4.4 Accepting and declining Orders

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

- (a) notify the Authority in writing and with detailed reasons that it is unable to fulfil the Order; or
- (b) notify the Authority that it is able to fulfil the Order by signing and returning the Order Form.

4.4.2 If the Contractor:

- (a) notifies the Authority that it is unable to fulfil an Order; or

- (b) the time limit referred to in Clause 4.2.2. has expired;

then the Order shall lapse and the Authority may then send that Order to the contractor placed second following the further competition or the Authority shall re-tender the Works.

4.4.3 If the Contractor modifies or imposes conditions on the fulfillment of an Order, then the Authority may either:

- (a) reissue the Order incorporating the modifications or conditions; or
- (b) treat the Contractor's response as notification of its inability to fulfil the Order and the provisions of Clause 4.4.2 shall apply.

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

5. CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS

5.1 The Contractor shall perform all Contracts entered into with the Authority in accordance with:

- (a) the requirements of this Standing List Agreement; and
- (b) the terms and conditions of the respective Contracts.

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 (Contractor'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 Contractor'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 Contractor's Tender), and Appendix 3 to the Order Form (Supplemental Tender).

6. PRICES FOR SERVICES

The prices offered by the Contractor shall be as set out in the further competition response.

CONTRACTOR'S GENERAL STANDING LIST OBLIGATIONS

7. WARRANTIES AND REPRESENTATIONS

The Contractor 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 Contractor;
- (c) in entering into this Standing List Agreement or any Contract it has not committed any Prohibited Act;
- (d) as at the Commencement Date, all information, statements and representations contained in the Tender and the SQ Response are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority before the execution of this Standing List Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Standing List Agreement and any Contract which may be entered into with the Authority;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Standing List Agreement and any Contract; and
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue.
- (h) In performing its obligations under the agreement, the Contractor shall, and shall ensure that each of its subcontractors shall, comply with:
 - (i) all applicable laws, statutes, regulations and codes from time to time in force including, but not limited to, the Modern Slavery Act 2015; and
 - (ii) in accordance with Customer's the Anti-slavery Policy.(if any)

8. SERVICE PRE-REQUISITES

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

CONTRACTORS'S INFORMATION OBLIGATIONS

9. RECORDS AND AUDIT ACCESS

- 9.1 The Contractor 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 Works provided under it, the Contracts entered into with Customers and the amounts paid by the Authority.
- 9.2 The Contractor shall keep the records and accounts referred to in Clause 9.1 above in accordance with good accountancy practice.

- 9.3 The Contractor shall afford the Authority or the Auditor (or both) such access to such records and accounts as may be required from time to time.
- 9.4 The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) during the Term and for a period of 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 Contractor or delay the provision of the Works pursuant to the Contracts, save insofar as the Contractor accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Authority.
- 9.6 Subject to the Authority's rights of confidentiality, the Contractor shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
- (a) all information requested by the Auditor within the scope of the Audit;
 - (b) reasonable access to sites controlled by the Contractor and to equipment used in the provision of the Works; and
 - (c) access to the Staff.
- 9.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 9, unless the Audit reveals a Material Default by the Contractor in which case the Contractor shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.

10. CONFIDENTIALITY

- 10.1 Subject to Clause 10.2, the Parties shall keep confidential all matters relating to this Standing List Agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 10.2 Clause 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 Contractor has given its prior written consent to disclosure.

11. INSURANCE

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

12. DATA PROTECTION

12.1 The Contractor shall (and shall procure that any of its Contractor's Personnel involved in the provision of the agreement shall) comply with any notification requirements under 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 Contractor is processing Personal Data as a Data Processor for the Authority, the Contractor shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under Data Protection Legislation; and

- (a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Contractor is complying with its obligations under Data Protection Legislation;
- (b) 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 Contractor hereby assigns to the Authority, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Works.

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

13. FREEDOM OF INFORMATION

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

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

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

14. PUBLICITY

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

15. GUARANTEE

Before the Commencement Date and at the request of the Authority, the Contractor 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 Contractor with effect from the date specified in such notice:
 - (a) where the Contractor commits a material breach and:
 - (i) the Contractor has not remedied the material breach to the satisfaction of the Authority within 20 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or

- (ii) the material breach is not, in the reasonable opinion of the Authority, capable of remedy; or
- (b) where the Authority terminates a Contract awarded to the Contractor under this Standing List Agreement as a consequence of a material breach by the Contractor;
- (c) any warranty given by the other party in Clause 7 of this agreement is found to be untrue or misleading;
- (d) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

16.2 For the purposes of Clause 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 Contractor if:

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

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

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

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

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

Termination by Authority for convenience

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

17. SUSPENSION OF CONTRACTOR'S APPOINTMENT

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

18. CONSEQUENCES OF TERMINATION AND EXPIRY

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

18.2 Unless expressly stated to the contrary, the service of a notice to terminate the Standing List Agreement shall not operate as a notice to terminate any Contract made under the Standing List Agreement. Termination or expiry of the Standing List Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

18.3 Within 30 Working Days of the date of termination or expiry of the Standing List Agreement, the Contractor shall return or destroy at the request of the Authority any data, personal information relating to the Authority or its personnel or Confidential Information belonging to

the Authority in the Contractor's possession, power or control, either in its then current format or in a format nominated by the Authority (in which event the Authority will reimburse the Contractor's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information for a period of up to 12 Months to comply with its obligations under the Standing List Agreement, or such period as is necessary for such compliance.

- 18.4 Termination or expiry of this Standing List Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Standing List Agreement before termination or expiry.
- 18.5 The provisions of Clause 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 Contractor to take remedial action under the provisions of the Standing List Agreement or a Contract, the Contractor shall use its best endeavours to resolve 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 Contractor shall attempt in good faith to resolve the Dispute;
 - (b) if the Standing List Manager of the Authority and Standing List Manager of the Contractor are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Executive Head of Assets and Business Services and **Director** of the Contractor who shall attempt in good faith to resolve it; and
 - (c) if the Executive Head of Assets and Business Services and **Director** of the Contractor are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 90 days after the date of the ADR notice.

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

GENERAL PROVISIONS

21. PREVENTION OF BRIBERY

21.1 The Contractor:

- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Standing List Agreement and any Contract made under it commit a Prohibited Act; and
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Standing List Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Standing List Agreement.

21.2 The Contractor shall:

- (a) if requested, provide the Authority with any reasonable assistance, at the Customer's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- (b) within 20 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Contractor) compliance with this Clause 21 by the Contractor and all persons associated with it or other persons who are supplying goods, services or works in connection with this Standing List Agreement. The Contractor shall provide such supporting evidence of compliance as the Authority may reasonably request.

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

- 21.4 If any breach of Clause 22.1 is suspected or known, the Contractor must notify the Authority immediately.

- 21.5 If the Contractor notifies the Authority that it suspects or knows that there may be a breach of Clause 22, the Contractor must respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documents. This obligation shall continue for six years following the expiry or termination of this Standing List Agreement.

- 21.6 The Authority may terminate this Standing List Agreement by written notice with immediate effect if the Contractor, its Staff or Sub-Contractors (in all cases whether or not acting with the Contractor's knowledge) breaches Clause 21.1 (a) with the authority or with the actual knowledge of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be)

- 21.7 Any notice of termination under Clause 21.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
- (c) the date on which this Standing List Agreement will terminate.

21.8 Despite Clause 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 Contractor subcontract the whole or any part of its obligations under this Standing List Agreement except with the express prior written consent of the Authority.

22.2 The Authority shall be entitled to novate the Standing List Agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

22.3 Provided that the Authority has given prior written consent, the Contractor shall be entitled to novate the agreement where:

- (a) the specific change in contractor was provided for in the procurement process for the award of this agreement;
- (b) there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

22.4 The Contractor shall be entitled to novate the agreement where:

- (a) the specific change in contractor was provided for in the procurement process for the award of this agreement;
- (b) there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement;
- (c) (a) and (b) above are subject to the this condition (c) as follows:
 - (i) The Contractor acknowledges by executing this agreement that in any of the circumstances set out in (a) and (b) that any organisation or contractor to whom this Agreement is novated or becomes a successor under the circumstances set out in (b) above will enter into a warranty with the Contractor as a part of the Novation or arrangements set out in (b) above [and/or an agreement with the

Authority (at the Authority's option)} in accordance with the terms set out in Clause c (ii) below.

- (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 Contractor. It will agree not to seek to vary or alter the terms or pricing accepted by the Authority. Any approach to alter the terms and pricing by a novated organisation or successor will entitle the Authority to terminate forthwith.

22.5 Payment to sub-contractors under Regulation 113 of the Public Contract Regulations 2015; The Contractor shall include in every Sub-contract;

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

In this clause, 'Sub-contract' means a contract between two or more contractors, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

23. VARIATIONS TO STANDING LIST AGREEMENT

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

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

(a) For the Authority:

Tracey Field

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

For the attention of: Tracey Field, Strategic Procurement Manager

Tel: 01803 208391

E-mail: tracey.field@torbay.gov.uk

(b) For the Contractor:

[NAME OF CONTRACTOR'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 CONTRACTOR]

.....

Director

SCHEDULE 1

SPECIFICATION

Insert Standing List Tender Part 2 Specification here

SCHEDULE 2

AWARDED LOTS AND AWARD CRITERIA

PART 1

The Lots have been awarded as follows:

Lot 1 Highways Schemes

Lot 2 Marine Engineering Schemes

PART 2

The Lots have been awarded based on the following criteria:

Method Statement 75%

Technical Questions:

Organisation – 10%

Health & Safety – 5%

Quality – 5%

Social Value, Sustainability and Environment – 5%

PART 3

Competed Services Award Criteria

The following sub-criteria will be used for further competitions. The percentages can be set to suit the call-off being undertaken:

Lot Highways Schemes

100% Price

Lot 2 Marine Engineering Schemes

- 100% Price; or
- A mixture of Price and Quality

Additional award criteria appropriate to the project being undertaken may be added at call-off stage.

The questions or method statements used to assess the call-off submissions will be appropriate and proportionate to the contract being procured and will be set by Authority for each individual Further Competition.

SCHEDULE 3
CONTRACTOR'S TENDER SUBMISSION

SCHEDULE 4 ORDER FORM

ORDER FORM

Standing List Agreement

FROM

Authority:

Works address:

Invoice address:

Authorised Representative:

Ref:

Phone:

E-mail:

Order number:

To be quoted on all correspondence relating to this Order:

Order date:

TO

Contractor:

[CONTRACTOR'S NAME]

For the attention of:

E-mail:

Telephone number:

Address:

1. SERVICES REQUIREMENTS

(1.1) Services [and deliverables] required:

(1.2) Service Commencement Date:

(1.3) Price payable by Authority and payment profile:

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

2 [FURTHER COMPETITION ORDER: ADDITIONAL REQUIREMENTS

(2.1) Supplemental requirements in addition to Call-off Terms and Conditions:

(2.2) Variations to Call-off Terms and Conditions:

3. PERFORMANCE OF THE WORKS [AND DELIVERABLES]

(3.1) Key personnel of the Contractor to be involved in the Services [and deliverables]:

(3.2) Performance standards:

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

(3.4) Quality standards:

(3.5) Contract monitoring arrangements:

(3.6) Management Information and meetings

4. CONFIDENTIAL INFORMATION

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

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

BY SIGNING AND RETURNING THIS ORDER FORM THE SERVICE PROVIDER AGREES to enter a legally binding contract with the Authority to provide to the Authority the Works specified in this Order Form (together with, where completed and applicable, the mini-competition order (additional requirements) set out in section 2 of this Order Form) incorporating the rights and obligations in the Call-off Terms and Conditions set out in the Standing List Agreement entered into by the Contractor and the Authority on [DATE].

For and on behalf of the Contractor:

Name and title

Signature

Date

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

[NAME]

For and on behalf of the Authority:

Name and title

Signature

Date

Appendix 1: Specification for the Works

Appendix 2: Contractor's Tender

Appendix 3: Supplemental Tender (for Competed Services)

SCHEDULE 5

CALL-OFF TERMS AND CONDITIONS

All contracts awarded under this Standing List will be subject to the NEC3 or ICC terms and conditions for a professional services contract (PSC) 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 7 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 Provider to assess the variation and consider whether any changes to the prices set out in its Pricing Matrices are necessary; and
 - (b) require each Standing List Provider to notify the Authority within 28 days of any proposed changes to the prices set out in its Pricing Matrices.
- 2.4 On receipt of the Notice of Variation, each Standing List Provider 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 Provider with a written agreement detailing the variation to be signed and returned by each Standing List Provider within 7 days of receipt.
- 2.6 On receipt of a signed agreement from each Standing List Provider, the Authority shall notify all Standing List Providers 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 Providers from performing its obligations under the Standing List Agreement; or
- (b) is in contravention of any Law.