

# TORBAY COUNCIL

<b>TORBAY COUNCIL STANDING LIST AGREEMENT FRONT SHEET</b>	
<i>Agreement between</i>	
<b>The Authority</b> Torbay Council of Town Hall, Torquay, Devon, TQ1 3DR	
<i>and</i>	
<b>The Provider</b> [Insert name, registered office address and, where applicable, the company number of the Provider]	
<i>Contract Number and Title</i>	
[Insert number and title of Contract]	
<i>Date</i>	
[Insert the date when signed by both parties]	
<i>Commencement Date</i>	
[Insert the date on which the Agreement shall commence]	
<i>Summary of Services</i>	
[Insert a summary of the services to be supplied by the Provider]	

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

The Provider shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of this Agreement and any subsequent Call-Off Contract.

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

<b>Schedule 1</b>	Key Provisions
<b>Schedule 2</b>	General Provisions
<b>Schedule 3</b>	Definitions and Interpretations
<b>Schedule 4</b>	Award Procedures
<b>Schedule 5</b>	Not Used
<b>Schedule 6</b>	Specification
<b>Schedule 7</b>	Provider's Tender Response
<b>Schedule 8</b>	Provider's Pricing Schedule
<b>Schedule 9</b>	Evidence of Insurance
<b>Schedule 10</b>	Change Control Procedure
<b>Schedule 11</b>	Performance Management System
<b>Schedule 12</b>	Not Used
<b>Schedule 13</b>	Call-Off Terms and Conditions
<b>Schedule 14</b>	Data Protection Roles and Responsibilities

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

.....

**Name:**

**Position:**

**COMMON SEAL**

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

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 Standing List Agreement]** on **[insert date that the contract notice was published]** on Find a Tender and Contracts Finder seeking expressions of interest from potential Providers for **[insert a brief description of the Services to be provided by the Provider]**.
- (B) The Authority has, through a competitive process, appointed the Provider to this Standing List and the Provider is willing and able to participate in this Standing List and provide the services in accordance with the terms and conditions of this Agreement and any subsequent Call-Off Contract.
- (C) Documents that form part of this Agreement are
- (i) the completed tender documents including the Specification, Provider Tender Response Payment Schedule, Call-Off Contract and any other supporting documentation; and
  - (ii) the Front Sheet and its associated Schedules.

### **Standard Key Provisions**

#### **1 APPLICATION OF THE KEY PROVISIONS**

The standard Key Provisions at clauses 1 to 6 of these Key Provisions shall apply to this Agreement.

The optional Key Provisions at clauses 7 to 16 of these Key Provisions shall apply to this Agreement 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 Agreement

Extra Key Provisions shall only apply to this Agreement where such provisions are set out at the end of this Schedule 1.

#### **2 TERM**

This Agreement shall take effect on the Commencement Date and shall continue for the Term unless:

- the Standing List is terminated early or extended; or
  - the Provider's appointment to the Standing List is terminated early or extended;
- as appropriate in accordance with the terms conditions or clauses of this Agreement.

The Initial Term shall be the period commencing on the Commencement Date and ending **[insert proposed end date of the Agreement]** unless the Standing List or the Provider's appointment to the Standing List is terminated in advance of this date.

#### **3 AUTHORISED REPRESENTATIVES**

At the commencement of this Agreement:

the Authority Authorised Representative is:

**[insert name and role of the Authority's Authorised Representative]**

the Provider Authorised Representative is:

**[insert name and role of the Provider's Authorised Representative]**.

#### **4 NAMES AND ADDRESSES FOR NOTICES**

Notices served under this Agreement are to be delivered to:

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]**

for the Provider:

**[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 Provider 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 Agreement the order of priority for construction purposes shall be:

- the provisions of the Front Sheet of this Agreement;
- Schedule 1: Key Provisions;
- Schedule 6: Specification;
- Schedule 8: Provider's Pricing Submission;
- Schedule 2: General Terms;
- Schedule 14: Data Protection Roles and Responsibilities
- Schedule 4: Award Procedures
- Schedule 3: Definitions and Interpretations;
- Schedule 13: Call-Off Terms;
- Schedule 7: Provider's Tender Response Document; and
- the order in which all subsequent schedules, if any, appear.

## **6 SCOPE OF STANDING LIST AGREEMENT**

This Agreement governs the relationship between the Authority and the Provider in respect of the provision of the Services by the Provider to the Authority.

The Authority appoints the Provider as a Standing List Provider of the Services and the Provider shall, subject to eligibility, be able to participate in further competition call-offs from the Standing List and receive Orders for such Services from the Authority during the Term. The Authority does not guarantee any Orders, Call-Off Contracts or work will be offered or put in place as a result of this Standing List Agreement.

The Authority may, at its absolute discretion and from time to time, order Services from the Provider in accordance with the ordering procedure set out in Schedule 4 during the Term. The Parties acknowledge and agree that the Authority has the right to order Services pursuant to this Agreement provided that they comply at all times with the Regulations and the ordering procedure in Schedule 4. If there is a conflict between Schedule 4 and the Regulations, the Regulations shall take precedence.

If and to the extent that any Services under this Agreement are required the Authority shall:

enter into an agreement with the Provider for these Services materially in accordance with the terms of the Agreement; and

comply with the ordering procedure in Schedule 4.

The Provider acknowledges that, in entering this Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for the Services and that the Authority is at all times entitled to enter into other contracts and arrangements with other Providers for the provision of any or all services which are the same as or similar to the Services.

The Authority shall not in any circumstances be liable to the Provider or any Other Contracting Body for payment or otherwise in respect of any Services provided by the Provider to any Other Contracting Body.

**Optional Key Provisions**

<input checked="" type="checkbox"/>	<p><b>7 EXTENDING THE INITIAL TERM</b></p> <p>The Authority may extend this Agreement beyond the Initial Term by a further period or periods of up to 2 years (<b>Extension Period</b>), awarded in increments of up to 2 years. If the Authority wishes to extend this Agreement, it shall give the Provider at least 3 months' written notice of such intention before the expiry of the Initial Term or Extension Period.</p> <p>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>If the Authority does not wish to extend this Agreement beyond the Initial Term this Agreement shall expire on the expiry of the Initial Term and clause 15 of the General Terms shall apply.</p>
<input type="checkbox"/>	<p><b>8 NOT USED</b></p>
<input type="checkbox"/>	<p><b>9 NOT USED</b></p>
<input type="checkbox"/>	<p><b>10 NOT USED</b></p>
<input type="checkbox"/>	<p><b>11 NOT USED</b></p>
<input type="checkbox"/>	<p><b>12 NOT USED</b></p>
<input checked="" type="checkbox"/>	<p><b>13 BUSINESS CONTINUITY</b></p> <p>Within <b>3 months</b> following the Commencement Date, the Provider shall prepare a draft business continuity plan relating to its provision of the Services and submit that plan to the Authority for its approval. The draft business continuity plan shall:</p> <ul style="list-style-type: none"> <li>(a) address how the Provider will respond to, and rectify, any destruction or loss of the Hardware, Software, Data or any other facilities used by the Provider in providing the Services so that there is no disruption to the Authority or the performance of the Provider's obligations under this Contract, and</li> <li>(b) detail how and when the Provider will test its business continuity plan;</li> <li>(c) address how it intends to mitigate against any Covid19 or any similar emerging pandemic, epidemic or global health emergency in particular in respect of the Provider's Personnel or a Provider Party; the Provider's supply chain any issues with regard to the supply of equipment or accommodation;</li> <li>(d) address how it intends to mitigate against any reasonably foreseeable events which would otherwise fall within the definition of Force Majeure Event; and</li> </ul>

	<p>(e) address how it intends to mitigate against any other threats or risks to the provision by the Provider of the Services.</p> <p>The Authority shall within a reasonable time provide its comments on the Provider's draft business continuity plan, and if necessary, the parties shall discuss the Authority's comments and the Provider shall then promptly prepare a revised draft business continuity plan which addresses the Authority's comments and submit it to the Authority for approval within <b>30 days</b> of receipt of the Authority's comments provided under this clause 0. This process shall be repeated until the Authority approves the business continuity plan in writing.</p> <p>Once the Authority has approved the Provider's draft business continuity plan in writing it will form part of this Agreement and the Provider shall perform its obligations under the approved business continuity plan.</p> <p>The Provider shall review its business continuity plan at least every <b>12 months</b> and update it as necessary to reflect any changes in the way the Provider carries on business or provides the Services, any changes made to any aspect of this Agreement or any other changes required as a result of changes by the Authority to its business continuity requirements. Such a plan will as a minimum identify ways in which the Provider intends to mitigate against impact of:</p> <p>(a) Covid19 or any similar emerging pandemic, epidemic or global health emergency in particular in respect of the Provider's Personnel or a Provider Party; the Provider's supply chain any issues with regard to the supply of equipment or accommodation;</p> <p>(b) any reasonably foreseeable events which would otherwise fall within the definition of Force Majeure Event; and</p> <p>(c) any other threats or risks to the provision by the Provider of the Services.</p>
<input checked="" type="checkbox"/>	<p><b>14 REPORTING AND MEETINGS</b></p> <p>The Provider shall submit Management Information to the Authority in the form set out in Schedule 11 or within any Call-Off Contract throughout the Term on the last day of every third Month and thereafter in respect of any Call-Off Contract entered into with the Authority.</p> <p>The Authorised Representatives shall meet in accordance with the details set out in Schedule 11 and the Provider shall, at each meeting, present its previously circulated Management Information in the format set out in that Schedule.</p> <p>The Authority may share the Management Information supplied by the Provider with any Other Contracting Body.</p> <p>The Authority may make changes to the nature of the Management Information that the Provider is required to supply and shall give the Provider at least one month's written notice of any changes.</p>
<input type="checkbox"/>	<p><b>15 NOT USED</b></p>
<input type="checkbox"/>	<p><b>16 NOT USED</b></p>

**Additional Key Provisions**

<input type="checkbox"/>	17 NOT USED
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## Schedule 2 General Terms

### 1. SUPPLY OF SERVICES

- 1.1 The Provider shall provide the Services to the Authority with effect from the Commencement Date of any Call-Off Contract and for the duration of said Call-Off Contract in accordance with the provisions of this Agreement and said Call-Off Contract.
- 1.2 In the event that the Provider does not comply with the provisions of clause 0 in any way, the Authority may serve the Provider with a notice in writing setting out the details of the Provider's default (a Default Notice). The Default and Remedy process is set out in Schedule 11.

### 2. SERVICE LEVELS

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

### 3. COMPLIANCE

- 3.1 The Provider shall ensure that all Necessary Consents are in place to participate in this Agreement and provide the Services under any Call-Off Contract and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 3.2 Where there is any conflict or inconsistency between the provisions of the Agreement or any Call-Off Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Provider has used best endeavours to obtain a Necessary Consent in line with the requirements of the Services.
- 3.3 The Provider warrants and represents to the Authority and to each of the Other Contracting Bodies (where applicable) that:
  - (a) this Agreement is executed by a duly authorised representative of the Provider;
  - (b) in entering into this Agreement or any Call-Off Contract it has not committed any Prohibited Act;
  - (c) 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 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;
  - (d) 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 Agreement and any Call-Off Contract which may be entered into with the Authority or Other Contracting Bodies;
  - (e) 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 Agreement and any Call-Off Contract; and
  - (f) 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 Provider 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 Provider's assets or revenue.
- 3.4 Without prejudice to clause 1, the Provider 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 Agreement by the Authority; and
  - (c) in accordance with all applicable laws.

- 3.5 Without limiting the general obligation set out in clause 3.1, the Provider shall (and shall procure that the Provider's Personnel shall):
- (a) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract. The Provider shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998;
  - (b) not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment;
  - (c) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality law; and
  - (d) comply with the Provider's Social Value Response (where applicable).
- 3.6 In performing its obligations under the agreement, the Provider shall and (where applicable) shall ensure that each of its subProviders shall comply with:
- (a) all applicable laws, statutes, regulations and codes from time to time in force including, but not limited to, the Modern Slavery Act 2015; and
  - (b) in accordance with Customer's the Anti-slavery Policy.(if any)
- 3.7 Where requested by the Provider and agreed by the Authority in writing pursuant to the Brand Guidelines, the Provider may use the Marks (as defined in the Brand Guidelines and agreed by the Authority in the Permission Request Form) for the purposes outlined and agreed by the Authority in the Permission Request Form.
- 3.8 The Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Agreement and any Call-Off Contract.

#### **4. DUE DILIGENCE**

- 4.1 The Provider acknowledges and confirms that:
- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement;
  - (b) it has received all information requested by it from the Authority pursuant to paragraph (a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Agreement and the Fees set out in this Agreement;
  - (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to paragraph (b);
  - (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
  - (e) it has entered into this Agreement in reliance on its own due diligence.
- 4.2 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Provider by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.3 The Provider:
- (a) as at the Commencement Date, warrants and represents that all information contained in the Provider'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 Agreement; and
  - (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this Agreement 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.

- 4.4 The Provider shall not be entitled to recover any additional costs or Fees from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Provider in accordance with clause 4.3(b) save where such additional costs or adverse effect on performance have been caused by the Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Provider shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 4.5 Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

## 5. DISPUTE RESOLUTION PROCEDURE

- 5.1 If a Dispute arises 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 Authorised Representatives of both the Authority and the Provider shall attempt in good faith to resolve the Dispute;
  - (b) if the Authorised Representatives of the Authority the Provider 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 Provider who shall attempt in good faith to resolve it; and
  - (c) if the senior officers of the Authority and the Provider 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.
- 5.2 The Provider shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.
- 5.3 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clauses 30 and 31 which shall apply at all times.
- 5.4 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 clauses 30 and 31 of these General Terms.

## 6. SUB-CONTRACTING AND ASSIGNMENT

- 6.1 The Provider shall not be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement or any Call-Off Contract without the prior written consent of the Authority. The Provider shall not sub-contract the whole or any part of its obligations under this Agreement or any Call-Off Contract nor shall it replace a Sub-contractor approved under this Agreement or any Call-Off Contract or permit a Sub-contractor approved under this Agreement or any Call-Off 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.

- 6.2 In the event that the Provider enters into any Sub-Contract in connection with this Agreement or any Call-Off Contract it shall:
- (a) remain responsible to the Authority for the performance of its obligations under the Agreement or Call-Off Contract notwithstanding the appointment of any Sub-contractor and be responsible for the acts omissions and neglects of its Sub-Providers and shall indemnify and keep indemnified the Authority against any loss or claim arising resulting from the failure of the Sub Provider or an employee of the Sub Provider in the performance of the duties of the Sub Provider to provide the Services on behalf of the Provider under this Agreement or any Call-Off Contract;
  - (b) impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to this Agreement or any Call-Off Contract and shall procure that the Sub-contractor complies with such terms and, if necessary, imposes obligations on any further sub-Providers in its sub-contract pursuant to this Agreement or any Call-Off 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.
- 6.3 The Authority shall be entitled to novate the Agreement or any Call-Off Contract to any other body which substantially performs any of the functions that previously had been performed by the Authority.
- 6.4 The Authority may, by notice in writing to the Provider, require the Provider 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 Agreement or any Call-Off Contract where any of the circumstances specified in Regulation 57(1) or (8) of the Public Contracts Regulations 2015 applies to the Sub-contractor.

## 7. INSURANCE

- 7.1 The policy limits set out below shall apply to the Provider's appointment to the Standing List. In addition, for each Call-Off the project specific insurance requirements shall be included in the individual Call-Off Contract.
- 7.2 The Provider 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 shall ensure that all professional consultants or Sub-Providers involved in the provision of the Services hold and maintain appropriate cover; and
  - (d) any insurances specified within individual Call-Off Contracts,
- (the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- 7.3 The Provider shall, prior to the Commencement Date and on each subsequent anniversary of the Commencement Date, provide the Authority with copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies. This evidence of insurance will be added annually to this Agreement in Schedule 9.
- 7.4 If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the

costs of such arrangements from the Provider including by way of set off against payments that may be made by the Authority to the Provider for the provision of the Services.

- 7.5 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Agreement or any Call-Off Contract.
- 7.6 The Provider shall hold and maintain the Required Insurances for a minimum of twelve years following the expiration or earlier termination of the Agreement or any Call-Off Contract, whichever is the latter.

## **8. FREEDOM OF INFORMATION AND TRANSPARENCY OBLIGATIONS**

- 8.1 The Provider 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 Provider'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.
- 8.2 The Provider shall and shall procure that its Sub-Providers 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.
- 8.3 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.
- 8.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 8.5 The Provider 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 Provider. The Authority shall take reasonable steps to notify the Provider 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 or any Call-Off 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 Provider shall ensure that all Information produced in the course of the Agreement or relating to the Agreement or any Call-Off Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 8.6 The Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 8.5
- 8.7 The Provider 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 Provider consents to such publication.
- 8.8 The Provider 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.

- 8.9 Notwithstanding any other term of the Agreement, the Provider hereby consents to the Authority publishing the Agreement or any Call-Off 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 Agreement or any Call-Off Contract, to the general public.
- 8.10 The Provider shall assist and co-operate with the Authority to enable the Authority to publish this Agreement and any Call-Off Contract(s).

## **9. DATA PROTECTION**

- 9.1 The parties acknowledge and agree that the allocation of the role of data controller, joint data controller or data processor (as such terms are defined in the Data Protection Laws) is a question of fact rather than being determined by contractual agreement. However, the parties agree that circumstances may arise in connection with the provision of the Services whereby:
- (a) both parties are independent data controllers of Contract Personal Data;
  - (b) the parties are joint data controllers of Contract Personal Data;
  - (c) one party acts as a data processor on behalf of the other party in relation to Contract Personal Data; or
  - (d) a combination of two or more of the circumstances set out above.
- 9.2 The parties agree to confirm the role of each party (as described in 9.1 above) prior to the commencement of the processing of personal data under any Call-Off Contract in respect of any Services in the relevant SOW or otherwise in writing.
- 9.3 Depending on the roles of each party in relation to any Project or any processing of Contract Personal Data, the parties agree in each case to comply with the terms of this clause 9 and Schedule 15 of any Call-Off Contract.
- 9.4 The parties shall each be responsible for their own costs of compliance with this clause 5 and Schedule 15 of any Call-Off Contract save where any data protection related audit carried out by or on behalf of the Authority reveals any material non-compliance by the Provider in relation to the Provider's obligations under this clause 9, Schedule 15 of any Call-Off Contract or the Data Protection Laws, in which case Provider shall promptly reimburse the Authority's reasonable costs incurred in relation to such audit.
- 9.5 The Provider 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 Provider's obligations in this clause 9 except and to the extent that such liabilities have resulted directly from the Authority's instructions.

## **10. CONFIDENTIALITY**

- 10.1 The provisions of this clause shall not apply to any Confidential Information that:
- (a) is required for disclosure by any applicable law, provided that clause 8.5 shall apply to any disclosures required under the FOIA or the EIRs;
  - (b) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Authorised Representatives in breach of this clause);
  - (c) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - (d) is disclosed by the Authority to any other department, office or agency of the Government;
  - (e) where in the reasonable opinion of the Authority it is necessary to disclose information or required to disclose information to any court tribunal arm of Government or Local Government;
  - (f) may assist in the enabling of a determination to be made under clause 5;

- (g) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
  - (h) the parties agree in writing is not confidential or may be disclosed.
- 10.2 Each party shall keep the other party's Confidential Information confidential and shall not:
- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement or any Call-Off Contract (Permitted Purpose); or
  - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 10.3 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Contract,
- and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause.
- 10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.
- 10.5 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.
- 10.6 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Contract are granted to the other party, or to be implied from this Contract.
- 10.7 On termination of this Contract, the Provider shall:
- (a) return to the Authority all documents and materials (and any copies) containing, reflecting, incorporating or based on the Authority's Confidential Information;
  - (b) erase all the Authority's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable); and
  - (c) certify in writing to the Authority that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the Authority's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.
- 10.8 Except as expressly stated in this Contract, no party makes any express or implied warranty or representation concerning its Confidential Information.

## **11. AUDIT**

- 11.1 During the Term and for a period of 7 years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:
- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Agreement or any Call-Off Contract) and/or the costs of all Providers (including Sub-Providers) of the Services;

- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
  - (c) to review the Provider's compliance with the Data Protection Act and the FOIA in accordance with clause 9 and clause 5 and any other legislation applicable to the Services;
  - (d) to review any records created during the provision of the Services;
  - (e) to review any books of account kept by the Provider in connection with the provision of the Services;
  - (f) to carry out the audit and certification of the Authority's accounts;
  - (g) to carry out an examination pursuant of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - (h) to verify the accuracy and completeness of the Management Reports (if applicable) and any other management information delivered or required by this Contract.
- 11.2 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- 11.3 Subject to the Authority's obligations of confidentiality, the Provider shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
  - (b) reasonable access to any sites controlled by the Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  - (c) access to the Provider's Personnel.
- 11.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 11.5 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Agreement in any material manner by the Provider in which case the Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 11.6 If an audit identifies that:
- (a) the Provider has failed to perform its obligations under this Agreement or any Call-Off Contract in any material manner; the parties shall agree and implement a remedial plan. If the Provider's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Provider'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 Provider shall pay to the Authority the amount overpaid within 20 Working Days. The Authority may deduct the relevant amount from the Charges if the Provider fails to make this payment; and
  - (c) the Authority has underpaid any Charges, the Authority shall pay to the Provider the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Provider in relation to invoicing within 20 Working Days.

## **12. TERMINATION FOR BREACH**

### **Immediate Termination for Breach**

- 12.1 The Authority may terminate the Provider's appointment to the Standing List and this Agreement with immediate effect by the service of written notice on the Provider in the following circumstances:
- (a) if the Provider is in breach of any material obligation under this Agreement provided that if the breach is capable of remedy, the Authority has served the Provider with a written Default Notice in accordance with the Default and Remedy process set out

in Schedule 11. The Authority may only terminate this Agreement under this clause 12.1(a) if the Provider has failed to:

- (i) acknowledge receipt of the Default Notice within one Working Day;
  - (ii) provide the Authority with a Remedial Action Plan for approval by the Authority, within the timescale specified within the Default Notice; or
  - (iii) implement the Remedial Action Plan within the agreed timescale.
- (b) if the Provider is in breach of any material obligation under this Agreement and the material breach is not, in the reasonable opinion of the Authority, capable of remedy;
  - (c) where the Authority terminates a Contract awarded to the Provider under this Agreement as a consequence of a material breach by the Provider;
  - (d) if a Catastrophic Failure has occurred;
  - (e) if an Insolvency Event has occurred within the meaning of section 123 or section 168 of the Insolvency Act 1986;
  - (f) if the Provider ceases or threatens to cease to meet its obligations under this Agreement for any reason;
  - (g) any warranty given by the Provider under this Agreement is found to be untrue or misleading;
  - (h) if there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Provider to which the Authority reasonably objects; or
  - (i) in accordance with clauses 17 Anti-Slavery and 18 Prevention of Bribery and Corruption.
  - (j) if Provider fails to meet its obligations and / or commits a breach of clauses 8 Freedom of Information and Transparency Obligations or 11 Audit.

#### **Termination with Notice for Breach**

12.2 The Authority may terminate the Standing List or the Provider's appointment to the Standing List by giving not less than 30 days written notice on the Provider in any of the following circumstances:

- (a) the Agreement 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 Provider such that it should have been excluded from the procurement procedure; or
  - (ii) to a Sub-contractor on which the Provider relied in its tender to the Authority for this Agreement and the Provider does not cease to engage that Sub-contractor within 30 days of a notice from the Authority requiring the Provider to cease to engage that Sub-contractor.
- (c) in the event that the Government announces or instigates a national or local lockdown which has the effect of materially impacting the provision of the Services or the Authority's ability to effectively use or apply the output of the Services; and
- (d) in the event that any third party lease (including in respect of any Authority Premises) to which the Authority is a party is terminated or expires provided that the Services provided by the Provider relates specifically to the property to which the lease relates.

12.3 If this Agreement is terminated by the Authority for cause in accordance with clause 12.1 or 0 such termination shall be at no loss or cost to the Authority.

### **13. TERMINATION ON NOTICE**

13.1 The Authority may terminate this Agreement at any time by giving not less than 30 days written notice to the Provider.

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

### **14. SUSPENSION OF PROVIDER'S APPOINTMENT**

14.1 Without prejudice to the Authority's rights to terminate the Agreement in clauses 12 and 13 above, if a right to terminate the Provider's appointment to the Standing List arises in accordance with clauses 12 and 13, the Authority may suspend the Provider's right to receive Orders in any or all Provider's Lots by giving notice in writing to the Provider. If the Authority provides notice to the Provider in accordance with this clause 14, the Provider's appointment to the Standing List shall be suspended for the period set out in the notice or such other period notified to the Provider by the Authority in writing from time to time.

14.2 The Authority may suspend the Supplier's right to receive Orders against any or all of the Lots awarded to them where:

- (a) in the reasonable opinion of the Authority, there is a material detrimental change in the financial standing and/or the credit rating of the Provider (as measured from the Commencement Date) which:
  - (i) adversely impacts on the Provider's ability to supply Goods and/or Services under the Standing List; or
  - (ii) could reasonably be expected to have an adverse impact on the Provider's ability to supply the Goods and/or Services under the Standing List.
- (b) the Provider fails to remedy the issues referred to within a Default Notice or breaches a Remedial Action Plan, in accordance with the requirements of Schedule 11;
- (c) the Provider is issued with three or more Default Notices in any 12 month rolling period;
- (d) the Supplier fails to respond to any Direct Award or Further Competitions in any twelve month rolling period; or

14.3 The Supplier shall be given the opportunity to provide an explanation before a decision to suspend is made.

### **15. EXIT MANAGEMENT AND CONSEQUENCES OF TERMINATION**

15.1 Notwithstanding the service of a notice to terminate the Agreement, the Provider shall continue to fulfill its obligations under the Agreement until the date of expiry or termination of the Agreement or such other date as required under this clause 15.

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

15.3 On termination of the Provider's appointment to the Standing List or expiry of this Agreement for any reason, the Provider shall:

- (a) immediately deliver to the Authority all Authority Assets (where applicable), copies of information, documentation and Data provided by the Authority to the Provider for the purposes of this Agreement;
- (b) immediately repay to the Authority all Charges that it has been paid in respect of Services not provided by the Provider as at the date of expiry or termination or any other sums due to the Authority in accordance with this Agreement

- (c) cease to use the Authority Data;
  - (d) provide the Authority with a complete and uncorrupted version of all Authority Data;
  - (e) certify to the Authority that it has not retained any copies of any Authority documentation or other information or data, except for one copy which the Provider may use for audit purposes only and subject to the confidentiality obligations in clause 10 of the General Terms;
  - (f) vacate any Authority Premises; and
  - (g) provide such information relating to the Services as remains in the possession or control of the Provider.
- 15.4 If the Provider fails to fulfil its obligations under clause 15.1, then the Authority may enter the Provider's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Provider shall be solely responsible for their safe keeping.
- 15.5 The provisions of clauses 7 (Insurance), 8 (Freedom of Information), 9 (Data Protection), 10 (Confidentiality), 11 (Audit), 12 (Termination for Breach) and this clause 15 of the General Terms and clause 14 (Reporting and Meetings) (if applicable) of the Key Provisions shall survive termination or expiry of this Agreement.
- 15.6 Termination of the Provider's appointment to the Standing List or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 16. FORCE MAJEURE**
- 16.1 Subject to the remaining provisions of this clause 16, neither party to this Agreement or any Call-Off Contract shall be liable to the other for any delay or non-performance of its obligations under this Contract to the extent that such non-performance is due to a Force Majeure Event.
- 16.2 In the event that either party is delayed or prevented from performing its obligations under this Agreement or any Call-Off Contract by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
  - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement or any Call-Off Contract; and
  - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 16.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 16.4 The Provider cannot claim relief if the Force Majeure Event is one where a reasonable Provider should have foreseen and provided for the cause in question.
- 16.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement or any Call-Off Contract. Where the Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 16.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement or any Call-Off Contract. Following such notification, this Agreement or any Call-Off Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

16.7 The Authority may, during the continuance of any Force Majeure Event, terminate the Provider's appointment to the Standing List or any Call-Off Contract by written notice to the Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 60 Working Days.

## 17. ANTI-SLAVERY

17.1 The Provider will not and will procure that any other persons who perform services or supply goods for or on behalf of it in connection with this Agreement or any Call-Off Contract (including each Provider Party and/or the Provider's Personnel) will not engage in any practice or omit to do any act or thing that amounts to modern slavery as defined under the Modern Slavery Act 2015 ("**Modern Slavery Practice**").

17.2 The Provider will (and procure that its Provider Party/ies or Provider Personnel will):

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015;
- (b) comply with all applicable any anti-slavery policy and/or code of conduct adopted by the Authority from time to time;
- (c) conduct proper and detailed checks on its own Providers and Providers and all persons employed or engaged on or in connection with the Services to ensure that they do not engage in any Modern Slavery Practice;
- (d) include in its contracts with its subProviders and Providers (including any Provider Party) anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 17
- (e) provide the Authority (at the Provider's cost) with assistance and information to enable the Authority to prepare a slavery and human trafficking statement as required by section 54 Modern Slavery Act 2015;
- (f) permit the Authority and any person nominated by it for this purpose to have such access on demand to the Provider's (or any relevant Provider Party's) premises, personnel, systems, books and records as the Authority may require to verify the Provider's compliance with this clause 17.

17.3 The Provider represents and warrants (on behalf of itself and its Provider Personnel and Provider Party/ies) that neither the Provider (its Provider Party/ies or Provider Personnel) nor any of its/their officers, employees or other persons associated with it:

- (a) have been convicted of any offence involving slavery and human trafficking;
- (b) have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

17.4 The Provider will (and procure that its Provider Party/ies and/or Provider Personnel) immediately give written notice to the Authority upon a breach, potential or suspected breach, of any of its obligations referred to in Clauses 17.1 to 17.3 occurring. The notice will set out full details of the breach or suspected breach or non-compliance.

17.5 The Authority may terminate the Provider's appointment to the Standing List or any Call-Off Contract (or any part thereof as applicable) immediately and without liability by giving written notice to that effect to the Provider if the Provider (or any of the Provider Party/ies or Provider Personnel) is/are in breach of any of their obligations under this clause 17 or has reasonable cause to believe such a breach has occurred.

17.6 The Provider will indemnify the Authority (against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that the Authority does or will incur or suffer arising out of or in connection with any breach by the Provider (or its Provider Party/ies or Provider Personnel) of any of its obligations under this Clause 17.

## 18. PREVENTION OF BRIBERY AND CORRUPTION

18.1 The Provider:

- (a) shall not, and shall procure that any Provider Party and all Provider Personnel shall not, in connection with this Agreement or any Call-Off Contract commit a Prohibited Act or contravene any of the Authority's policies or rules with regard to anti-bribery notified to the Provider in writing from time to time;
- (b) shall not do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, Providers, sub-Providers 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:
  - (i) 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;
  - (ii) neither the Provider, the Provider Party/ies or any of the Provider Personnel has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Bribery Act;
  - (iii) neither the Provider, the Provider Party/ies or any of the Provider Personnel has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts including, without limitation, any exclusion under regulation 57 of the Public Contracts Regulations 2015 or regulation 80 of the Utilities Contracts Regulations 2016 (SI 2016/274);
  - (iv) (except as notified in writing to the Authority, specifically referring to this clause 25.1(c)(iv)) none of the officers or employees of the Provider or any person associated with it or any other person who is performing the Services in connection with this Agreement or any Call-Off Contract is a foreign public official; and/or
  - (v) (except as notified in writing to the Authority, specifically referring to this clause 25.1(c)(v)) no foreign public official owns a direct or indirect interest in the Provider or any person associated with it (including any Provider Party or the Provider Personnel) or any other person for whom the Provider is responsible under this Contract and no public official has any legal or beneficial interest in any payments made by the Authority under this Agreement or any Call-Off Contract.

18.2 The Provider shall promptly notify the Authority if, at any time during the continuance of this Agreement, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clauses 18.1 and 18.3 at the relevant time. Breach of clause 18.1 and 18.3 shall be a material breach of this Agreement. If the Authority terminates this Agreement for breach of clause 18.1, the Provider shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.

18.3 The Provider represents and warrants that neither it, nor to the best of its knowledge any Provider Party or Provider 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.

18.4 The Provider 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 Provider) compliance with this clause 18 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.

18.5 The Provider shall establish, maintain and enforce, and require that its Sub-Providers establish, maintain and enforce, an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Provider Party or Provider Personnel from committing a Prohibited Act and that are compliant with the Bribery Act and shall enforce it where appropriate. Any sub-contract shall be recorded in writing and shall:

- (a) impose on and secure from the Sub-contractor obligations, liabilities, undertakings, warranties, acknowledgements and grants of rights equivalent to those imposed on and secured from the Provider in this clause 18 (**Relevant Terms and Conditions**) in each case for the benefit of the Authority, such provisions to be directly enforceable by the Authority under the Contract (Rights of Third Parties) Act 1999 (**Third Party Rights Act**);
- (b) include an undertaking from the Sub-contractor in favour of the Authority (directly enforceable by the Authority under the Third Party Rights Act) not to enter into any further subcontract with any third party;
- (c) include provisions, directly enforceable by the Authority under the Third Party Rights Act, granting the Authority and its representatives:
  - (i) the same direct access to the premises, records, information and personnel of the Sub-contractor as the Authority has to the premises, records, information and personnel of the Provider; and
  - (ii) the same auditing rights in respect of the Sub-contractor's compliance with the Relevant Terms and Conditions as the Authority has regarding the Provider's compliance with this clause; and
  - (iii) include provisions allowing termination of the Sub-Contract by the Authority in accordance with this Contract and a provision for automatic termination of the subcontract in the event of, and at the same time as, the termination of this Agreement.

18.6 After any subcontract has been entered into, the Provider shall:

- (a) within thirty (30) days (or such other period agreed in writing with the Authority) of it being entered into, provide the Authority with a copy of the Subcontract;
- (b) be responsible for the observance and performance by the Sub-contractor of the Relevant Terms and Conditions, and shall be directly liable to the Authority for any breach by the Sub-contractor of any of the Relevant Terms and Conditions;
- (c) notify the Authority in the case of any such breach; and
- (d) if the Sub-contractor fails to perform or observe any of the Relevant Terms and Conditions, and if requested by the Authority, immediately give the Sub-contractor notice, specifying the breach complained of, and:

- (i) where the breach is not capable of remedy, terminating the subcontract immediately; or
- (ii) where the breach is capable of remedy, giving notice that the subcontract is to terminate thirty (30) day`s from the date of the notice being given unless the Sub-contractor has remedied the breach within that period.

18.7 If any breach of clause 18.1 or clause 18.3 is suspected or known, the Provider must notify the Authority immediately.

18.8 If the Provider notifies the Authority that it suspects or knows that there may be a breach of clause 18.1 or clause 18.3, the Provider 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.

18.9 The Authority may terminate this Agreement by written notice with immediate effect and without liability to the Provider, Provider Party or any Provider Personnel if the Provider, Provider Party or Provider Personnel (in all cases whether or not acting with the Provider's knowledge) breaches clause 18.1 or clause 18.3. The expression "not acting independently of" (when used in relation to the Provider or a Sub-contractor) means and shall be construed as acting:

- (a) with the Authority; or,
- (b) with the actual knowledge;
- (c) of any one or more of the directors of the Provider or the Sub-contractor (as the case may be); or
- (d) in circumstances where any one or more of the directors of the Provider ought reasonably to have had knowledge.

18.10 Any notice of termination under clause 18.9 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.

18.11 Despite clause 5, any dispute relating to:

- (a) the interpretation of clause 16; or
- (b) the amount or value of any gift, consideration or commission,
- (c) shall be determined by the Authority and its decision shall be final and conclusive.

18.12 Any termination under clause 18.9 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

## 19. NON-SOLICITATION

Neither party shall (except with the prior written consent of the other) during the term of this Agreement or any Call-Off 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 Agreement or any Call-Off Contract or any significant part thereof either as principal, agent, employee, independent Provider or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

## 20. 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 Provider 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

Provider of its obligations to deliver the Services in accordance with the provisions of this Agreement.

## **21. ACCUMULATION OF REMEDIES**

Subject to the specific limitations set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy except as expressly provided for in this Agreement 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.

## **22. SEVERABILITY**

- 22.1 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.
- 22.2 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.

## **23. PARTNERSHIP OR AGENCY**

- 23.1 Nothing in this Agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this Agreement.
- 23.2 Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

## **24. THIRD PARTY RIGHTS**

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

## **25. PUBLICITY**

The Provider shall not:

- (a) make any press announcements or publicise this Agreement or any Call-Off 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.

## **26. NOTICES**

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

- (a) first-class mail,
- (b) e-mail (provided that the e-mail is sent to the e-mail address of the Authorised Representative of the receiving party as set out at clause 4 of the Key Provisions, or as notified by one party to the other in writing from time to time and are confirmed within 24 hours by first class mailed confirmation of a copy).

26.2 This table sets out:

- (a) delivery methods for sending a notice to a party under this agreement; and
- (b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 26.3:

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

26.3 For the purpose of clause 26.2 and calculating deemed receipt:

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

**27. CHANGES TO THE AGREEMENT**

No Change to this Agreement shall be effective unless it is processed in accordance with the Change of Control Procedure set out in Schedule 10.

**28. ENTIRE AGREEMENT**

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

**29. COUNTERPARTS**

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

**30. GOVERNING LAW**

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

**31. 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 Agreement of its subject matter or formation (including non-contractual disputes).

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

## Schedule 3 Definitions and Interpretation

### 1 Definitions and Interpretation

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

**Agreement / Standing List Agreement:** means this Agreement and all Schedules to this Agreement and no other.

**Authorised Representative:** the persons respectively designated as such by the Authority and the Provider, 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 Provider 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 or the relevant part of them, having regard to factors such as the nature and size of the parties, the Service Level Arrangements, the term, the pricing structure and any other relevant factors.

**Brand Guidelines:** means those guidelines set out in Schedule 16 of the Call-Off Contract.

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

**Call-Off Contract:** means the terms and conditions in Schedule 13.

**Catastrophic Failure:** any action by the Provider, 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.

**Change Control Procedure:** the procedure for making a Change, as set out in clause 27 of the General Terms.

**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.

**Competed Services:** means the competed services set out in Schedule 4.

**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, Providers, 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 a legally binding agreement (made pursuant to the provisions of this **Agreement**) for the provision of Services made between the Authority and the Provider comprising an Order Form, its appendices, and the Call-off Terms and Conditions (as may be amended pursuant to Schedule 4).

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

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

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

**Default Notice:** is defined in clause 0 of the General Terms.

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

**Dispute Resolution Procedure:** the procedure set out in clause 5 of the General Terms.

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

**Eligible Providers:** Providers who are eligible to receive work under this Agreement, i.e. those Providers appointment to the Standing List has not been terminated or who are not at the time of the call-off subject to suspension from the Standing List.

**Employee Liabilities:** means all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers and any claims (whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fines, losses, orders, penalties, disbursements, payments made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation and any legal costs and expenses.

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

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

**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.

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

**Insolvency Event:** where;

- (a) the Provider 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 Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors

other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of that other party;

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

**Key Personnel:** those personnel identified in the Specification for the roles attributed to such personnel, as modified from time to time in accordance with the terms of this Contract.

**Key Provisions:** the terms set out in Schedule 1.

**Management Reports:** the reports to be prepared and presented by the Provider in accordance with clause 14 of the Key Provisions and the Specification.

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

**Personal Data Breach:** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.

**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:
  - (iii) under the Bribery Act;
  - (iv) under legislation creating offences concerning fraudulent acts;
  - (v) at common law concerning fraudulent acts relating to this Contract or any other contract with the Authority; or
  - (vi) defrauding, attempting to defraud or conspiring to defraud the Authority.

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

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

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

**Services:** means the services detailed in Schedule 6

**SOW:** Scope of Work

**Provider Party:** the Provider's agents and Providers, including each Sub-contractor.

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

**Provider's Social Value Response:** means the response set out (where applicable) at Schedule 12.

**Provider's Tender Response:** the tender response document submitted by the Provider and other associated documentation set out in Schedule 7

**Services:** the services to be delivered by or on behalf of the Provider 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 6.

**Sub-Contract:** any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party.

**Sub-contractor:** the Providers or Providers that enter into a Sub-Contract with the Provider.

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

- (a) any extensions to this Contract which are agreed pursuant to clause 7 of the Key Provisions; or
- (b) the earlier termination of this Contract in accordance with its terms.

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

**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.

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

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.

- 1.12 References to clauses and schedules are to the clauses and schedules of this Contract; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where any statement is qualified by the expression so far as any party is aware or to any party's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.

## Schedule 4 Award Procedures

1. The Authority does not guarantee any Orders, Call-Off Contracts or work will be offered or put in place as a result of this Standing List Agreement. If the Authority decides to source Services through the Agreement then it may only do so in accordance with the terms for award set out in this Schedule 4.

### 2. Awards under the Standing List

2.1 The Authority may satisfy its requirements by awarding a Contract in accordance with the terms laid down in this Standing List Agreement without re-opening competition.

#### **Awards without Re-opening Competition**

2.2 The Authority shall direct award to the Provider who has been identified as the preferred Provider by the individual service user.

2.3 In the event the Eligible Provider is unable to meet the requirements the Authority shall either direct award to another preferred Provider identified by the individual service user or make alternative arrangements outside of this Standing List.

### 3. Form of Order

3.1 Subject to 2.2 above, where the Authority issues written acceptance of an offer by the Eligible Provider in response to a direct award shall constitute an Order with the Eligible Provider.

3.2 Where applicable, completion of all Orders shall be subject to both parties signing the agreed Call-Off Contract.

### 4. Accepting and Declining Orders

4.1 Following receipt of an Order, the Provider shall promptly and in any event within a reasonable period determined by the Authority and notified to the Provider 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.

4.2 If the Provider:

- (a) notifies the Authority that it is unable to fulfil an Order; or
- (b) the time limit referred to in paragraph 5.1 has expired; or
- (c) fails to submit a signed Call-Off Contract, where applicable, within the required timescales;

then the Order shall lapse and the Authority may then send that Order to another Standing List Provider in accordance with the procedure set out in clause 2.3.

4.3 If the Provider 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 Provider's response as notification of its inability to fulfil the Order and the provisions of paragraph 4.2 shall apply.

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

### 5. Contract Performance and Precedence of Documents

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

- (a) the requirements of this Agreement; and
- (b) the terms and conditions of the respective Call-off Contract.

5.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of a Call-Off Contract, such conflict or inconsistency shall be resolved according to the order of priority set in out in clause 5 of the Key Provisions.

5.3 **Prices**

5.4 The prices offered by the Provider shall be the prices listed in the Pricing Matrix which may only be adjusted in accordance with the provisions of this Agreement or the relevant Call-Off Contract.

**Schedule 5 Not Used**

## Schedule 6 Specification

**Schedule 7 Provider's Tender Response**

**Schedule 8 Provider's Pricing Submission**

**Schedule 9 Evidence of Insurance**

**Schedule 10 Change Control Procedure**

**1 DEFINITIONS**

The definitions in this paragraph apply in this Schedule 10.

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

**2 PERMITTED CHANGES**

2.1 Changes to the Contract shall be made only where:

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

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

(a) the Change is of the following scope and nature:	(b) the price of the Change is calculated as follows:	(c) the circumstances necessitating the Change are:
i move to the use of pre-paid cards system	i to be agreed by both parties, however there will be no increase in the cost of the overall service	i If it is agreed by Torbay Council that this change is financially viable

(d) the Change does not alter the overall nature of the Contract.

2.3 In respect of paragraph 2.2(b) the cost of additional services, changes or modifications will:

- (a) be proportionate to the changes being made;
- (b) be calculated in accordance with the Authority's budget and/or any additional funding available;
- (c) offer best value to the Authority;
- (d) take into consideration the pricing proposals set out in the Provider's tender submission.

**3 GENERAL PRINCIPLES**

- 3.1 Where the Authority or the Provider or any other Standing List Provider sees a need to change this Agreement, the Authority may at any time request and the Provider or any other Standing List Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 4 of this Schedule 10.
- 3.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Provider shall continue to perform this Agreement in compliance with its terms before such Change.
- 3.3 Any discussions which may take place between the Authority, the Provider and any other Standing List Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 3.4 Any work undertaken by the Provider and the Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 10 shall be undertaken entirely at the expense and liability of the Provider.

#### **4 PROCEDURE**

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

- (iii) the Charges;
  - (iv) the Documentation to be provided;
  - (v) the training to be provided;
  - (vi) working arrangements;
  - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
  - (j) provision for signature by the Authority and the Provider.
- 4.5 For each Change Control Note submitted by the Provider the Authority shall, within the period of the validity of the Change Control Note:
- (a) allocate a sequential number to the Change Control Note; and
  - (b) evaluate the Change Control Note and, as appropriate:
    - (i) request further information;
    - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Provider; or
    - (iii) notify the Provider of the rejection of the Change Control Note.
- 4.6 A Change Control Note signed by the Authority and by the Provider shall constitute an amendment to this Agreement.
- 4.7 The Authority may identify a Change request as an emergency Change or agree on a Change request being a minor Change. If this occurs then the procedure for agreeing the Change shall either be:
- (a) accelerated in accordance with the emergency as indicated by the Authority in the Change request. A Change would be an emergency Change request in circumstances where there is a new or continuing Force Majeure Event (inter alia) and the Authority requires the terms of the Agreement to be amended to circumvent or alleviate the circumstances arising from the Force Majeure Event. Where an emergency Change is agreed by the parties in respect of what would otherwise be determined to be a Force Majeure Event which enables the Provider to continue performing its obligations (as amended by the emergency Change) the Provider will no longer be permitted to claim relief in respect of that Force Majeure Event to the extent that its performance is no longer restricted or prevented; or
  - (b) truncated in accordance with the minor nature of the Change request.

## Schedule 11 Performance Management System

### 1 KEY PERFORMANCE INDICATORS, OUTCOMES AND TARGETS

- 1.1 Specific KPIs are to be agreed once Providers are awarded a place on the Standing List Agreement.
- 1.2 The Authority requires good quality service. The Provider acknowledges this requirement and undertakes to use its best endeavours to provide such a service based on the philosophy of "Get it right first time. The Authority shall be entitled to take steps to ascertain whether the Provider has performed the Service and that they have done so in complete accordance with this Agreement and any resultant call-off Contract(s).
- 1.3 The Provider's performance will be measured against the following KPIs and targets, as varied from time to time in accordance with the contract terms:

Ref	Performance Indicator	Targets	Frequency	Method of Measurement	Consequence of non-compliance
1.					
2.					

- 1.4 If the Parties have agreed a consequence in relation to the Provider failing to meet an Outcome or KPI, the Authority may exercise the agreed consequence immediately, without issuing a Contract Query, irrespective of any other rights the Authority may have under this paragraph 1.
- 1.5 The provisions under this paragraph 1 do not affect any other rights and obligations the Parties may have under this Contract.

### 2 SERVICE QUALITY PERFORMANCE REPORT

Within 4 weeks following the end of each quarter the Provider shall submit to the Authority a report in respect of the quarter just ended containing the information set out in paragraph 2.1 below.

- 2.1 The Service Quality Performance Report, shall as a minimum contain the following information:
- (a) a summary assessment of performance against all KPIs, Outcomes and targets;
  - (b) a record of default points accrued against each mandatory KPI, plus a total number of points accrued.
  - (c) a full and complete accounting record for the expenditure under the Contract to date, including any variances and mitigations for managing those.
- 2.2 The Service Quality Performance Report shall be submitted by email to the Authority's Authorised Representative in the following format(s):
- (a) service levels, KPI's and Outcomes to be reported in Microsoft Excel
  - (b) financial data to be reported in Microsoft Excel
  - (c) case studies, narrative reports, audits, service user/carer feedback to be reported in Microsoft Word or Adobe Acrobat PDF
- 2.3 The Authority shall notify the Provider in writing within 10 Working Days of receipt by the Authority of the relevant quarterly report from the Provider if there is any part of that report which the Authority (acting reasonably and without delay) disputes.
- 2.4 The Authority and the Provider shall use all reasonable endeavours to resolve any dispute that arises in this respect. Should it not be possible to resolve the dispute before the end of the quarter following the quarter that the report relates to, they should make use of the dispute resolution procedures set out in clause 5 of the General Terms.

**3 FINANCIAL MONITORING**

- 3.1 The Provider acknowledges the importance to the Authority of transparency and complete and accurate records in relation to financial matters and the provision of the Services.
- 3.2 During the Contract Term and for a period of 12 years following the end of the Contract Term or earlier termination of this Contract the Provider shall maintain and retain the financial records referred to at paragraph 3.1 above and shall allow the Authority and its authorised agents access to that information upon the Authority giving at least 10 Working Days' notice in writing.

**4 INFORMATION PROVISION**

- 4.1 The Provider shall make available to the Authority, on demand, a copy of the following policies, procedures or other documentation:
  - (a) business continuity plans;
  - (b) accounts (audited where required by law and other relevant financial information (where this is reasonable)
  - (c) evidence of appropriate and adequate insurance cover;
  - (d) complaint procedure and copy of records relating to complaints made in relation to the service and the Provider's response;
  - (e) any other documentation that may be reasonably required in order to verify the service.]

**5 MEETINGS**

- 5.1 As a minimum the following meetings shall take place between the Parties during the term of the Contract:

<b>MEETING</b>	<b>TYPE</b>	<b>QUORUM</b>	<b>FREQUENCY</b>	<b>AGENDA (including but not limited to)</b>
<b>Contract Review</b>	Face-to-face (virtual or physical) or conference call	Authority's Authorised Representative and Provider's Authorised Representative	Monthly as a minimum and on an ad-hoc basis as required to deal with any urgent issues	<ul style="list-style-type: none"> <li>• performance review</li> <li>• service development</li> <li>• partnership working</li> <li>• operational issues</li> <li>• complaints</li> <li>• good new stories</li> <li>• incidents requiring reporting</li> <li>• safeguarding</li> <li>service user involvement</li> </ul>
<b>Performance Review</b>	Face-to-face (virtual or physical)	To be defined upon agreement of Terms of Reference for Quarterly Performance Review Meetings	Quarterly	

### Performance Monitoring

- 5.2 Additionally the Authority may undertake a Performance Review at any time where there is concern about the performance of the Agreement, giving not less than 10 Working Days' notice in writing to the Provider.
- 5.3 Any Performance Review undertaken shall be carried out in accordance with any applicable statutory or regulatory guidelines and directions.
- 5.4 The Provider shall co-operate with the Authority in carrying out the Performance Review.
- 5.5 The Authority will prepare a Service Improvement Plan taking into account the views of Stakeholders and the Provider. This will be agreed with the Contract Manager within 4 weeks of Performance Review being undertaken.
- 5.6 The Provider agrees to discharge the duties set out in the Service Improvement Plan.
- 5.7 The Authority reserves the right in all circumstances to notify any Regulatory Body or other relevant agency of any issue of concern identified during the Accreditation, performance Review or associated processes that fall within the jurisdiction of that Regulatory Body or agency.

## **6 DEFAULT AND REMEDIES**

- 6.1 The default and remedies process shall apply to the operation of the Standing List and any resultant call-off contracts.

### Default Notice

- 6.2 The Authority will issue a Default Notice to the Provider when:
  - (a) the Provider's performance against one or more of the Standing List and/or Contract KPIs within the agreed reporting period does not meet the expected target;
  - (b) the Provider fails to adequately meet its obligations under a call-off Contract;
  - (c) the Provider's performance against Standing List and/or Contract KPIs demonstrates significant or consistent underperformance or non-performance that is impacting on the outcomes for Service Users;
  - (d) the Provider breaches a Remedial Action Plan and does not remedy the breach within 5 Working Days of its occurrence.
- 6.3 The Default Notice will set out:
  - (a) details of the incident(s) of non-performance;
  - (b) any additional information in relation to the incident(s) of non-performance;
  - (c) a timeframe for submission by the Provider of the Draft Remedial Action Plan;
  - (d) a timeframe for rectification by the Provider of the incident(s) of non-performance;
  - (e) details of any consequences of failing to rectify the non-performance within the agreed timeframe.
- 6.4 Where a Default Notice is issued, the Provider will acknowledge receipt within one Working Day. The Provider will provide the Authority with a Remedial Action Plan for approval by the Authority, within the timescale specified within the Default Notice. Once agreed by the Authority, the Provider will implement the Remedial Action Plan within the agreed timescale.
- 6.5 The Remedial Action Plan must set out:
  - (a) details of the incident(s) of non-performance;
  - (b) the actions required to make the necessary improvements;
  - (c) the dates on which the actions will be completed;
  - (d) who will be responsible for completing the actions;

- (e) any issues or concerns, if applicable, that the Provider has and wants to raise with the Authority, in order to assist with the completion of the necessary actions.
- 6.6 Where deficient performance has been identified and it is not possible to reform the performance (whether or not a Default Notice has been issued) the Provider shall use its best endeavours to ameliorate the situation.
- 6.7 Should the Provider fail to remedy the issue referred to in a Default Notice then the Authority shall have power to rely on the provisions of clause 12 Termination for Breach or clause 13 Termination on Notice or clause 14 Suspension of Provider's Appointment to the Standing List of the General Terms depending upon the nature and seriousness of the breach.
- 6.8 The Authority reserves the right to notify the Provider's Chief Executive and/or Board of Directors or any relevant Regulatory Body of the default in order that each of them may take whatever steps they think are appropriate.

#### Breach of a Standing List Remedial Action Plan

- 6.9 Should the Provider breach a Standing List Remedial Action Plan then the Authority shall have power to rely on the provisions of clause 12 Termination for Breach or clause 13 Termination on Notice or clause 14 Suspension of Provider's Appointment of the General Terms depending upon the nature and seriousness of the breach.

#### Breach of a Call-Off Contract Remedial Action Plan

- 6.10 If the Provider breaches a Call-Off Contract Remedial Action Plan:
  - (a) the Authority may withhold, in respect of each milestone not met, up to 2% of the aggregate monthly sums payable by the Authority, from the date of issuing the Default Notice in respect of the breach and for each month the Provider's breach continues, subject to a maximum monthly withholding of 10% of the aggregate monthly sums payable by the Authority in relation to each Remedial Action Plan; or
  - (b) the Authority shall have power to rely on the provisions of clause 12 Termination for Breach or clause 13 Termination on Notice or clause 14 Suspension of Provider's Appointment to the Standing List of the General Terms depending upon the nature and seriousness of the breach.
- 6.11 If the authority withholds sums under paragraph 6.10(a) the Authority must pay the Provider any sums withheld under paragraph 6.10(a) within 10 Working Days following the Authority's confirmation that the breach of the Remedial Action Plan has been rectified. Subject to paragraph 7.12 no interest will be payable on those sums
- 6.12 If the Authority withholds sums under paragraph 6.10(a) and within 20 Working Days of the date of that withholding the Provider produces evidence satisfactory to the Authority that the relevant sums were withheld unjustifiably, the Authority must pay those sums to the Provider within 10 Working Days following the date of the Authority's acceptance of that evidence, together with interest at the Default Interest Rate for the period for which the sums were withheld. If the Authority does not accept the Provider's evidence the Provider may refer the matter to dispute resolution.
- 6.13 If the Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of the Call-Off Contract, the Authority may retain permanently any sums withheld under paragraph 6.10(a).

## APPENDIX 14A DEFAULT NOTICE

**This is a Default Notice given by the Authority to the Provider under the Agreement / Call-Off Contract referred to below.**

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

Name of the Authority	
Name of the Provider	
Agreement / Contract Description	
Contract Commencement Date	
Details of Provider's default	
Any additional information	
Details of agreed actions to remedy the default and timescales for completion	
Details of consequences of failing to meet timescales for completion of remedial actions	

**APPENDIX 14B REMEDIAL ACTION PLAN**

**PERFORMANCE IMPROVEMENT PLAN**

<b>Provider:</b>		<table border="1"> <tr> <th colspan="2"><b>PROGRESS KEY</b></th> </tr> <tr> <td style="background-color: red;"></td> <td><b>For Action</b></td> </tr> <tr> <td style="background-color: yellow;"></td> <td><b>In Progress</b></td> </tr> <tr> <td style="background-color: green;"></td> <td><b>Completed</b></td> </tr> </table>	<b>PROGRESS KEY</b>			<b>For Action</b>		<b>In Progress</b>		<b>Completed</b>
<b>PROGRESS KEY</b>										
	<b>For Action</b>									
	<b>In Progress</b>									
	<b>Completed</b>									
<b>Officer:</b>										
<b>Recipients:</b>										
<b>Date of Plan:</b>										
<b>Objective:</b>										

<b>DETAILS OF THE INCIDENTS OF NON-PERFORMANCE:</b>
1.
2.
3.
4.

<b>ACTION PLAN</b>					
	<b>Action</b>	<b>By When</b>	<b>By Who</b>	<b>Action Update</b>	<b>Completed Date</b>
1.					
2.					
3.					
4.					

5.					
6.					

**SUPPORT PLAN – Any Issues or concerns that the Provider has and wants to raise with the Authority.**

	Improvement Area	Action	Person(s) Responsible	Due Date	Completed Date
1.					
2.					
3.					

**RECORD OF FORMAL COMMUNICATIONS – To monitor and track key meetings and communications.**

Date	Method	Subject / Action	Due Date

**Schedule 12 Not Used**

**Schedule 13 Call-Off Terms and Conditions**

**ORDER FORM**

**Standing List Agreement**

**FROM**

**Authority:**

**Service address:**

**Invoice address:**

**Authorised Representative:**

**Ref:**

**Phone:**

**E-mail:**

**Order number:**

To be quoted on all correspondence relating to this Order:

**Order date:**

**TO**

**Provider:**

[SERVICE PROVIDER'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 SERVICES [AND DELIVERABLES]**

**(3.1) Key personnel of the Provider 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 Services 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 Provider and the Authority on [DATE].

For and on behalf of the Provider:

Name and title

Signature

Date

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

[NAME]

For and on behalf of the Authority:

Name and title

Signature

Date

## Schedule 14 Data Protection Roles and Responsibilities

1. When both parties act as **independent data controllers** of Contract Personal Data:
  - (a) both parties shall comply at all times with the Data Protection Laws when processing Contract Personal Data which shall include, but not be limited to, where applicable:
    - i. promptly informing the competent supervisory authority or affected data subjects of a personal data breach;
    - ii. providing the data subject with required information under the Data Protection Laws' transparency requirements;
    - iii. complying with any data subject's valid rights requests regarding the processing of their personal data; and
    - iv. only processing Contract Personal Data where the party has a valid lawful basis to do so;
  - (b) both parties agree not to do, or fail to do, or permit to be done, anything which causes the other party to be in breach of its obligations under the Data Protection Laws;
  - (c) both parties shall establish and maintain a lawful basis for processing the Contract Personal Data in accordance with the Data Protection Laws and, where a party no longer has a lawful basis to process all (or part of) the Contract Personal Data, the party shall permanently and securely delete all the relevant parts of (as applicable) the Contract Personal Data;
  - (d) on written request, each party shall provide (and, if it is updated, shall continue to provide throughout the term of the Agreement) the other party with the party's privacy policy so that the other party may provide said policy to data subjects on request in order to fulfil transparency related obligations or other obligations under the Data Protection Laws; and
  - (e) each party shall provide reasonable cooperation and assistance to the other party to enable the latter party to fulfil its respective obligations under the Data Protection Laws.
2. When one party (the "**Controller**") is a data controller and the **other party acts as a data processor** (the "**Processor**") appointed on behalf of the Controller in relation to the Contract Personal Data:
  - (a) the parties shall agree the details of the processing and include these details in the relevant SOW in accordance with the template "particulars of processing" table set out in paragraph 5 below. The Processor shall only process Contract Personal Data for the purposes of complying with its obligations under this Contract (and for no other purpose whatsoever) and only in accordance with the Controller's written instructions from time to time;
  - (b) the Processor shall comply with its obligations under any applicable laws regarding the Contract Personal Data (including the Data Protection Laws), and shall not by any act or omission put the Controller in breach of any such laws (including the Data Protection Laws). The Supplier will not engage a sub-processor without first receiving the written consent of the Authority and any agreed arrangements with sub-processors must be subject to a written contract;;
  - (c) other than as required to do so by applicable law in the UK or European Union (in which case the Processor shall inform the Controller of the relevant legal requirement before processing), the Processor shall only process any Contract Personal Data for the purposes of complying with its obligations under this agreement (and for no other purpose whatsoever) and only in accordance with the Controller's written instructions from time to time;
  - (d) the Processor shall notify the Controller as soon as is reasonably practicable if the Processor reasonably believes an instruction from the Controller breaches (or could cause either party to breach) the Data Protection Laws;

- (e) the Processor shall ensure that access to the Contract Personal Data is strictly limited to persons who need access to it as strictly necessary to comply with the Processor's obligations under this agreement and that all such persons are informed of the confidential nature of the Contract Personal Data, are subject to contractual or statutory obligations of confidentiality, are assessed by the Processor to ensure their reliability, and have received appropriate training with regards the processing of personal data and the Data Protection Laws;
- (f) the Processor shall keep appropriate records of all processing activity carried out on behalf of the Controller in accordance with this agreement;
- (g) the Processor shall implement, and at all times during this agreement maintain, appropriate technical and organisational measures to protect the Contract Personal Data (ensuring in each case a level of security appropriate to the risk, including in relation to any special categories of personal data) against unauthorised or unlawful processing or accidental loss or damage;
- (h) without prejudice to the generality of sub-paragraph (g) immediately above, where the Supplier is the Processor, the Supplier shall ensure that it implements any and all measures as may be necessary to ensure that the Contract Personal Data is protected in accordance with the minimum standards notified to the Supplier by the Authority;
- (i) the Processor shall provide to the Controller at any time on request a detailed written description of the technical and organisational measures in place to protect the Contract Personal Data as required under sub-paragraph (g) above;
- (j) the Processor shall not transfer the Contract Personal Data to countries outside the UK or the European Economic Area ("EEA") without Controller's prior written authorisation (not to be unreasonably withheld or delayed) and, at the reasonable request of the Controller, shall enter into a separate written agreement relating to the transfer of personal data outside of the UK or EEA (or otherwise enter into an alternative arrangement as may be approved under the Data Protection Laws relating to the transfer of data outside of the UK or EEA). The parties may agree to pre-authorise specific transfers of Agreement Personal Data in a SOW. This provision shall equally apply to circumstances where the Supplier is a Joint Controller in respect of the relevant Personal Data;
- (k) the Processor shall promptly and fully notify the Controller in writing of any notices received by the Processors (or any sub-processor) relating to the processing of any Contract Personal Data, including requests from individual data subjects in relation to the exercise of their rights (including subject access requests), complaints and/or correspondence from any regulatory body including any competent data protection supervisory authority and provide such information and assistance as the Controller may reasonably require in relation to any such notice;
- (l) the Processor shall assist the Controller in meeting the Controller's obligations regarding the exercise of data subjects' rights in accordance with the Data Protection Laws;
- (m) the Processor shall assist the Controller in meeting the Controller's obligations under the Data Protection Laws with respect to data security, breach notification (including notifications to competent supervisory authorities and/or data subjects), data protection impact assessments and prior consultation with or notification to a competent data protection supervisory authority;
- (n) in the event of a personal data breach or reasonably suspected Personal Data Breach in relation to Contract Personal Data, the Processor shall (without prejudice to sub-paragraph (o) above:
  - i. immediately (or as soon as practicable thereafter and in any event within 24 hours of becoming aware of the relevant incident) provide the Controller with details in writing of the Personal Data Breach, potential breach or threat. Where the Controller is the Authority, the Supplier shall contact the Authority by emailing [infocompliance@torbay.gov.uk](mailto:infocompliance@torbay.gov.uk);

- ii. immediately initiate a full investigation and take appropriate steps to remedy the Personal Data Breach or prevent the potential breach or remove the threat;
  - iii. promptly implement measures to ensure there is no repetition of the incident in the future;
  - iv. promptly (and in any event within 48 hours of becoming aware of the relevant incident) provide the Controller with full details in writing of the steps and measures taken to mitigate risks and comply with this agreement and the Data Protection Laws; and
  - v. comply with all reasonable requests made by the Controller in respect of the same;
- (o) the Processor shall not permit any processing of the Contract Personal Data by any agent, sub-contractor, service provider or other third party ("sub-processor") without the prior written authorisation of the Controller in each case (such authorisation may be given in a SOW), and shall ensure in each case that prior to the sub-processor processing any Contract Personal Data, terms equivalent to this Schedule 15 paragraph 2 are included in a written contract between the Processor and any sub-processor engaged in the processing of Contract Personal Data;
- (p) on request at any time and on termination of this agreement, at the Controller's option either return to the Controller all Contract Personal Data and copies of it in such format as the Controller may require or, at the Controller's written request, securely destroy the Contract Personal Data in any manner the Controller may specify; and
- (q) at the reasonable request of the Controller, make available to the Controller all information reasonably necessary to demonstrate the Processor's (and any sub-processor's) compliance with this clause Schedule 3 paragraph 2 and on reasonable prior notice and on reasonable terms, permit the Controller and its representatives to inspect and audit the Processor's data processing activities (and those of its sub-processors) and comply with all reasonable requests to enable the Controller to verify that the Processor (and any sub-processor) is complying with this Schedule 15 paragraph 2.
3. When the parties act as **joint data controllers** of Contract Personal Data:
- (a) the parties shall specify in writing in the SOW:
    - i. their respective roles in relation to the Contract Personal Data; and
    - ii. their respective responsibilities for compliance with the Data Protection Laws, in particular but without limitation as regards to the obligation to provide information to individual data subjects and the exercising of the rights of individual data subjects;
  - (b) both parties shall comply at all times with the Data Protection Laws when processing Contract Personal Data;
  - (c) both parties agree not to do, or fail to do, or permit to be done, anything which causes the other party to be in breach of its obligations under the Data Protection Laws; and
  - (d) each party shall provide reasonable cooperation and assistance to the other party to enable the latter party to fulfil its respective obligations under the Data Protection Laws.
4. Whenever the parties are required to describe the processing of Contract Personal Data in accordance with paragraph 3(a) above, the parties shall as a minimum ensure that the following information is included in the relevant SOW or other written document duly executed between the parties:

Role of Supplier	Data Processor acting on behalf of the Council in respect of the processing of Contract Personal Data described below.
Subject matter of the processing	Processing of the Contract Personal Data in connection with the provision of the Services.
Duration of the processing	For the duration of the Contract.
Nature and purpose of the processing	The purpose of the processing is to ensure that families utilising the Direct Payment scheme are able to pay for their own care and support services outlined in a care plan. The Provider will be processing personal data of Torbay Council's families who are utilising the Direct Payments Service and the personal data of the workers being paid to support those families.
Type of personal data processed	Names Dates of birth National Insurance Numbers Address Bank Account Details Finance Details
Categories of data subjects	Professionals providing a service Service Users
Method of Processing	[Describe how the Data will be processed]
Rights and obligations of the controller	As described in the Contract dated [date].
<ul style="list-style-type: none"> <li>• Approved sub-processors and in each case: <ul style="list-style-type: none"> <li>○ Nature and purpose of processing</li> <li>○ Location of processing</li> </ul> </li> </ul>	N/A
Details of approved international transfers of Contract Personal Data together with details of approved transfer mechanisms	N/A
Details of the technical and organisational measures in place to protect Contract Personal Data.	[Provide details of measures employed]