**LPP/2017/001 – DYNAMIC PURCHASING SYSTEM AGREEMENT FOR THE PROVISION OF ESTATES PROFESSIONAL SERVICES**

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| **The Authority**  | **NHS London Procurement Partnership (LPP)** |
| **The Supplier** | **[**       **]** |
| **Date** | **[*Insert date when signed by both parties*]** |
| **Type of Services** | **Dynamic Purchasing System for Estates Professional Services** |

This Agreement is made on the date set out above subject to the terms set out in the key provisions, general terms and conditions, the schedules and appendix listed below (“Key Provisions, General Terms and Conditions and Schedules”). The Authority and the Provider undertake to comply with the provisions of the Key Provisions, General Terms and Conditions and Schedules in the performance of this Agreement.

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**Signed by the authorised representative of THE AUTHORITY**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: | Mario Varela  | Signature: |   |
| Position: | Managing Director |  |  |

**Signed by the authorised representative of THE PROVIDER**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |   | Signature | ……………………………………. |
| Position: | …………………………………. |  |  |

**Key Provisions**

**Standard Key Provisions**

1. **Application of the Key Provisions**
	1. The standard Key Provisions at Clauses to below shall apply to this DPS Agreement.
	2. The optional Key Provisions at Clauses and 9 below shall only apply to this DPS Agreement where they have been checked and information completed as applicable.
	3. Extra Key Provisions at Clause 10 below shall apply to this DPS Agreement.
2. **Term**
	1. The DPS for professional Services is expected to run for a period of 4 years, from 1st March 2017 to 28th February 2021.
3. **Contract Managers**
	1. The Contract Managers at the commencement of this DPS Agreement are:
		1. for the Authority:

Edward James

Workstream Lead – Estates, Facilities & Professional Services

* + 1. for the Provider:

**[*insert name and role*].**

1. **Names and addresses for notices**
	1. Notices served under this DPS Agreement are to be delivered to:
		1. for the Authority:

Edward James

Workstream Lead – Estates, Facilities & Professional Services

* + 1. for the Provider:

**[*complete name and/or role and address*]**.

1. **Management levels for dispute resolution**
	1. The management levels at which a dispute will be dealt with are as follows:

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| --- | --- | --- |
| **Level** | **Authority representative** | **Provider representative** |
| 1 | Edward James - Contract Manager | **[*Contract Manager*]** |
| 2 | Mario Varela- Managing Director | **[*insert role*]** |

1. **Participating Authorities**
	1. The following Contracting Authorities are entitled to place Orders:
		1. LPP, NHS Trusts, NHS Foundation Trusts (including PFI healthcare facilities and buildings), NHS Collaborative Procurement Organisations, Clinical Commissioning Groups, NHS England and NHS Property Services Ltd.
		2. All UK Central Government Departments, executive agencies, non –departmental public bodies and other UK public sector organisations.
		3. A link to LPP’s list of current membership is set out below. The list is regularly updated to reflect any change in membership from time to time.

<http://www.lpp.nhs.uk/about-lpp/our-members/>

* 1. Contracting Authorities wishing to access this DPS to run a competition are required to complete the Customer Access Agreement (CAA) in Schedule 4 and send this to the LPP category manager. Once this has been completed the category manager will provide the Contracting Authority with access to the template Invitation to Tender documents for adaptation as appropriate for individual call-off contracts. Providers on the DPS will not enter contracts under this DPS with any Contracting Authority until the category manager has confirmed a signed access agreement is in place.

**Optional Key Provisions**

1. **Quality Assurance Standards**
	1. The DPS Provider and any Sub-contractor or Specialist employed by the Provider to perform any services under any Call-Off Contract(s) resulting from this DPS Agreement shall hold valid ISO9001 certification, or equivalent, for the specific functions for which they are employed or will work to a set of quality standards agreed with the Contracting Authority at the start of the Call Off Contract(s), to be in line with ISO9001 and reviewed by the Contracting Authority.
2. **Different levels and/or types of Insurance**
	1. The Provider shall put in place and maintain in force the following insurances with the following minimum cover per claim.
	2. If this default position is not appropriate in relation to the nature and risks of an individual call –off contract, the Provider shall effect and maintain the different types and /or levels of insurance required by a Contracting Authority in respect of a call –off contract.

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| **Type of insurance required** | **Minimum cover** |
| Employer’s liability insurance | £5M  |
| Public liability insurance | £2MThe level of cover may be increased by a Contracting Authority for individual call –off contracts when there are exceptional risks on the site of the services.  |
| All Risk Insurance | £1MAs this covers any possible damage to the contracts services, the level of cover may be adjusted by a Contracting Authority for individual call-off contracts. The level of cover should be for a minimum of the contract value plus all possible extras and inflation to contract completion. |
| Professional indemnity insurance | £1M As this covers design responsibility for design and build projects, the level of cover may be adjusted by a Contracting Authority for individual call-off contracts. The level of cover should be a minimum of twice the contract value of the work plus any exceptional risks and not less than £1m |

1. **Guarantee**
	1. Promptly following the execution of this DPS Agreement, the Provider shall, if it has not already delivered an executed deed of guarantee to the Authority, deliver the executed deed of guarantee to the Authority as required by the procurement process followed by the Authority. Failure to comply with this Key Provision shall be an irremediable breach of this DPS Agreement.

**Extra Key Provisions**

**10 Management Levy**

10.1 In Consideration of LPP appointing any Potential Provider to the DPS and the management and administration by LPP the Contracting Authority of the overall DPS structure and associated documentation, all DPS Providers who obtain contracts under the DPS shall pay to LPP a Management Levy. Each payment shall be made to a nominated bank account notified by LPP, this may change from time to time.

10.2 The Management levy is 1% (one percent) of the total charges invoiced by the Provider to all Contracting Authorities under the DPS Call-Off Contracts excluding VAT. Based on the Contract Management Information provided by the Provider to LPP in accordance with this Clause 10 and receipt of an invoice from LPP in accordance with Clause 10.1 above, the Provider shall pay the Management Charge to LPP bi-annually. There is no charge for Providers who apply to join and are admitted to the DPS.

10.3 LPP shall invoice the Supplier in accordance with the timescales and frequency referred to in Clause 10.2 above.

10.4 The Providers will pay the Management Levy within 28 days of the date of the invoice.

10.5 In the event that the Provider does not pay the invoice referred to in Clause 10.3, either in whole or in part, Clause 10.6 shall continue to apply.

10.6 The Management Levy shall apply to the full charges specified in each and every Contract resulting from a DPS call –off and the Provider agrees and acknowledges that LPP and/or the Contracting Authority may in addition to any other remedy they may have treat any failure to pay the Management Levy as a fundamental breach of the terms of this DPS Agreement.

10.7 The Management Charge is deemed to be exclusive of Value Added Tax (VAT). Where VAT is payable on the Management Charge it shall be paid by the Provider on production of a valid VAT invoice by LPP.

10.8 Interest shall be payable by the Provider to LPP on any late payments of the ABI Management Charge under this Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

10.9 The Provider acknowledges and agrees that LPP may at any time during the Term of Contract and upon serving two months’ written notice, introduce an electronic system to monitor and collect the Management Levy (the “System”) upon receipt of the written notice the Provider shall, use its best endeavours to implement the System.

10.10 LPP reserve the right to revert to a manual system to monitor and collect the Management Levy, upon providing two months’ written notice to the Provider.

10.11 LPP reserve the right to visit the Provider’s premises at any time to carry out audits of invoices issued to Contracting Authorities. LPP will provide one week’s written notice of the intention to audit the Provider.

10.12 LPP will incur no costs whatsoever or howsoever incurred in relation to the Provider’s compliance with this Clause.

10.13 In the event of any dispute between the amount of the amount of any Reconciled Management Levy Balance owing by or due to the Provider, the following provisions shall apply:

If following the conduct of an audit by LPP of the Provider pursuant to Clause 10.11 above or if in the reasonable opinion of LPP, the Reconciled Management Levy Balance as detailed in the Reconciliation Statement is incorrect and/or the Provider has failed to pay LPP the correct Management Levy Reconciled Balance(s), LPP shall provide a written notice to the Provider detailing:

* 1. the discrepancies between the amount of the Reconciled Management Levy Balance identified in the Reconciled Statement and/or paid by the Provider and such sums calculated by LPP as being due and payable by the Provider, together with LPP’s calculations and supporting evidence;
	2. the reasonable time period by which any Reconciled Balance due to LPP, if any, shall be paid by the Provider to LPP (the “Management Levy Reconciliation Notice”).

10.14  Upon receipt of the Management Levy Reconciliation Notice the Provider shall have 5 Working Days from receipt by it of the Reconciliation Notice to respond in writing to the Management Levy Reconciliation Notice and the Provider shall confirm and detail its reasons for the miscalculation or underpayment, together with supporting calculations. If the Provider has not responded to the Management Levy Reconciliation Notice within the requirements of this Clause 10.2, it shall be deemed to have accepted the Management Levy Reconciliation Notice and shall pay LPP any additional Management levy within the time periods stated in the Management levy Reconciliation Notice.

10.15 If the Parties are unable to agree any amount of the Management Levy payable by the Provider to LPP, the dispute shall be resolved in accordance with Clause 43 of the General Terms and Conditions.

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SCHEDULE 2 – AWARD CRITERIA

SCHEDULE 3 – PRICING MATRICES

SCHEDULE 4 – CUSTOMER ACCESS AGREEMENT

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SCHEDULE 8 – RETROSPECTIVE PAYMENT CERTIFICATE

SCHEDULE 9 – CALL-OFF TERMS AND CONDITIONS

APPENDIX 1 – ORDER FORM

APPENDIX 2 – CUSTOMER VARIATION FORM

# THIS Agreement is made on

**BETWEEN**:-

(1) Guy’s and St Thomas’ NHS Foundation Trust (as host of the NHS London Procurement Partnership (**"LPP"**) whose principal place of business is at 200 Great Dover Street , London SE1 4YBand

(2) [ ] whose registered address is at    [ ]     Company Registration Number: [ ] (the **"Provider"**).

**BACKGROUND**

1. LPP placed a contract notice 2017/S ??? on 27th January 2017 in the Official Journal of the European Union seeking Requests to Participate from Providers for the provision of Professional Servics to LPP and Other Contracting Authorities under a Dynamic Purchasing System (“DPS”).
2. The Provider submitted its Request to Participate in response to the contract notice.
3. On the basis of the Provider's Request to Participate, LPP admitted the Provider onto the DPS to be able to provide professional services to Contracting Authorities on a call-off basis.
4. All Providers indicated in their Requests to Participate that they will comply with the relevant Legislation, Codes of Conduct and Regulations governing the provision of these professional services.
5. This Agreement sets out the award and ordering procedure for professional services which may be required by Contracting Authorities, the main terms and conditions for any Call-Off Contract which Contracting Authorities may conclude, and the obligations of the Providers during and after the term of this Agreement.
6. It is the Parties' intention that there will be no obligation for any Contracting Authority to award any orders under the DPS during its Term.
7. The DPS will be established and managed by LPP and Providers may apply to be appointed to the DPS in accordance with the information contained in the DPS Establishment Documents.
8. These terms and conditions shall apply in relation to the provision of professional services. The Call-Off Contract terms and conditions may be replaced with the Contracting Authority’s own or alternatively the NEC 3 suite of Contracts (or other standard form of contract for professional services) may apply to any service elements that may form the basis of any Call-Off Contract.

**IT IS AGREED** as follows:-

1. INTERPRETATION
	1. Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

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| **“Agreement”** | Means this Agreement together with all schedules and appendices attached hereto |
| "**Approval**"**“Authority**" | means the prior written approval of LPPmeans LPP or any Other Contracting Authority as applicable |
| "**Audit**" | means an audit carried out pursuant to Clause 21 |
| "**Auditor**" | means LPP internal or a LPP’s member’s Auditor and/or the National Audit Office or an Auditor appointed by the Audit Commission as the context requires |
| **“Call-Off”** | Means the issue of an Invitation to Tender in relation to any contract to be awarded under the Dynamic Purchasing System to a Provider admitted to the Dynamic Purchasing System  |
| "**Call-Off Contract**" | means the legally binding agreement for the provision of professional services made between a Contracting Authority and a Provider comprising of the Call-off Order Form and the Call-Off Terms and Conditions as may be amended  |
| "**Call-Off Terms and Conditions**" | means the terms and conditions in Schedule 9, the NEC 3 suite of contracts or such other terms and conditions that may be provided by the Contracting Authority at further competition stage |
| "**Commencement Date**" | means  **1st MARCH 2017** |
| "**Commercially Sensitive Information**" | means any Confidential Information comprised of information:-(a) which is provided in writing by the Provider to LPP in confidence and designated as Commercially Sensitive Information including the information contained in the Freedom of Information Exclusion Schedule returned with the Tender in Schedule 6 |
| “**Call-off Award Criteria**” | means the award criteria to be applied to tenders received following a Call-Off as set out in Schedule 2 |
| "**Complaint**" | means any formal complaint raised by any Contracting Authority in relation to the operation of the Dynamic Purchasing System or the performance of any Call-Off in accordance with Clause 41 |
| **"Confidential Information**"**“Contracts Standard”** | means:-(a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA; and (b) the Commercially Sensitive Informationand does not include any information:-(i) which was public knowledge at the time of disclosure (otherwise than by breach of this Agreement)(ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;(iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or (iv) is independently developed without access to the Confidential InformationMeans the standard which complies with the relevant provision of the estates professional services included in the Specification or where and to the extent that no criteria are stated in the Contract then with the reasonable requirements of LPP and/or the Contracting Authority as agreed by the Provider. |
| **“Contracting Authority”** | For the purpose of this Agreement any reference to Contracting Authority shall also include a reference to Sub-Central Contracting Authorities both of which are defined in Section 2 (Definitions) of the Public Contracts Regulations 2015 with a list of Contracting Authorities being included at Schedule 1 of the Public Contracts Regulations 2015. For the purposes of this Agreement this reference will not include a reference to LPP. |
|  |  |
| "**DPA**"**“Dynamic Purchasing System (“DPS”)”** | means the Data Protection Act 1998 and any subordinate legislation made under such 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 legislationmeans a completely electronic system of limited duration which is (a) established by a contracting authority to purchase commonly used Goods, Services and/or Works (if applicable); and (b) open throughout its duration for the admission of economic operators which (i) satisfy the selection criteria specified by the contracting authority; and (ii) submit a Request to Participate to the contracting authority or person operating the system on its behalf which complies with the specification required by that contracting authority or person. |
| "**Environmental Information Regulations**" | mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations |
| "**FOIA**" | means the Freedom of Information Act 2000 and any subordinate legislation made under such 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 |
| **"Fraud"****“Funding”** | means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud any Contracting Authoritymeans the provision of Internal or External Grant Funding received by a Contracting Authority for provision of any part (whether in part or whole) of any of the Goods, Services and/or Works (if applicable) |
| "**Good Industry Practice**"**“Goods”****“Goods Testing”** | means standards, practices, methods and procedures conforming to the Law and that require a degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or organisation engaged in providing Goods, Services and/or Works (if applicable) of similar type and nature to those required under the terms of this Agreementmeans the provision of any Goods as specified in Schedule 1means the testing of any Goods requested by LPP or a Contracting Authority by an Independent Testing House/Organisation to ensure the Goods meet the required specified standards |
| "**Guarantee**" | means the Deed of Guarantee in favour of LPP entered into by the Guarantor on or about the date of this Agreement [or any guarantee acceptable to LPP that replaces it from time to time] |
| "**Guarantor**" | means [                    ] |
| "**Guidance**"  | means any guidance issued or updated by the UK Government from time to time in relation to the Regulations |
| **“Improvement Notice”** | Means a Notice issued on the Provider to improve minor breaches of the Agreement, the Contract or the Order Form instructing the Provider to improve or remedy any minor breaches in the provision of the Goods, Services and or Works  |
| **“Independent Testing Engineer”** | Means an independent engineer appointed by either LPP, the Provider or a Contracting Authority to provide written advice as to whether or not Goods have been installed correctly. It is agreed that the Independent Testing Engineer’s decision shall be final as to whether or not the Goods have been installed to the required standard/specification |
| **“Independent Testing House/Organisation”** | Means a testing house/organisation independent of any party that may be appointed for the testing of any Goods either in situ or at premises to be agreed under the terms of this Agreement or the Call-Off Contract. It is agreed that the Independent Testing House/Organisation’s decision shall be final as to whether or not the Goods meet the required standard/specification. |
| "**Information**" | has the meaning given under Section 84 of the Freedom of Information Act 2000 |
| "**Intellectual Property Rights**" | means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off |
| **“LPP”** | means NHS London Procurement Partnership or any employee, agent, servant or representative of LPP or any other public body or person employed on behalf of LPP or any other public body. |
| "**Management Information**" | means the management information specified in Schedule 5 |
| "**Material Default**" | means any breach of clauses 5 (Special Terms and Conditions – Funding), 13 (Statutory Requirements), 20 (Provision of Management Information), 21 (Records and Audit Access), 24 (Data Protection and Freedom of Information), 32 (Transfer and Sub-contracting), 9 (Prevention of Bribery and Corruption), 10 (Conflicts of Interest), 16 (Retrospective Payments), 22 (Confidentiality), 23 (Official Secrets), 8 (Warranties and Representations)  |
| **“Minor Breach”** | Means any breach of the Agreement, the Contract or the Order Form which may be either a partial breach or a breach not so severe as to warrant a Material Default. |
| "**Month**" | means a calendar month  |
| "**OJEU Notice**" | means the contract notice 2017/S ??? on 27th January 2017 published in the Official Journal of the European Union |
| "**Order**" | means an order for Goods, Services and/or Works (if applicable) issued by any Contracting Authority to the Provider in accordance with the Ordering Procedures |
| **"Order Form"** | means a document setting out details of an Order in the form set out in Appendix 1 |
| "**Other Contracting Authorities**" | means all Contracting Authorities except LPP |
| "**Parent Company**" | means any company which is the ultimate Holding Company of the Provider and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged in the same or similar business to the Provider. The term "**Holding Company**" shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto |
| "**Party**" | means LPP and/or the Provider |
| “**Prohibited Act”** **“Pricing Matrices**" | Means to directly or indirectly offer, promise or give any person working for or engaged by LPP or another Contracting Authority a financial or other advantage to (a) induce that person to perform improperly a relevant function or activity; or (b) reward that person for improper performance of a relevant function or activity means the prices submitted by the Provider attached at Schedule 3 |
| **“Provider”** | means any employee, agent, servant, sub-contractor or representative of the Provider or person employed on behalf of the Provider to provide the Goods, Services and/or Works (if applicable) |
| "**Regulations**" | means the Public Contracts Regulations 2015  |
| "**Regulatory Bodies**" | means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of LPP |
| "**Requests for Information"** **“Request to Participate”** | means a request for information or an apparent request under the FOIA or the Environmental Information RegulationsMeans a Pre-Qualification Questionnaire prepared by a Provider in response to the Request to Participate seeking admission onto the Dynamic Purchasing System |
| "**Selection Criteria**" | means the criteria set by LPP to evaluate Request to Participate submitted by Providers for their admission onto the Dynamic Purchasing System  |
| **“Services”** | means the provision of any Services as specified in Schedule 1 |
| **“Special Terms and Conditions”** | means any additional terms and conditions that may be imposed on a Contracting Authority by a Funding Stream that have to be incorporated into the Agreement to enable a Contracting Authority to comply with their obligations to the Internal or External Funder. |
| "**Tender**" | means the tender submitted by the Provider to the Contracting Authority following a Call-Off  |
| "**Term**" | means the period commencing on the Commencement Date and ending on **28/02/ 2021** or on earlier termination of this Agreement unless the Agreement is extended up to a maximum of 12 months |
| **“Variation Procedure**" | means the procedure set out in Schedule 7 |
| "**Working Days**" | means any day other than a Saturday, Sunday or public holiday in England and Wales  |
| **“Works”** | means the provision of any Works as specified in Schedule 1 |
| "**Year**" | means a calendar year |

* 1. The interpretation and construction of this Agreement shall all be subject to the following provisions:-
		1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
		2. words importing the masculine include the feminine and the neuter;
		3. the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
		4. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
		5. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
		6. headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;
		7. references in this Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Agreement so numbered;
		8. references in this Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Agreement so numbered;
		9. reference to a Clause is a reference to the whole of that clause unless stated otherwise; and
		10. The Provider shall perform all Contracts entered into with a Contracting Authority in accordance with:
			1. The requirements of this Agreement; and
			2. The terms and conditions of the Call-Off Contract.

(c) The relevant Legislation, Codes of Conduct and Regulations governing the delivery of Goods, Services and/or Works (if applicable).

1.2.11 In the event of, and only the extent of, any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Call-Off Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

* + - 1. Legislation
			2. The terms of this Agreement;
			3. The Schedules to this Agreement (excluding the Providers Request to Participate and the Provider’s Tender);
			4. The Call-off Contract
			5. The Order Form
			6. Any other document referred to in the clauses of the Call-Off Contract; and
			7. Schedule 1, (Specification), and Appendix 3 to the Order Form (Provider’s Tender).

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| **PART ONE: AGREEMENT AND AWARD PROCEDURE** |

1. Term of THIS AGREEMENT
	1. This Agreement shall take effect on the Commencement Date and shall expire at the end of the term unless it is terminated earlier in accordance with the terms of this Agreement under Clauses 26.
	2. This Agreement may be extended at LPP’s sole discretion for such period as may be notified to Providers.
	3. The Terms of this Agreement may be reduced or extended as advertised via a Corrigendum issued through OJEU. This Agreement shall remain in effect for the validity of the DPS.

1. SCOPE OF THIS AGREEMENT

This Agreement governs the relationship between LPP and the Provider in respect of the provision of the Goods, Services and/or Works (if applicable) by the Provider to LPP and to Other Contracting Authorities.

1. Provider'S APPOINTMENT

LPP admitted the Provider to the Dynamic Purchasing System as a potential Provider of Goods, Services and/or Works (if applicable) and the Provider shall be eligible to be considered for the award of Orders for such Goods, Services and/or Works (if applicable) by LPP and Other Contracting Authorities during the Term.

1. SPECIAL TERMS AND CONDITIONS – FUNDING
	1. Where a Contracting Authority is able to access grant Funding for any element of the provision of Goods, Services and/or Works (if applicable) required under the terms and conditions of this Agreement, they are obligated by the funding stream to pass on certain grant funding terms and conditions (Special Terms and Conditions).
	2. To enable Contracting Authorities to be able to include Special Terms and Conditions into the Call-Off Terms and Conditions an additional Section has been included at Appendix 1 Section 5 within the Order Form and Option D of Appendix 1.
	3. Any Special Terms and Conditions included in Appendix must relate solely to the funding terms and conditions imposed on the Contracting Authority
	4. The Provider should ensure when competing for any Call-Off Goods they incorporate the impact and additional costs of complying with the Special Terms and Conditions into their submission. LPP will not accept any responsibility whatsoever or be liable for any Special Terms and Conditions included in Appendix of the Order Form or any impact the Special Terms and Conditions may have on this Agreement or the Call-Off Contract.
	5. THE PROVIDERS ATTENTION IS SPECIFICALLY DRAWN TO APPENDIX 1 SECTION 5.2 OF THE ORDER FORM AS UNDER THE SPECIAL TERMS AND CONDITIONS SHOULD THE PROVIDER FAIL TO MEET THEIR OBLIGATIONS OF THE SPECIAL TERMS AND CONDITIONS SECTION 5 IN ITS ENTIRETY), THE CONTRACTING AUTHORITY CAN CLAWBACK ANY OF THE MONIES DUE IN WHOLE OR IN PART TO ENABLE THEM TO COMPLY WITH THE OBLIGATIONS PLACED ON THEM BY THE FUNDING STREAM.
	6. If the Provider does not want to accept the Special Terms and Conditions they are not obligated to submit a tender for that particular Call-Off.
2. NON-EXCLUSIVITY

The Provider acknowledges that, in entering into this Agreement, no form of exclusivity or volume guarantee has been granted by LPP and/or Other Contracting Authorities for Goods, Services and/or Works (if applicable) from the Provider and that LPP and/or Other Contracting Authorities are at all times entitled to enter into other contracts and agreements with other Providers for the provision of any or all Goods, Services and/or Works (if applicable), which are the same as or similar to the Goods, Services and/or Works (if applicable) being provided under this Agreement.

1. **ESTABLISHING THE DYNAMIC PURCHASING SYSTEM**
	1. A Dynamic Purchasing System (DPS) is a completely electronic system of limited duration which is established to purchase commonly used Goods, Services and Works. A DPS remains open throughout its duration for the admission of Economic Operators which satisfy the selection criteria specified by the Contracting Authority and which submit a Pre-Qualification Questionnaire to the Contracting Body (or persons operating the system on its behalf) which complies with the specification required by that Contracting Authority or persons.
	2. The Dynamic Purchasing System will be established using the Restricted Procedure subject to the provisions in regulation 34 of the Regulations.
	3. Establishing the DPS;
		1. There are 5 steps to establishing the DPS;
2. A contract notice is placed with OJEU under a restricted procedure and potential Providers will be given full details of how to access LPP’s registration system and process in order to register as a Provider.
3. Once registered the potential Providers will be able to download the Request to Participate and any supporting documents.
4. After a minimum period of 30 days LPP will evaluate all Requests to Participate to ensure that they meet the specification and criteria contained within the documents.
5. Providers will be notified if their Request to Participate has been accepted or rejected, if they have been admitted onto the DPS and will be provided with feedback relating to their submission. LPP’s decision is final as to whether or not a potential Provider is accepted onto the DPS.
6. The DPS shall remain open for the term specified in the Contract Notice. Should the term be extended or reduced notice will be given to all Providers and a Corrigendum will be issued via OJEU. Any Provider may reapply to be admitted onto the DPS or improve its Request to Participate at any time. For the avoidance of doubt Providers will not be ranked on the DPS and all further competition will be carried out in accordance with clause 11.1
	1. Providers can be removed from the DPS as a result of their actions or failure to comply with the required minimum standards. Providers do however have the option to apply to be re-admitted to the DPS.
	2. Should a Provider be removed from the DPS for any other reason than failing to comply with the minimum required standards, LPP’s decision will be final as to whether or not the Provider can be re-admitted to the DPS.

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| **PART TWO: PROVIDER'S GENERAL OBLIGATIONS** |

1. WARRANTIES AND REPRESENTATIONS
	1. The Provider warrants and represents to LPP that:-
		1. it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Agreement;
		2. it acknowledges that it will not be able to bid for any further competitions under the DPS following the issue of any Invitation to Tender if it has not signed and returned this Agreement;
		3. all obligations of the Provider pursuant to this Agreement and under any Call-off Contract shall be performed by appropriately experienced, certified, qualified and trained Staff with all due skill, care and diligence;
		4. it will ensure that the Provider and all Staff, agents, sub-contractors, self-employed staff or personnel employed by the Provider in connection with the Goods, Services and/or Works (if applicable) will comply with the relevant Legislation, Codes of Conduct and Regulations governing the delivery of Goods, Services and/or Works (if applicable).
		5. the Provider is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement and under any Call-off Contract.
		6. the Provider shall discharge its obligations under this Agreement and under any Call-off Contract with all due skill, care and diligence including but not limited to the good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures;
		7. this Agreement is executed by a duly authorised representative of the Provider;
		8. in entering into this Agreement or any Call-Off Contract it has not committed any Fraud;
		9. as at the Commencement Date, all information, statements and representations contained in the Request to Participate/ completed Pre-Qualification Questionnaire (including statements made in relation to the categories referred to in regulation 57 of the Regulations) for the Goods, Services and/or Works (if applicable) are true, accurate, and not misleading save as may have been specifically disclosed in writing to LPP prior to the execution of this Agreement and it will promptly advise LPP of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
		10. it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of this Agreement or any Call-off Contract;
		11. it has not caused or induced any person to enter such agreement referred to in Clause 8.1.8 above;
		12. it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Goods, Services and/or Works (if applicable) under the Agreement;
		13. it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010;
		14. 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 which will or might affect its ability to perform its obligations under this Agreement and any Call-Off Contract which may be entered into with LPP or Other Contracting Authorities;
		15. 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 which may be entered into with LPP or Other Contracting Authorities;
		16. 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; and
		17. in the three (3) years prior to the date of this Agreement:-
			1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
			2. it has been in full compliance with all applicable securities, laws and regulations in the jurisdiction in which it is established; and
			3. it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Agreement.
		18. The Provider shall perform the Goods, Services and/or Works (if applicable) in a conscientious and timely manner in accordance with the Contract Standard as described in this Agreement or as reasonably required by LPP and/or the Contracting Authority.
		19. The Provider shall notify LPP’s Contracting Manager immediately of any circumstances relating to the Provider and/or LPP and/or the Contracting Authority concerning the Goods, Services and/or Works (if applicable) of which the Provider is aware or anticipates which may justify LPP and/or the Contracting Authority taking action to protect its interests (including its reputation and standing).
	2. The Provider warrants and represents the statements in Clause 8.1 above to each of the Other Contracting Authorities.
2. **PREVENTION OF BRIBERY AND CORRUPTION**
	1. The Provider:

8.1.1 has not, will not, and will procure that its staff (and any sub–contractor or self- employed staff) have not committed and will not commit a Prohibited Act in connection with this Agreement;

8.1.2 has not given and will not give any fee or reward to any person which it is an offence under Section 117(2) of the Local Government Act 1972 to receive

8.1.3 warrants represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by LPP or that an agreement has been reached to that effect in connection with the securing or execution of this Agreement, or any other Agreement with LPP, excluding any arrangements of which full details have been disclosed in writing to LPP prior to the execution of this Agreement.

* 1. The Provider will upon request provide LPP with all reasonable assistance to enable LPP to perform any activity required for the purposes of complying with the Bribery Act, as may be required of LPP by any relevant government or agency in any relevant jurisdiction. Should LPP request such assistance LPP shall pay the reasonable expenses of the Provider arising as a result.
	2. The Provider will provide to LPP certification, in writing and signed by an officer of the Provider, of the compliance with this Clause 9 by:
		1. the Provider and
		2. all persons associated with the Provider; and
		3. any other persons who are supplying Goods, Services and/or Works (if applicable) in connection with this Agreement.
	3. Certification will be provided to LPP within 15 working days of the Commencement Date and annually thereafter for the Term. The Provider will provide any evidence of compliance as may reasonably be requested by LPP.
	4. The Provider will have in place an anti-bribery policy for the purpose of preventing any of its staff from committing any Prohibited Act. Such policy shall be disclosed to LPP and enforced by the Provider where appropriate.
	5. Should the Provider become aware of or suspect any breach of Clause 9.1 it will notify LPP immediately.
	6. Following notification under Clause 9.6 the Provider will respond promptly and fully to the enquiries of LPP, cooperate with any investigation undertaken by LPP and allow LPP to audit any books, records and other relevant documentation. The Provider’s obligations under this Clause 9.7 shall survive the expiry or termination of this Agreement for a further period of 6 years.
	7. LPP may recover in full from the Provider and the Provider shall indemnify LPP in full from and against any other loss sustained by LPP in consequence of any breach of this Clause 9 “Prevention of Bribery and Corruption”, whether or not this Agreement has been terminated.
	8. LPP may terminate this Agreement and any Order immediately upon serving written notice if the Provider, its staff, any sub-contractor or self-employed staff whether or not acting with the Provider’s knowledge, breaches Clause 9.1. Before exercising its right of termination under this Clause 9.9 LPP will give all due consideration to other action beside termination unless the Prohibited Act is committed by:

9.9.1 the Provider or a senior officer of the Provider; or

9.9.2 a member of Staff, Sub-Contractor or Agent who is not acting independently of the Provider. The expression ‘not acting independently of’ (when used in relation to the Provider, Sub-Contractor or Agent) means and shall be construed as acting;

* + - 1. with the authority of; or
			2. with the actual knowledge; of any one or more of the Provider’s or Sub-Contractors or Agent (as applicable) directors [or Partners]; or
			3. in circumstances where any one or more of the directors (or Partners) of the Provider or Sub-Provider (as applicable) ought reasonably to have had knowledge.
	1. Any notice of termination by LPP under Clause 9.9 must specify:
		1. the nature of the Prohibited Act;
		2. the identity of the person whom LPP believes has committed the Prohibited Act; and
		3. the date on which this Agreement will terminate.
	2. In the event of any breach of Clause 9.1 LPP is entitled to recover from the Provider the value of any gift, consideration or commission.
	3. Notwithstanding Clause 43 (Dispute Resolution) any dispute relating to:
		1. the interpretation of this Clause 9 or
		2. the amount or value of any gift, consideration, commission or other financial advantage shall be determined by LPP and its decision shall be final and conclusive
	4. Termination under Clause 9.9 will :
		1. be without prejudice to any right or remedy which has already accrued or subsequently accrues to LPP under this Agreement.
		2. prohibit the Provider from claiming any damages for early termination; and
		3. allow LPP to recover from the Provider the amount of any loss suffered by LPP resulting from the termination; or
		4. entitle LPP to be indemnified by the Provider for any additional costs losses, damages or expenses incurred in re-procuring and obtaining the Goods, Services and/or Works (if applicable) from another party.

1. CONFLICTS OF INTEREST

10.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of LPP) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to LPP and Other Contracting Authorities under the provisions of this Agreement or any Call-Off Contract.

10.2 The Provider shall promptly notify and provide full particulars to LPP or the relevant Contracting Authority if such conflict as referred to in Clause 10.1 above arises or is reasonably foreseeable to arise.

10.3 LPP reserves the right to terminate this Dynamic Purchasing System immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of LPP, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to LPP under the provisions of this Agreement or any Call-Off Contract. The action of LPP pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to LPP.

10.4 This Clause shall apply during the Term.

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| **PART THREE: CALL-OFF AND ORDERING PROCEDURE** |

1. **TENDERING FROM THE DPS – CALL-OFF PROCEDURE**;
	1. There are 5 steps in order for Contracting Authorities to make a Call- Off from the DPS;
2. Contracting Authorities shall invite all admitted Providers to submit a tender for each specific procurement under the DPS. Where the DPS has been divided into categories of works, products and services Contracting Authorities shall invite all Providers having been admitted to the category corresponding to the specific procurement concerned to submit a Tender.
3. The Invitation to Tender document setting out the Contracting Authority’s requirements will be issued and will contain further information and also a deadline by which the Tender response must be submitted.
4. All submissions received within the Invitation to Tender deadline will be evaluated in accordance with the criteria set in the Invitation to Tender documentation.

1. Once the evaluation is complete the preferred Provider(s) will be selected and all Providers will be notified of the award decision and provided with feedback relating to their submission.
2. Contracting Authorities will be advised to implement a voluntary standstill period of 10 days – Please note however that this would be considered to be best practice but Contracting Authorities will not be bound to implement any standstill.
	1. A contract award notice will be sent to OJEU.

**Responsibility of Awards**

* 1. The Provider acknowledges that each Contracting Body is independently responsible for the conduct of its award of Call-Off Contracts under the Agreement and that LPP is not responsible or accountable for and shall have no liability whatsoever in relation to:-
		1. the conduct of Other Contracting Bodies in relation to the Agreement; or
		2. the performance or non-performance of (including payments due under) any Call-Off Contracts between the Provider and Other Contracting Bodies entered into pursuant to the Agreement.

1. PRICES FOR Goods, Services and/or Works (if applicable)
	1. The prices offered by the Provider for Call-Off Contracts to Contracting Authorities for Goods, Services and/or Works (if applicable) shall be the prices listed in the Pricing Schedule submitted with the Provider’s tender response for the Call-Off contract.
	2. The prices offered by the Provider for all call off requirements will be fixed for the agreed time within the Invitation to Tender documentation
	3. Under no circumstances are Providers to change any submitted pricing without first seeking approval of the Contracting Authority.
	4. Unless otherwise expressly stated in the Call-Off Contract the prices shall cover all the Provider's obligations under the Call-Off Contract and everything necessary for the provision of the Goods, Services and/or Works (if applicable) under the Invitation to Tender documentation.
	5. Unless otherwise expressly stated in the Call-Off Contract no claim by the Provider will be allowed for any addition to the prices on the grounds of any matter relating to any document forming part of the Call-Off Contract or any ambiguity or discrepancy therein on which an experienced Provider could have satisfied himself by reference to the Contracting Body by any other appropriate means.

1. STATUTORY REQUIREMENTS

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.

1. **FORM OF ORDER**

Subject to Clause 11 above, each Contracting Body may place an Order with the Provider by serving an order in writing in substantially the form set out in Appendix 1 or such similar or analogous form agreed with the Provider including systems of ordering involving facsimile, electronic mail or other on-line solutions. The Parties agree that any document or communication (including any document or communication in the apparent form of an Order) which is not in the form prescribed by this Clause 14 shall not constitute an Order under this Agreement.

**15. ORDERING PROCEDURE**

15.1 The Contracting Authority shall select a Provider for Orders in accordance with the criteria outlined in the Invitation to Tender documents

15.2 The Contracting Authority will endeavour to have their Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.

15.3 The Contracting Authority shall respond to any reasonable request for information from the Provider.

15.4 The Contracting Authority shall ensure that all Orders are awarded in accordance with the Public Contracts Regulations 2015.

**Accepting and Declining Orders**

15.5 Following receipt of an Order, the Provider shall promptly and in any event within a reasonable period (taking into account all relevant circumstances in relation to the subject matter and nature of an Order) determined by the relevant Contracting 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 (3) Working Days) acknowledge receipt of the Order and either:

15.5.1 notify the relevant Contracting Authority that it declines to accept the Order; or

15.5.2 notify the relevant Contracting Authority that it accepts the Order by signing and returning the Order Form.

15.6 If the Provider:

 15.6.1 notifies the Contracting Authority that it declines to accept an Order; or

 15.6.2 the time-limit referred to in Clause 15.5 has expired;

then the offer from the Contracting Authority to the Provider shall lapse and the relevant Contracting Authority may offer that Order to the Provider that submitted the next most economically advantageous tender in accordance with the relevant Award Criteria.

15.7 The Provider in agreeing to accept such an Order pursuant to Clause15.5above shall enter a Call-Off Contract with the relevant Contracting Authority for the provision of Goods, Services and/or Works (if applicable) referred to in that Order. A Call-Off Contract shall be formed on the Contracting Authority’s receipt of the signed Order Form provided by the Provider (or such similar or analogous form agreed with the Provider) pursuant to Clause 14.

1. RETROSPECTIVE PAYMENTS

16.1 A Retrospective Payment will be applied to all Orders placed in relation to this Agreement and to any Call-Off Contracts bi-annually of the Term. Any retrospective payments payable by the Provider under this Agreement are to be paid to LPP as per the details in Clause 10 of the Key Provisions and Schedule 8.

16.2 Reports on the value of orders placed under this Agreement and under any Call-Off Contracts shall be submitted to LPP by the Provider in accordance with Clause 10 of the Key Provisions.

16.3 The Provider shall make payment of the Retrospective Payment to LPP within 28 days as per the instructions on the invoice.

16.4 For the avoidance of doubt the Retrospective Payments shall be payable on all individual Orders during the full term of the Agreement and Call-Off Contracts including any extensions thereto.

16.5 If any invoice for Retrospective Payments shall remain unpaid for a period of three (3) months then LPP may terminate the Agreement forthwith on giving notice in writing to the Provider.

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| **PART FOUR: CONTRACT PERFORMANCE** |

**17. SOCIAL RESPONSIBILITY**

17.1 The Provider shall and shall ensure that any of its servants, employees, agents or sub-contractors employed in the execution of this Agreement:

17.1.1 Perform its obligations under this Agreement (including those in relation to the Goods, Services and/or Works (if applicable)) in accordance with:

(a) All applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

(b) LPP’s or any Other Contracting Authorities equality and diversity policy as provided to the Provider from time to time; and

(c) Any other requirements and instructions which the Contracting Authority reasonably imposes in connection with any equality obligations imposed on the Contracting Authority at any time under the applicable equality law; and

 Take all necessary steps, and inform the Contracting Authority of the steps taken, to prevent unlawful discrimination designated as such by any court, tribunal, or Equality and Human Rights Commission or (any successor organisation).

17.2 The Provider shall, at all times, be responsible for and take all such precautions as are necessary to protect the health and safety of all employees, volunteers, service users and any other persons involved in, or receiving Goods, Services and/or Works (if applicable) from, the performance of the Agreement or any Call-Off Contract and shall comply with the requirements of the Health and Safety at Work Act 1974 and any other Act or Regulation relating to the health and safety of persons and any amendment or re-enactment thereof.

17.3 The Provider must ensure that all employees of the Provider involved in the supply of the Goods, Services and/or Works (if applicable) are eligible to work in the UK.

17.4 LPP shall be entitled at LPP’s expense to inspect such books, accounts and records belonging to the Provider as are necessary to demonstrate compliance with Clause 21.

17.5 The cost to the Provider of complying with this Clause 17 shall be included in the prices.

**18. PROVIDERS STAFF**

18.1 The Provider shall select, employ, train, furnish and deploy in and about the performance of the Agreement and each Call-Off Contract only such persons as are appropriately certified, skilled and experienced in the delivery of these type of Goods, Services and/or Works (if applicable).

18.2 The Provider and the Provider’s sub-contractors, staff and agents shall comply with all reasonable requirements of LPP and any Other Contracting Authority.

18.3 The Provider shall use reasonable endeavours to ensure that its sub-contractors are subject to the provisions of Clauses 18.1 and 18.2.

18.4 The Provider, its agents, and sub-contractors shall employ sufficient staff to ensure that the Goods, Services and/or Works (if applicable) named in Schedule 1 of this Agreement are provided at all times and in accordance with the Agreement and each Call-Off Contract. Without prejudice to the generality of this obligation, it shall be the duty of the Provider to ensure that a sufficient reserve of staff is available to supply the Goods, Services and/or Works (if applicable) in accordance with this Agreement during staff holidays or absence through sickness or any other cause.

1. CALL-OFF CONTRACT PERFORMANCE
	1. The Provider shall perform all Call-Off Contracts entered into with LPP or any Other Contracting Body in accordance with:-
		1. the requirements of this Agreement; and
		2. the terms and conditions of the Call-Off Contract.
	2. In the event of, and only to the extent of, any conflict between the terms and conditions of this Agreement and the terms and conditions of a Call-Off Contract, the precedence list in Clause 1.2.11 will be applicable

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| **PART FIVE: PROVIDER'S INFORMATION OBLIGATIONS** |

20. PROVISION OF MANAGEMENT INFORMATION

20.1 The Provider shall submit Management Information to LPP in the form set out in Schedule 5 throughout the Term on the 15th day of every Month and thereafter in respect of any Call-Off Contract entered into with any Contracting Authority.

20.2 LPP may share the Management Information supplied by the Provider with any Contracting Authority.

20.3 LPP may make changes to the Management Information which the Provider is required to supply and shall give the Provider at least one (1) month's written notice of any changes.

21. RECORDS AND AUDIT ACCESS

21.1 The Provider shall keep and maintain full and accurate records and accounts of the operation of this Agreement including the Goods, Services and/or Works (if applicable) provided under it, the Call-off Contracts entered into with Contracting Authorities and the amounts paid by Contracting Authorities until the latest of:

21.1.1 the expiry of a period of twelve (12) months following termination or expiry of the Agreement; or

21.1.2 the expiry of a period of twelve (12) months following the date on which the Provider ceases to provide Goods, Services and/or Works (if applicable) under any Call-off Contract.

21.1.3 the expiry of the period twelve (12) months following the date provided in any Order Form or Special Terms and Conditions

21.2 The Provider shall afford LPP (or a relevant Contracting Authority) and/or the Auditor access to such records and accounts as may be required from time to time.

21.3 The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) during the Term and for a period of [six (6)] years after expiry of the Term to LPP (or the relevant Contracting Authority) and the Auditor.

21.4 LPP shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Goods, Services and/or Works (if applicable) pursuant to the Call-Off Contracts, save insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of LPP.

21.5 Subject to LPP's rights of confidentiality, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:-

21.5.1 all information requested by the Auditor within the scope of the Audit;

21.5.2 reasonable access to sites controlled by the Provider and to equipment used in the provision of the Goods, Services and/or Works (if applicable); and

21.5.3 access to the Staff.

21.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 21, unless the Audit reveals a Material Default by the Provider in which case the Provider shall reimburse LPP for reasonable costs incurred in relation to the Audit.

22. CONFIDENTIALITY

22.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:

(a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

(b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

22.2 Clause 22 shall not apply to the extent that:

(a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;

(b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

(c) such information was obtained from a third party without obligation of confidentiality;

### (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

### (e) it is independently developed without access to the other party's Confidential Information.

22.3 The Provider may only disclose LPP’s Confidential Information to its Staff who are directly involved in the provision of the Goods, Services and/or Works (if applicable) and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

22.4 The Provider shall not, and shall procure that its Staff do not, use any of LPP's Confidential Information received otherwise than for the purposes of this Agreement.

22.5 Nothing in this Agreement shall prevent LPP and/or the Contracting Authority from disclosing the Provider's Confidential Information:

### (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;

### (b) to any consultant, Provider or other person engaged by the Contracting Authority or any person conducting a gateway review;

### (c) for the purpose of the examination and certification of LPP's accounts;

### (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 or the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Contracting Authority has used its resources.

22.6 Nothing in this Clause 22 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights

22.7 The Provider shall not without the prior written consent of LPP divulge the existence of this Agreement, any Call-Off Contract or any Order or disclose any information relating to or contained in this Agreement to any person who is not engaged in the performance of this Agreement.

22.8 In the event that the Provider fails to comply with this Clause 22, LPP reserves the right to terminate the Agreement by notice in writing with immediate effect.

22.9 The provisions of this Clause 22 shall apply notwithstanding termination of the Agreement.

23. OFFICIAL SECRETS ACTS

23.1 The Provider shall comply with and shall ensure that its Staff comply with, the provisions of:-

23.1.1 the Official Secrets Act 1911 to 1989; and

23.1.2 Section 182 of the Finance Act 1989.

23.2 In the event that the Provider or its Staff fail to comply with this Clause 23, LPP reserves the right to terminate this Agreement with immediate effect by giving notice in writing to the Provider.

24. DATA PROTECTION act, Freedom of Information act and Environmental information Regulations

24.1 The Provider shall (and shall procure that all of its Staff and Sub-Contractors and/or Agents) comply with any notification requirements and timelines for response in relation to the Data Protection Act, the Freedom of Information Act and the Environmental Information Regulations and all Parties will duly observe all of their obligations under this legislation in connection with this Agreement.

24.2 The Provider guarantees that it will maintain strict security over the information and will preserve the integrity and confidentiality of the information at all times.

24.3 The Provider confirms that adequate security measures and precautions are in place to protect the information at all times in accordance with current UK data protection legislation, and any relevant European Union Data Protection regulation or directive from time to time.

25. PUBLICITY

25.1 Unless otherwise directed by LPP, the Provider shall not make any press announcements or publicise this Agreement in any way without LPP’s prior written consent.

25.2 LPP shall be entitled to publicise this Agreement in accordance with any legal obligation upon LPP, including any examination of this Agreement by the Auditor.

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| **PART SIX: AGREEMENT TERMINATION AND SUSPENSION** |

26. Termination

**Termination on Default**

26.1 LPP may terminate this Agreement by serving written notice on the Provider with effect from the date specified in such notice where:-

26.1.1 the Provider are using staff that are not experienced, certified, qualified and trained in the delivery of these types of Goods, Services and/or Works (if applicable);

26.1.2 the Provider and its Staff, agents, sub-contractors, or personnel employed by the Provider in connection with the Goods, Services and/or Works (if applicable) have failed to comply with the relevant Legislation, Codes of Conduct and Regulations governing the provision of Goods, Services and/or Works (if applicable).

 **Termination on Default – Minor Breaches**

26.2 Where the Provider commits a Minor Breach of the Contract, LPP shall be entitled to issue the Provider with an “Improvement Notice”. Such Improvement Notice shall state the nature of the Minor Breach and give the Provider a minimum of ten (10) working days to remedy the Minor Breach.

26.3 If the Provider commits three (3) Minor Breaches in a twelve (12) month rolling period this will be classed as a Material Default and the Contract may be terminated in accordance with Clause 26.4(c).

 **Termination on Default – Material Default**

26.4 where the Provider commits a Material Default and:-

(a) the Provider has not remedied the Material Default to the satisfaction of LPP within twenty (20) Working Days, or such other period as may be specified by LPP, after issue of a written notice specifying the Material Default and requesting it to be remedied; or

(b) the Material Default is not, in the reasonable opinion of LPP, capable of remedy; or

(c) if the Provider has committed three (3) or more Minor Breaches within a twelve (12) month rolling period.

(d) where any Contracting Authority terminates a Call-Off Contract awarded to the Provider under this Agreement as a consequence of default by the Provider.

(e) where any Goods have been tested by an Independent Testing House/Organisation or an Independent Testing Engineer and certifies/states that the Goods and Installation Services do not meet the minimum required standards/specification, the Agreement, and any Orders or Contracts may be terminated and all outstanding Orders may be cancelled at no cost and without any liability to LPP or the Customer.

**TERMINATION ON FINANCIAL STANDING**

26.5 LPp may terminate this Agreement by serving notice on the Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of LPP), there is or seems likely to occur a material detrimental change in the financial standing and/or the credit rating of the Provider which adversely impacts on the Provider's ability to supply Goods, Services and/or Works (if applicable) under this Agreement. This may be checked throughout the life of the Dynamic Purchasing System.

26,6 Providers if requested by LPp must provide latest financial accounts.

26.7 LPP in order to ascertain or track any material detrimental change of the financial standing of the Provider may use an external credit rating agency. This will then be clarified with the Provider before any reasonable decision is made.

**TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL**

26.8 LPP may terminate this Agreement with immediate effect by notice in writing where the Provider is a company and in respect of the Provider if any event listed in Regulation 57 of the Public Contracts Regulations 2015 occurs or seems likely to occur

26.9 The Provider shall notify LPP immediately if the Provider undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). LPP may terminate this Agreement by giving notice in writing to the Provider with immediate effect within six (6) Months of:-

26.9.1 being notified that a Change of Control has occurred; or

26.9.2 where no notification has been made, the date that LPP becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

 **TERMINATION BY LPP**

26.10 LPP shall have the right to terminate this Agreement and/or the Dynamic Purchasing System, or to terminate the provision of any part of this Agreement at any time by giving three months' written notice to the Provider. The Parties acknowledge that if LPP exercises its rights under this Clause, it shall exercise its equivalent rights under all agreements with Providers admitted to the Dynamic Purchasing System.

27. Suspension of PROVIDER'S Appointment

27.1 Without prejudice to LPP’s rights to terminate the Agreement in Clause 26 above, if a right to terminate this Agreement arises in accordance with these terms and conditions, LPP may suspend the Provider’s appointment to supply Goods, Services and/or Works (if applicable) to Contracting Authorities by giving notice in writing to the Provider. If LPP provides notice to the Provider in accordance with this Clause 27, the Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by LPP in writing from time to time.

27.2 Should LPP or any Other Contracting Authority request product or installation testing for any reason whatsoever the Provider will be suspended from the Framework (at no cost to LPP or the Contracting Authority) whilst this testing takes place and will not be allowed to tender until completion of the testing. Any Orders already placed during this period shall be put on hold pending the outcome of the testing.

28. CONSEQUENCES OF TERMINATION AND EXPIRY

28.1 Notwithstanding the service of a notice to terminate this Agreement, the Provider shall continue to fulfil its obligations under the Agreement until the date of expiry or termination of the Agreement or such other date as required under this Clause 28.

28.2 Termination or expiry of this Agreement and/or the Dynamic Purchasing System 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.

28.3 Within thirty (30) Working Days of the date of termination or expiry of this Agreement and/or the Dynamic Purchasing System, the Provider shall return to LPP any data and Confidential Information belonging to LPP in the Provider's possession, power or control, either in its then current format or in a format nominated by LPP, together with all training manuals and other related documentation, and any other information and all copies thereof owned by LPP, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under this Agreement, or such period as is necessary for such compliance.

28.4 LPP shall be entitled to require access to data or information arising from the provision of the Goods, Services and/or Works (if applicable) from the Provider until the latest of:-

28.4.1 the expiry of a period of twelve (12) Months following termination or expiry of this Agreement; or

28.4.2 the expiry of a period of three (3) Months following the date on which the Provider ceases to provide Goods, Services and/or Works (if applicable) under any Call-Off Contract

28.5 Termination or expiry of this Agreement and/or the Dynamic Purchasing System shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Agreement prior to termination or expiry.

28.6 The provisions of Clauses 5, 8, 9, 10,16, 17, 18, 19, 21, 22, 24 and 25 shall survive the termination or expiry of this Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

28.7 In the event of any termination of the Agreement whether under this Clause 28 or otherwise, and without prejudice to any other rights (including the right to recover damages) that may accrue to the benefit of the Other Contracting Authority under this Agreement or otherwise, the Other Contracting Authority shall be entitled to:

28.7.1 obtain a refund of any Charges paid by the Contracting Authority in respect of any Goods, Services and/or Works (if applicable) which have not been performed by the Provider in accordance with the terms of the Agreement.

|  |
| --- |
| **PART SEVEN: INSURANCE AND LIABILITY** |

29. LIABILITY

29.1 Neither Party excludes or limits its liability for:-

29.1.1 death or personal injury caused by its negligence, or that of its Staff;

29.1.2 fraud or fraudulent misrepresentation by it or its Staff; or

29.1.3 breach of any obligations as to title implied by Section 2 of the Supply of Goods and Services Act 1982.

29.2 Subject to Clause 29.1 each Party's total aggregate liability in connection with this Agreement in each twelve (12) Month period during the Term (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall be limited to 125% of the annual contract price paid by the Contracting Authority(s) under the Call-Off Contract for provision of the Goods, Services and/or Works (if applicable). For the avoidance of doubt, the Parties acknowledge and agree that this Clause 29.2 shall not limit either Party's liability under any Call-Off Contract and that each Party's liability in relation to a Call-Off Contract shall be as set out in the Call-Off Contract.

29.3 Subject to Clause 29.2 above, the Provider shall indemnify and keep indemnified LPP in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with this Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, financial loss arising from provision and the quality or installation of any Goods, Services and/or Works (if applicable) or any other loss which is caused directly or indirectly by any act or omission of the Provider. This Clause shall not apply to the extent that the Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or Default, or the negligence or Default of its Staff, or by any circumstances within its or their control.

30. INSURANCE

30.1 The Provider shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Provider under this Agreement including death or personal injury, or loss of or damage to property.

30.2 The Provider shall effect and maintain the following insurances for the duration of the Agreement in relation to the performance of the Agreement:-

30.2.1 public liability insurance adequate to cover all risks in the performance of this Agreement from time to time;

30.2.2 employer's liability insurance with a minimum limit of indemnity as required by law from time to time; and

30.2.3 professional indemnity insurance with a minimum limit of indemnity of £1,000,000 [**one million pounds**] for each individual claim or such higher limit as LPP may reasonably require (and as required by law or best industry practice) from time to time.

30.3 Any excess or deductibles under such insurance (referred to in Clause 30.1 and Clause 30.2 above) shall be the sole and exclusive responsibility of the Provider.

30.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities arising under this Agreement.

30.5 The Provider shall produce to LPP, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

30.6 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by this Agreement then LPP may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

30.7 The Provider shall maintain the insurances referred to in Clauses 30.1 and Clause 30.2 above for a minimum of six (6) years following the expiration or earlier termination of this Agreement

31. GUARANTEE (IF REqUIRED)

 31.1 Before the Commencement Date, the Provider shall procure that the Guarantor shall:

31.1.1 execute and deliver to LPP the Guarantee;

31.1.2 deliver to LPP a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee.

|  |
| --- |
| **PART EIGHT: OTHER PROVISIONS** |

32.  TRANSFER AND SUB-CONTRACTING

 32.1 This Agreement is personal to the Provider and the Provider shall not assign, novate or otherwise dispose of this Agreement or any part thereof without the previous consent in writing of LPP. The Provider shall not be entitled to sub-contract any of its rights or obligations under this Agreement without the express prior written consent of LPP (such consent not to be reasonably withheld or delayed).

 32.2 LPP shall be entitled to:-

32.2.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Other Contracting Authority; or

32.2.2 novate this Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by LPP;

provided that such assignment, novation or disposals shall not increase the burden of the Provider's obligations under this Agreement.

33.  Variations TO THIS AGREEMENT

Any variations to this Agreement must be made only in accordance with the Variation Procedure set out in Schedule 7.

**34. DYNAMIC PURCHASING SYSTEM REVIEW**

The Dynamic Purchasing System and this Agreement shall be reviewed annually in accordance with the provisions of Schedule 1, 2 and 3 hereof.

35.  RIGHTS OF THIRD PARTIES

Save as provided herein the rights specified in this Agreement for the benefit of Contracting Authorities (including where any provision of this Agreement is also stated to apply to a Call-off Contract), a person who is not party to this Agreement ("**Third Party**") has no right to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this Agreement or vary any of its terms in accordance with the relevant provisions of this Agreement, such rescission or variation will not require the consent of any Third Party.

36.  SEVERABILITY

36.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Agreement had been executed with the invalid provision eliminated.

36.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, LPP and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

37.  CUMULATIVE REMEDIES

Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

38.  WAIVER

38.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Agreement.

38.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 40 (Notices).

33.3 A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

39.  ENTIRE AGREEMENT

39.1 This Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

39.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

39.3 Nothing in this Clause 39 shall operate to exclude Fraud or fraudulent misrepresentation.

40.  NOTICES

40.1 Except as otherwise expressly provided within this Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party sending the communication.

40.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 40. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

For the purposes of Clause 40 the address of each Party shall be:

For LPP :-

Address: 200 Great Dover Street , London SE1 4YB

For the attention of: The Contracting Manager

 For the Provider:-

[                    ]

Address:

For the attention of:

Tel:

Email:

Either Party may change its address for service by serving a notice in accordance with this Clause.

41.  COMPLAINTS HANDLING AND RESOLUTION

41.1 The Provider shall notify LPP of any Complaint made by Other Contracting Authorities within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Provider's plans to resolve such Complaint.

41.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under this Agreement or a Call-Off Contract, and without prejudice to any obligation of the Provider to take remedial action under the provisions of this Agreement or a Call-Off Contract, the Provider shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

**42. FORCE MAJEURE**

Neither party shall be in breach of the Contract for any delay in or failure to perform its obligations under the Contract resulting from strike, lockout (other than strike or lockout which is limited to the Providers personnel), war, civil commotion, cessation or serious interruption of communication or power supplies, exceptional adverse weather conditions, fire. The parties shall immediately notify each other stating the likely length of disruption and the steps being taken to minimise the disruption. LPP or the appropriate Contracting Authority will notify the Provider within 30 days whether it requires the provision of the Goods, Services and/or Works (if applicable) to be recommenced, varied or cancelled (without further liability on either party).

43.  DISPUTE RESOLUTION

43.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to those persons identified in Clause 40 above.

43.2 If the dispute cannot be resolved by the Parties pursuant to Clause 43.1 it shall be referred to the Director or Executive Director of the respective Parties for resolution.

 43.3 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

43.4 If the dispute cannot be resolved by the Parties pursuant to Clause 43.2 the Parties shall refer it to mediation pursuant to the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure unless:

43.4.1 LPP considers that the dispute is not suitable for resolution by mediation; or

43.4.2 the Provider does not agree to mediation.

43.5 The obligations of the Parties under this Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Provider and its employees, personnel and associates shall comply fully with the requirements of this Agreement at all times.

44.  LAW AND JURISDICTION

Subject to the provisions of Clause 43 LPP and the Provider accept the exclusive jurisdiction of the English courts and agree that this Agreement be governed by and construed according to English Law.

**THE GOODS, SERVICES AND/OR WORKS SPECIFICATION**

**NOT REQUIRED UNTIL CALL FOR FURTHER COMPETITION STAGE**

1. Schedule 2
2. AWARD CRITERIA

**Goods, Services and/or Works (if applicable) - Establishment on the DPS Criteria (Quality only)**

|  |  |  |
| --- | --- | --- |
| **Criterion Number** | **Criterion** | **Percentage Weightings** (or rank order of importance where applicable) |
| 1 | Financial Information | PASS/FAIL |
| 2 | Business and professional standing | PASS/FAIL |
| 3 | Health and Safety Policy and Capability | PASS/FAIL |
| 4 | Two Acceptable References | PASS/FAIL |

# Goods, Services and/or Works (if applicable) - Award Criteria

|  |  |  |
| --- | --- | --- |
| **Criterion Number** | **Criterion** | **Percentage Weightings** (or rank order of importance where applicable) |
| 1 | [As set out in ITT]  | to be set by Contracting Authority conducting Call for competition |
| 2 | [As set out in ITT]  | to be set by Contracting Authority conducting Call for competition |
| 3 | [As set out in ITT]  | to be set by Contracting Authority conducting Call for competition |
| 4 | [As set out in ITT] | to be set by Contracting Authority conducting Call for competition |
| 5 | [As set out in ITT] | to be set by Contracting Authority conducting Call for competition |

1.
2. schedule 3
3. PRICING MATRICES

**NOT REQUIRED UNTIL CALL FOR FURTHER COMPETITION STAGE**

1.

**Schedule 4 - Customer Access Agreement**

**CUSTOMER ACCESS AGREEMENT**

**for use by INSERT HUB/TRUST NAME/PUBLIC SECTOR ORGANISATION**

**NHS LONDON PROCUREMEN PARTNERSHIP DYNAMIC PURCHASING SYSTEM FOR THE PROVISION OF PROFESSIONAL SERVICES**

**Agreement Reference Number: LPP/2017/001**

Before conducting any activity under this DPS please complete and return this form to NHS LPP directly if you are an NHS LPP member/associate member or via your local (insert customer name) representative.

This agreement provides approval by NHS LPP for the below named Organisation to access the above named DPS only, subject to the conditions set out below.

In exchange for NHS LPP granting approval to access the DPS, the Organisation AGREES:

1. I/We accept all responsibility for both accessing and using the DPS in accordance with its associated terms and conditions of contract;
2. I/We agree that NHS LPP (and insert customer name) have no responsibility, or liability, on behalf of our Organisation relating to our use of this DPS Agreement;
3. I/We hereby certify that all information provided by NHS LPP (and insert customer name) in relation to the DPS, in any form, will be kept strictly confidential and not be made available to any external entity other than our own, without prior permission of LPP. (Please note, this obligation shall not apply to the provision of information by public sector organisations in order to comply with government guidelines and/or legislation regarding transparency and expenditure of public money);
4. I/We authorise NHS LPP to receive management information from contracted Providers, regarding the usage of this DPS by the Organisation. Such information will be used by NHS LPP for contract management/administration purposes, and will be shared with insert customer name.

**AGREEMENT:** I/We confirm that the organisation detailed below intends to participate in the above mentioned NHS LPP DPS, and that in doing so will act in accordance with the guidance and instructions set out in the relevant NHS LPP (and/or INSERT CUSTOMER NAME) Contract Briefing Document, associated terms and conditions of contract, and in accordance with the Public Contracts Regulations 2015.

**CUSTOMER ACCESS AGREEMENT**

**for use by INSERT HUB/TRUST NAME/ PUBLIC SECTOR ORGANISATION**

**NHS LONDON PROCUREMEN PARTNERSHIP DYNAMIC PURCHASING SYSTEM FOR THE PROVISION OF PROFESSIONAL SERVICES**

**Agreement Reference Number: LPP/2017/001**

|  |  |
| --- | --- |
| **Customer Signature:** |  |
| **Date:** |   |
| **Name:** |   |
| **Position:** |   |
| **Name of Authority:** |   |
| **Address:** |   |
| **Telephone:** |   |
| **E-mail** | *Please list all required user email addresses* |

**Access facilitated by XXXX(Framework Recipient Hub)XXX - To be completed by NHS Hub**

|  |  |  |  |
| --- | --- | --- | --- |
| **Name:**  |   | **Signature:** |   |
| **Position:**  |   | **Date:** |   |

**NHS LPP APPROVAL (To be completed by NHS LPP)**

|  |  |  |  |
| --- | --- | --- | --- |
| **Name:**  |   | **Signature:** |   |
| **Position:** |   | **Date:** |   |

**CONSTRUCTIONLINE APPROVAL (To be completed by Constructionline)**

|  |  |  |  |
| --- | --- | --- | --- |
| **Name:**  |   | **Signature:** |   |
| **Position:** |   | **Date:** |   |

**SCHEDULE 5**

**MANAGEMENT INFORMATION REQUIREMENTS**

The performance of this DPS Agreement shall be managed by LPP and the Provider and regular appropriate review meetings held. During the first six months of the Agreement a meeting in alternate months may be required and the Provider will be expected to keep in contact with LPP by telephone and / or email as required by LPP.

Contracting Authority Pipeline information must be received from the Provider to LPP by the 15th of each month detailing the below information. LPP will provide an electronic template for you to enter this information into.

* Date
* Contracting Authority Name
* Status i.e. initial discussions, tender in progress, implementation, live, unsuccessful
* Opportunity i.e. existing Contracting Authority, new Contracting Authority
* Goods, Services and/or Works (if applicable)

This information is intended to keep LPP updated with any potential Contracting Authorities Providers are discussing the DPS with. This will allow LPP to plan resources needed in order to service this Agreement.

Management information may also be required by the Contracting Authority. The exact format and frequency will be agreed with the successful Provider prior to the start of the call off contract.

A template may be provided electronically by the Contracting Authority for you to enter this information into. This may also be available as a hard copy on request.

The information supplied at the point of further competition shall form the Key Performance Indicators (KPI’s) of this contract.

These KPI’s shall apply to the full contract period unless modifications and appropriate timescales are agreed between both parties at the contract reviews.

If any variations to the performance levels are agreed then these shall be documented, signed by both parties and a copy held by both parties.

SCHEDULE 6

1. FREEDOM OF INFORMATION EXCLUSIONS SCHEDULE (IF APPLICABLE)

**SCHEDULE 7**

**LPP DYNAMIC PURCHASING SYSTEM VARIATION PROCEDURE**

1. **Introduction**
	1. Schedule 7 details the scope of the variations permitted and the process to be followed where LPP proposes a variation to the Agreement.
	2. LPP may propose a variation to the Agreement under Schedule 7 only where the variation does not amount to a material change in the Agreement.
2. **Procedure for proposing a Variation**
	1. Except where paragraph 5 applies, LPP may propose a variation using the procedure contained in this paragraph 2.
	2. In order to propose a variation, LPP shall serve each Provider on the Dynamic Purchasing System with written notice of the proposal to vary the Agreement ("Notice of Variation").
	3. The Notice of Variation shall:-
		1. contain details of the proposed variation providing sufficient information to allow each Provider to assess the variation ;
		2. Not applicable.
	4. Upon receipt of the Notice of Variation, each Provider has [10] days to respond in writing with any objections to the variation.
	5. Where LPP does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, LPP may then serve each Provider with a written agreement detailing the variation to be signed and returned by each Provider within [10] days of receipt.
	6. Upon receipt of a signed agreement from each Provider, LPP shall notify all Providers in writing of the commencement date of the variation.
3. **Objections to a Variation**
	1. In the event that LPP receives one or more written objections to a variation, LPP may:-
		1. withdraw the proposed variation; or
		2. propose an amendment to the variation.
4. **Variations which are not permitted**
	1. In addition to the provisions contained in paragraph 1.2, LPP may not propose any variation which:-
		1. may prevent one or more of the Providers from performing its obligations under the Agreement; or
		2. is in contravention of any law.

**SCHEDULE 8**

**RETROSPECTIVE PAYMENTS**

**Management Levy - 1%**

|  |
| --- |
| In consideration of LPP appointing any Provider to the DPS and the management and administration by LPP of the overall DPS structure and associated documentation, all DPS Providers who obtain contracts under the DPS shall pay to LPP a Management Levy. The Management Levy is 1% (one percent) of the total charges invoiced by the Provider to all Contracting Authorities under the DPS Call-Off Contracts excluding VAT. The Provider shall pay the Management Charge to LPP bi-annually.There is no charge for Providers who apply to join and are admitted to the DPS. Payments should be made no later than 28 days after date of invoice.Customer NameBill to addressPost CodeAccounts Contact NameAccounts Contact TelephoneAccounts Contact Email |

**I agree that the above Management Levy will be paid to LPP.**

**For and on behalf of the Provider (**Director/Company Secretary)

|  |  |
| --- | --- |
| **SIGNATURE:**Name:Date:Company: |  |

**SCHEDULE 9**

1. CALL-OFF TERMS AND CONDITIONS

The Contracting Authority has the option to use either:-

* The call-off terms and conditions set out below:
* Their own terms and conditions;
* The NEC 3 Suite of Contracts;
* The JCT Suite of Contracts
* Other standard forms of contract used by the Construction Industry
* One or more of the above where there is an overlap of Goods, Services or Works

**THE FORM OF CONTRACT TO BE USED WHEN CALLING OFF THIS AGREEMENT SHALL BE MADE KNOWN TO THE PROVIDERS AT THE INVITATION TO TENDER STAGE.**

**SCHEDULE 9**

1. CALL-OFF TERMS AND CONDITIONS
2. CONTENT
3. INTERPRETATION
4. INITIAL CONTRACT PERIOD
5. EXTENSION OF INITIAL CONTRACT PERIOD
6. PROVIDER STATUS
7. PROVISION OF MANAGEMENT INFORMATION
8. CUSTOMERS OBLIGATIONS
9. ENTIRE AGREEMENT
10. NOTICES
11. MISTAKES IN INFORMATION
12. CONFLICTS OF INTEREST
13. PREVENTION OF FRAUD
14. PROVISION OF GOODS
15. LABELLING AND PACKAGING
16. TRAINING
17. PROVISION OF THE GOODS, SERVICES AND/OR WORKS
18. MANNER OF PROVIDING THE GOODS, SERVICES AND/OR WORKS
19. KEY PERSONNEL
20. PROVIDER’S STAFF
21. OFFERS OF EMPLOYMENT
22. CONTRACT PERFORMANCE
23. PAYMENT AND CONTRACT PRICE
24. SET OFF
25. RECOVERY OF SUMS DUE
26. EURO
27. STATUTORY OBLIGATIONS AND REGULATIONS
28. DISCRIMINATION
29. THE CONTRACTS (RIGHTS OF THIRD PARTYS) ACT 1999
30. ENVIRONMENTAL REQUIREMENTS
31. HEALTH AND SAFETY
32. DATA PROTECTION ACT
33. FREEDOM OF INFORMATION ACT
34. OFFICIAL SECRETS ACT
35. CONFIDENTIAL INFORMATION
36. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES
37. INTELLECTUAL PROPERTY RIGHTS
38. RECORDS AND AUDIT ACCESS
39. TRANSFER AND SUB-CONTRACTING
40. WAIVER
41. VARIATION
42. SEVERABILITY
43. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE GOODS, SERVICES AND/OR WORKS
44. LIQUIDATED DAMAGES
45. CUMULATIVE REMEDIES
46. MONITORING OF CONTRACT PERFORMANCE
47. LIABILITY, INDEMNITY AND INSURANCE
48. PROFESSIONAL INDEMNITY
49. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY
50. WARRANTIES AND REPRESENTATIONS
51. TERMINATION
52. BREAK
53. TERMINATION OF DYNAMIC PURCHASING SYSTEM
54. CONSEQUENCES OF EXPIRY OR TERMINATION
55. DISRUPTION
56. RECOVERY UPON TERMINATION
57. FORCE MAJEURE
58. GOVERNING LAW
59. TUPE
60. DISPUTE RESOLUTION

APPENDIX 1 – ORDER FORM DYNAMIC PURCHASING SYSTEM

APPENDIX 2 – CUSTOMER VARIATION FORM

**SCHEDULE 9**

**CALL-OFF TERMS AND CONDITIONS**

1. **INTERPRETATION**

In the Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:-

|  |  |
| --- | --- |
| **"Agreement"** | means the Agreement for the provision of Estates Professional Services between LPP and the Provider  |
| "**Approval**"and "**Approved**" | means the written consent of the Contracting Authority |
| "**Auditor**" | means the National Audit Office or an auditor appointed by the Audit Commission as the context requires or such other auditor as may have been appointed in relation to the Contracting Authority  |
| **“Call-Off”** | Means the issue of an Invitation to Tender in relation to any contract to be awarded under the Dynamic Purchasing System |
| "**Commencement Date**" | means the date set out in the Order Form |
| "**Commercially Sensitive Information**" | means the Confidential Information listed in the Order Form comprised of information:-(a) which is provided by the Provider and designated as commercially sensitive information by the Contracting Authority for the period set out in that Order Form  |
| "**Confidential Information**" | means:-(a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA; and(b) the Commercially Sensitive Information, and does not include any information:-(i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 33 (Confidential Information);(ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;(iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or (iv) is independently developed without access to the Confidential Information |
| "**Contract**" | means the written agreement between the Contracting Authority and the Provider consisting of the Order Form and these clauses save that for the purposes of Clause 6.1 only, reference to Contract shall not include the Order Form |
| "**Contract Period**" | means the period from the Commencement Date to:- (a) the date of expiry set out in Clause 2; or(b) following an extension pursuant to Clause 3 the date of expiry of the extended period; or(c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract |
| "**Contract Price**" | means the price (exclusive of any applicable VAT), payable to the Provider by the Contracting Authority under the Contract, as set out in the Order Form, for the full and proper performance by the Provider of its obligations under the Contract |
| "**Contracting Authority**" | means LPP and any Contracting Authority for the purposes of the Public Contracts Regulations 2015 other than the Customer(s) |
| "**Crown**" | means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf |
| "**Customer(s)**" | means the Contracting Authority(s) identified in the Order Form |
| "**Default**" | means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other |
| "**Deliverables**" | means those deliverables listed in the Order Form  |
| "**DPA**" | means the Data Protection Act 1998 and any subordinate legislation made under such 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 |
| **“Dynamic Purchasing System”** | means a completely electronic system of limited duration which is (a) established by a contracting authority to purchase commonly used Goods, Services and/or Works (if applicable); and (b) open throughout its duration for the admission of economic operators which (i) satisfy the selection criteria specified by the contracting authority; and (ii) submit an Request to Participate to the contracting authority or person operating the system on its behalf which complies with the specification required by that contracting authority or person. |
| "**Environmental Information Regulations**" | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations |
| "**Equipment**" | means the Provider's equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under the Contract |
| "**FOIA**" | means the Freedom of Information Act 2000 and any subordinate legislation made under this 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**" | means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:-(a) any industrial action occurring within the Provider's or any sub-contractor's organisation; or(b) the failure by any sub-contractor to perform its obligations under any sub-contract(c) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; |
| "**Fraud**" | means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud LPP, a Contracting Authority or the Contracting Authority |
| "**Good Industry Practice**" | means standards, codes, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances |
| **“Improvement Notice”** | Means a Notice issued on the Provider to improve minor breaches of the Agreement, the Contract or the Order Form instructing the Provider to improve or remedy any minor breaches in the provision of the Goods, Services and or Works |
| **“Independent Testing Engineer”** | Means an independent engineer appointed by either LPP, the Customer or the Provider to provide written advice as to whether or not Goods have been installed correctly. It is agreed that the Independent Testing Engineer’s decision shall be final as to whether or not the Goods have been installed to the required standard/specification. |
| **“Independent Testing House/Organisation”** | Means a testing house/organisation independent of any party that may be appointed for the testing of any Goods either in situ or at premises to be agreed under the terms of this Contract. It is agreed that the Independent Testing House/Organisation’s decision shall be final as to whether or not the Goods meet the required standard/specification. |
| "**Information**" | has the meaning given under section 84 of the FOIA |
| "**Initial Contract Period**" | means the period from the Commencement Date to the date of expiry set out in Clause 2 (Initial Contract Period), or such earlier date of termination or partial termination of the agreement in accordance with the provisions of the Contract |
| "**Intellectual Property Rights**" **and** "**IPRs**" | means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off |
| "**Key Personnel**" | means any individual identified in the Order Form as being key personnel |
| "**Law**" | means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply |
| **“Material Default”** | means any breach of clauses 11 (Prevention of Fraud), 25 (Statutory Obligations and Regulations), 26 (Discrimination), 5 (Provision of Management Information), 36 (Records and Audit Access), 30 (Data Protection), 31 (Freedom of Information), 37 (Transfer and Sub-contracting), 10 (Conflicts of Interest), 16 (Retrospective Payments), 33 (Confidential Information), 32 (Official Secrets), 48 (Warranties and Representations)] |
| **“Minor Breach”** | Means any breach of the Agreement, the Contract or the Order Form which may be either a partial breach or a breach not so severe to warrant a Material Default. |
| "**Month**" | means calendar month |
| **"Order"** | means the order submitted by the Contracting Authority to the Provider in accordance with the Call-Off  |
| "**Order Form**" | means the order submitted to the Provider by the Contracting Authority in accordance with the Contract which sets out the description of the Goods, Services and/or Works (if applicable) to be supplied including, where appropriate, the Key Personnel, the Premises, the timeframe, the Deliverables and the Quality Standards |
| "**Parent Company**" | means any company which is the ultimate Holding Company of the Provider or any other company of which the ultimate Holding Company of the Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged by the same or similar business to the Provider. The term "**Holding Company**" shall have the meaning ascribed in Section 1261 of the Companies Act 2006 or any statutory re-enactment or amendment thereto |
| "**Party**" | means the Provider or the Contracting Authority |
| "**Pre-Existing IPR**" | shall mean any Intellectual Property Rights vested in or licensed to the Contracting Authority or the Provider prior to or independently of the performance by the Contracting Authority or the Provider of their obligations under the Contract and in respect of the Contracting Authority includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs |
| "**Premises**" | means the location where the Goods, Services and/or Works (if applicable) are to be provided, as set out in the Order Form |
| "**Project Specific IPRs**" | means:-(a) IPRs in Goods, Services and/or Works (if applicable) [and/or Deliverables] provided by the Provider (or by a third party on behalf of the Provider) specifically for the purposes of the Contract including, any Deliverables, and all updates and amendments of these items and/or(b) IPRs arising as a result of the provision of the Goods, Services and/or Works (if applicable) [and/or Deliverables] by the Providers under the Contract |
| "**Property**" | means the property, other than real property, issued or made available to the Provider by the Contracting Authority in connection with the Contract |
| "**Quality Standards**" | means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form |
| "**Regulatory Bodies**" | means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Contracting Authority |
| "**Replacement Provider**" | means any third party Provider appointed by the Contracting Authority, to provide any Goods, Services and/or Works (if applicable) which are substantially similar to any of the Goods, Services and/or Works (if applicable), and which the Contracting Authority receives in substitution for any of the Goods, Services and/or Works (if applicable) following the expiry, termination or partial termination of the Contract |
| "**Request for Information**" | shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "Request" shall apply) |
| "**Goods, Services and/or Works**" | means the Goods, Services and/or Works to be supplied as specified in the Order Form |
| "**Staff**" | means all persons employed by the Provider to perform its obligations under the Contract together with the Provider's servants, agents and sub-contractors used in the performance of its obligations under the Contract |
| **Staff Vetting Procedures** | means the Contracting Authority’s Procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure including but not limited to, the provisions of the Official Secrets Act 1911 to 1989. |
| "**Provider**" | means the person, firm or company with whom the Contracting Authority enters into the Contract as identified in the Order Form |
| "**Tender**" | means the document(s) submitted by the Provider to the Contracting Authority in response to the Contracting Authority's Invitation to Tender to provide the Contracting Authority with the Goods, Services and/or Works (if applicable)  |
| "**Variation**" | has the meaning given to it in Clause 39 (Variation) |
| "**VAT**" | means value added tax in accordance with the provisions of the Value Added Tax Act 1994 |
| "**Working Day**" | means any day other than a Saturday or Sunday or public holiday in England and Wales |

The interpretation and construction of the Contract shall be subject to the following provisions:-

* 1. Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
	2. Words importing the masculine include the feminine and the neuter;
	3. The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
	4. References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
	5. References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
	6. Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and
	7. Reference to a clause is a reference to the whole of that clause unless stated otherwise.
	8. Reference to any employees of the Provider shall not be deemed to include the Provider’s agents and sub-Providers unless expressly stated.
	9. “Time” shall be construed to be British Summer Time or Greenwich Mean Time or any other arrangement prevailing generally within England for the time being during the Contract Period.
1. **INITIAL CONTRACT PERIOD**

The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause 3 (Extension of Initial Contract Period).

1. **EXTENSION OF INITIAL CONTRACT PERIOD**

Subject to satisfactory performance of its obligations under the Contract by the Provider during the Initial Contract Period, the Customer may, by giving written notice to the Provider not less than [                    ] prior to the last day of the Initial Contract Period, extend the Contract [for any further period specified in the Order Form]. The provisions of the Contract will apply throughout any such extended period

1. **PROVIDERS STATUS**

At all times during the Contract Period the Provider shall be an independent Provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

1. PROVISION OF MANAGEMENT INFORMATION
	1. The Provider shall submit Management Information to LPP and/or the Customer in the form set out in Schedule 5 throughout the Term on the last day of every Month and thereafter in respect of any Call-Off Contract entered into with any Customer.
	2. LPP may share the Management Information supplied by the Provider with any Contracting Authority.
	3. LPP may make changes to the Management Information which the Provider is required to supply and shall give the Provider at least one (1) month's written notice of any changes.
2. **CUSTOMER’S Obligations**
	1. Save as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Provider.
	2. The Customer shall select a Provider for Orders in accordance with the Award Criteria outlined in the Invitation to Tender.
	3. The Customer will endeavour to have their Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.
	4. The Customer shall respond to any reasonable request for information from the Provider.
	5. The Customer will assign an Authorised Representative who will liaise with the Provider’s Contract Manager, to ensure both parties use reasonable endeavours to meet the milestones determined in the Implementation Plan where such a plan is appropriate.
	6. The Customer shall ensure that all Orders are awarded in accordance with the provisions of this Contract and in accordance with the Public Contracts Regulations 2015 (and any subsequent re-enactment thereof).
3. **ENTIRE AGREEMENT**
	1. This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt within it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
	2. Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
	3. Nothing in Clauses 6.1 and 6.2 shall operate to exclude Fraud or fraudulent misrepresentation.
	4. In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:-
		* 1. legislation and/or code of practice
			2. the Order Form;
			3. the clauses of the Contract; and
			4. any other document referred to in the clauses of the Contract.
	5. For the avoidance of doubt any terms that the Provider may seek to impose and which in any way vary or contradict these Contract Order terms shall be excluded and not form part of the Order
	6. The Contract may be executed in counterparts each of which when executed and delivered shall constitute a duplicate original but all the counterparts together shall constitute the one agreement.
4. **NOTICES**
	1. Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.
	2. Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 8.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
	3. For the purposes of Clause 8.2, the address of each Party shall be:-
		* 1. For the Customer: the address set out in the Order Form.
			2. For the Provider: the address set out in the Order Form.
	4. Either Party may change its address for service by serving a notice in accordance with this clause.
5. **MISTAKES INFORMATION**

The Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Provider in connection with the provision of the Goods, Services and/or Works (if applicable) and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein.

1. **CONFLICTS OF INTEREST**
	1. The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Customer under the provisions of the Contract.
	2. The Provider shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 10.1 above arises or is reasonably foreseeable.
	3. The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
	4. This Clause shall apply during the Contract Period and for a period of two (2) years after expiry of the Contract Period.
2. **PREVENTION OF FRAUD**
	1. The Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
	2. The Provider shall notify the Customer and LPP immediately if it has reason to suspect that any Fraud has occurred, is occurring or is likely to occur.
	3. If the Provider or its Staff commits any Fraud in relation to this or any other contract with LPP, a Contracting Authority or the Customer, the Customer may:-
		* 1. terminate the Contract with immediate effect by giving the Provider notice in writing and recover from the Provider the amount of any loss suffered by the Customer resulting from the termination including the cost reasonably incurred by the Customer of making other arrangements for the provision of the Goods, Services and/or Works (if applicable) and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and/or
			2. recover in full from the Provider any other loss sustained by the Customer in consequence of any breach of this clause.
3. **PROVISION OF GOODS**
	1. The Provider shall supply and, where relevant, install the Goods in accordance with the specification in the Agreement, the Invitation to Tender, the Order Form and in accordance with any obligations implied by Section 12 or 14 of the Sale of Goods Act 1979.
	2. If requested by the Customer the Provider shall provide the Customer with samples of Goods for evaluation and approval, at the Provider's cost and expense.
	3. If requested by the Customer the Provider shall submit products to an Independent Testing House/Organisation for testing at the Provider’s cost and expense. Where the Goods are too large to be sent to an Independent Testing House/Organisation or need to be tested in situ then the Provider shall arrange for an Independent Testing Engineer to test the Goods and the installation of the Goods at their own cost and expense. Such requests for Testings should be acted upon immediately.
	4. The Provider shall ensure that the Goods are fully compatible with any of the Customer's equipment, to the extent specified in the Order Form.
	5. The Provider acknowledges that the Customer relies on the skill and judgment of the Provider in the provision of the Goods and the performance of its obligations under the Contract.
	6. The Provider, its agents, sub-contractors and suppliers shall employ sufficient staff to ensure that the Goods are provided at all times and in accordance with the Contract. Without prejudice to the generality of this obligation, it shall be the duty of the Provider to ensure that a sufficient reserve of staff is available to provide the Goods in accordance with the Contract during staff holidays or absence through sickness or any other cause.

**DELIVERY**

* 1. The Provider shall deliver the Goods at the time(s) and date(s) specified in the Order Form.
	2. Unless otherwise stated in the Order Form, where the Goods are delivered by the Provider, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.
	3. Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Provider's suppliers or carriers at such place as the Customer or duly authorised person shall reasonably direct.
	4. All deliveries shall be accompanied wherever possible by the appropriate paperwork including any certificates authorised by an Independent Testing House/Organisation, evidencing that all Goods are manufactured to an agreed Specification/Standard. If deliveries are made with incomplete paperwork the Customer has the right to reject the Goods in accordance with Clause 12.16.
	5. Time of delivery shall be of the essence and if the Provider fails to deliver the Goods within the time specified in the Order Form, the Customer may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Customer.
	6. The Customer shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Customer elects not to accept such over-delivered Goods it shall give notice in writing to the Provider to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Customer may dispose of such Goods and charge the Provider for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Provider unless they are accepted by the Customer.
	7. The Customer shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Order Form.
	8. Unless expressly agreed to the contrary, the Customer shall not be obliged to accept delivery by instalments. If, however, the Customer does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Customer, entitle the Customer to terminate the whole of any unfulfilled part of the Contract without further liability to the Customer**.**

 **OWNERSHIP AND RISK**

12.15 Ownership and risk in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer at the time of acceptance of delivery.

**NON-DELIVERY**

12.16 Where specified by the Customer on dispatch of any consignment of the Goods, the Provider shall send the Customer an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to the Customer on the due date for delivery, the Customer shall, (provided that the Customer has been advised in writing of the dispatch of the Goods), within ten (10) Working Days of the notified date of delivery, give notice to the Provider that the Goods have not been delivered and may request the Provider free of charge to deliver substitute Goods within the timescales specified by the Customer or terminate the Contract.

**INSPECTION, REJECTION AND GUARANTEE**

12.17 The Customer or its authorised representatives may inspect or test the Goods either when complete or in the process of manufacture during normal business hours on reasonable notice at the Provider’s premises and the Provider shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Customer of any rights or remedies in respect of the Goods and the Customer reserves the right to reject the Goods in accordance with Clause 12.18

* 1. The Customer may by written notice to the Provider reject any of the Goods which fail to conform to the approved sample, do not have valid certification, or fail to meet the Contract requirements. Such notice shall be given within a reasonable time after delivery to the Customer of such Goods. If the Customer rejects any of the Goods pursuant to this clause the Customer may (without prejudice to other rights and remedies) either:-
		+ 1. have such Goods promptly, and in any event within 5 Working Days, either repaired by the Provider or replaced by the Provider with Goods which conform in all respects with the approved sample or with the Order Form and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
			2. treat the Contract as discharged by the Provider's breach and obtain a refund from the Provider in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Customer in obtaining other goods in replacement provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.
	2. The issue by the Customer of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods.
	3. The Provider hereby guarantees the Goods for the period from the date of delivery to the date of either (i) (twelve [12]) Months thereafter; or (ii) such other guarantee period or warranty period notified by the Provider in their response to the Invitation to Tender against faulty materials or workmanship. If the Customer shall within such guarantee period or within [twenty five (25)] Working Days thereafter give notice in writing to the Provider of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Provider shall (without prejudice to any other rights and remedies which the Customer may have) promptly remedy such defects (whether by repair or replacement as the Customer shall elect) free of charge.
	4. Any Goods rejected or returned by the Customer as described in Clause 12.20 shall be returned to the Provider at the Providers risk and expense.
1. **LABELLING AND PACKAGING**

The Goods shall be packed and marked in a proper manner and in accordance with the Customer's instructions, any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the order number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

1. **TRAINING**

Where indicated in the Order Form, the Contract Price shall include the cost of instruction of the Customer's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements specified in the Order Form.

**15. PROVISION OF THE GOODS, SERVICES AND/OR WORKS**

* 1. The Provider shall provide the Goods, Services and/or Works (if applicable) during the Contract Period in accordance with the Customer's requirements as set out in the Contract and the Order Form. The Customer may inspect and examine the manner in which the Provider supplies the Goods, Services and/or Works (if applicable) at the Premises during normal business hours on reasonable notice.
	2. If the Customer informs the Provider in writing that the Customer reasonably believes that any part of the Goods, Services and/or Works (if applicable) do not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default on the part of the Customer, the Provider shall at its own expense re-schedule and provide or carry out the Goods, Services and/or Works (if applicable) in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.
	3. The Provider acknowledges that in entering into this contract no form of exclusivity has been granted by the Customer and that the Customer is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all Goods, Services and/or Works which are the same as or similar to the Goods, Services and/or Works provided under the terms of the Contract.
1. **MANNER OF PROVIDING GOODS, SERVICES AND/OR WORKS**
	1. The Provider shall at all times comply with the relevant Legislation, Codes of Conduct and Regulations governing the provision of Goods, Services and/or Works.
	2. Where applicable the Provider shall maintain and shall ensure that any agents, staff or sub-contractors utilised in the provision of the Goods, Services and/or Works maintain accreditation and certification with the relevant authorisation body. To the extent that the standard of Goods, Services and/or Works has not been specified in the Contract the Provider shall agree the relevant standard of the Goods, Services and/or Works with the Customer prior to the supply of the Goods and provision of the Services and/or Works, and in any event the Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
	3. The Provider shall ensure that all Staff providing the Goods, Services and/or Works shall do so with all due skill, care and diligence and shall possess such qualifications, certification, skills and experience as are necessary for the proper supply of the Goods, and provision of the Services and/or Works.
2. **KEY PERSONNEL**
	1. The Parties have agreed to the appointment of the Key Personnel. The Provider shall and shall procure that any sub-contractor shall obtain the prior Approval of the Customer before removing or replacing any Key Personnel during the Contract Period, and, where possible, at least one months' written notice must be provided by the Provider of its intention to replace Key Personnel.
	2. The Customer shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Provider, their agents or sub-contractor. The Customer may interview the candidates for Key Personnel positions before they are appointed.
	3. The Provider acknowledges that the Key Personnel are essential to the proper provision of the Goods, Services and/or Works (if applicable) to the Customer. The Provider shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
	4. The Customer may also require the Provider to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall in no circumstances be liable to the Provider or to their employee in respect of any liability, loss or damage occasioned by such removal and the Provider shall provide an indemnity for any claim made by such employee. The Customer will also not be liable for the cost of replacing any Key Personnel.
3. **PROVIDER’S STAFF**
	1. The Customer may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain on, the Premises:-
		* 1. any member of Staff; or
			2. any person employed or engaged by any member of the Staff;

whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.

* 1. At the Customer's written request, the Provider shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.
	2. The Provider's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises.
	3. If the Provider fails to comply with Clause 18.2 within two (2) Months of the date of the request, the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
	4. The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Provider has failed to comply with Clause 18 shall be final and conclusive.
	5. The Provider shall comply with the Staff Vetting Procedures in respect of all Provider Staff employed or engaged by the Provider at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedure.
1. **OFFERS OF EMPLOYMENT**

For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Customer nor the Provider shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Goods, Services and/or Works (if applicable) without that other Party's prior written consent.

1. **CONTRACT PERFORMANCE**
	1. In supplying the Goods, Services and/or Works (if applicable) the Provider shall perform its obligations under the Contract:
		1. with appropriately experienced, accredited, certified, qualified and trained Staff;

20.1.2 in a timely manner; and in compliance with applicable Laws, including but not limited to Section 2 of the Supply of Goods and Services Act 1982.

* 1. The Provider shall ensure that:

20.2.1 the Goods, Services and/or Works (if applicable) conform in all respects with the specifications set out, in the Invitation to Tender, the Order Form and where applicable the Contract or any sample approved by the Customer Authority;

* + 1. the Goods, Services and/or Works (if applicable) operate in accordance with the relevant technical specifications and correspond with the requirements set out in the Order Form;
		2. the Goods, Services and/or Works (if applicable) conform in all respects with all applicable Laws; and
		3. the Goods, Services and/or Works (if applicable) comply with the relevant Legislation, Codes of Conduct and Regulations governing the provision of Goods, Services and/or Works (if applicable).
	1. The Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to the good industry practice and (without limiting the generality of this Clause 20.3) in accordance with its own established internal procedures.
1. **PAYMENT AND CONTRACT PRICE**

**CONTRACT PRICE**

* 1. In consideration of the Provider's performance of its obligations under the Contract, the Customer shall pay the Contract Price in accordance with Clause 21 (Payment and VAT).
	2. The Customer shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Goods, Services and/or Works (if applicable) supplied in accordance with the Contract.

21.3 Unless otherwise expressly stated in the Agreement, the Contract or the Order Form, no claim by the Provider will be allowed for any addition to the Contract Price on the grounds of any matter relating to any document forming part of the Agreement, the Contract or the Order Form or any ambiguity or discrepancy therein on which an experienced Provider could have satisfied himself by reference to the Customer or any other appropriate means.

**PAYMENT AND VAT**

* 1. The Customer shall pay all sums due to the Provider if properly due and applicable in cleared funds within thirty (30) days of receipt of a valid invoice submitted in accordance with the payment profile set out in the Order Form.
	2. The Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods, Services and/or Works (if applicable) provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.
	3. Where the Provider enters into a sub-contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in the sub-contract which requires payment to be made of all sums due by the Provider to the sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the sub-contract requirements.
	4. The Provider shall add VAT to the Contract Price at the prevailing rate as applicable.
	5. The Provider shall indemnify LPP and the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on LPP and/or the Customer at any time in respect of the Provider’s failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this Clause 21.8 shall be paid by the Provider to the LPP and/or the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable.
	6. The Provider shall not suspend the provision of the Goods, Services and/or Works (if applicable) unless the Provider is entitled to terminate the Contract under Clause 49 (Termination) for failure to pay undisputed sums of money.
1. **SET OFF**
	1. The Provider shall not be entitled to retain or set-off any amount due to LPP or the Customer by it but the Customer may retain or set-off any amount owed to it by the Provider under this Contract which has fallen due and payable against any amount due to the Provider under this Contract.
	2. If the payment or deduction of any amount referred to in Clause is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.
2. **RECOVERY OF SUMS DUE**
	1. Wherever under the Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Contract or under any other agreement or contract with the Customer.
	2. Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
	3. The Provider shall make any payments due to the Contracting Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Contracting Authority to the Provider.
	4. All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
3. **EURO**
	1. Any requirement of Law to account for the Goods, Services and/or Works (if applicable) in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Provider free of charge to the Contracting Authority.
	2. The Contracting Authority shall provide all reasonable assistance to facilitate compliance with Clause 24.1 by the Provider.
4. **STATUTORY OBLIGATIONS AND REGULATIONS**

**PREVENTION OF BRIBERY AND CORRUPTION**

* 1. The Provider:

21.1.1 has not, will not, and will procure that its staff (and any agents or sub-contractors) have not committed and will not commit a Prohibited Act in connection with this Contract;

21.1.2 has not given and will not give any fee or reward to any person which it is an offence under Section 117(2) of the Local Government Act 1972 to receive

21.1.3 represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by LPP or the Customer or that a contract has been reached to that effect in connection with the securing or execution of this contract, or any other contract with LPP or the Customer, excluding any arrangements of which full details have been disclosed in writing to LPP and/or the Customer prior to the execution of this contract

* 1. The Provider will upon request provide the Customer with all reasonable assistance to enable the Customer to perform any activity required for the purposes of complying with the Bribery Act, as may be required of the Customer by any relevant government or agency in any relevant jurisdiction. Should the Customer request such assistance the Customer shall pay the reasonable expenses of the Provider arising as a result.
	2. The Provider will provide to the Customer certification, in writing and signed by an officer of the Provider, of the compliance with this Clause 25 by:

25.3.1 the Provider and

25.3.2 all persons associated with the Provider; and

25.3.3 any other persons who are supplying Goods, Services and/or Works (if applicable) in connection with this contract.

* 1. Certification will be provided to the Customer within 15 working days of the Commencement Date and annually thereafter for the Term. The Provider will provide any evidence of compliance as may reasonably be requested by the Customer.
	2. The Provider will have in place an anti-bribery policy for the purpose of preventing any of its staff from committing any Prohibited Act. Such policy shall be disclosed to the Customer and enforced by the Provider where appropriate.
	3. Should the Provider become aware of or suspect any breach of Clause 25 it will notify the Customer immediately.
	4. Following notification under Clause 25.6 the Provider will respond promptly and fully to the enquiries of the Customer, cooperate with any investigation undertaken by the Customer and allow the Customer to audit any books, records and other relevant documentation. The Provider’s obligations under this Clause 25.7 shall survive the expiry or termination of this Contract for a further period of 6 years.
	5. The Customer may recover in full from the Provider and the Provider shall indemnify the Customer in full from and against any other loss sustained by the Customer in consequence of any breach of this Clause 25 (Prevention of Bribery and Corruption), whether or not the Contract has been terminated.
	6. The Customer may terminate this Contract and any Order immediately upon serving written notice if the Provider, its staff or any sub-contractor’s staff whether or not acting with the Provider’s knowledge, breaches Clause 25.1. Before exercising its right of termination under this Clause 25.9 the Customer will give all due consideration to other action beside termination unless the Prohibited Act is committed by:

 25.9.1 the Provider or a senior officer of the Provider; or

 25.9.2 a member of Staff, agents or sub-contractors who are not acting independently of the Provider. The expression ‘not acting independently of’ (when used in relation to the Provider or sub-contractor) means and shall be construed as acting;

(a) with the authority of; or

(b) with the actual knowledge; of any one or more of the Provider’s, agents or sub-contractor’s (as applicable) directors [or Partners]or

(c) in circumstances where any one or more of the directors (or Partners) of the Provider, their agent or sub-contractor (as applicable) ought reasonably to have had knowledge.

* 1. Any notice of termination by the Customer under Clause 25.9 must specify:

25.10.1 the nature of the Prohibited Act;

25.10.2 the identity of the person whom the Customer believes has committed the prohibited act

25.10.3 the date on which this Contract will terminate.

25.11 In the event of any breach of Clause 25.1 the Customer is entitled to recover from the Provider the value of any gift, consideration or commission.

25.12 Notwithstanding Clause 58 (Dispute Resolution) any dispute relating to:

25.12.1 the interpretation of this Clause 25 or

25.12.2 the amount or value of any gift, consideration, commission or other financial advantage shall be determined by the Customer and its decision shall be final and conclusive

25.13 Termination under Clause 25 will :

25.13.1 be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer under this Contract.

25.13.2 prohibit the Provider from claiming any damages for early termination; and

25.13.3 allow the Customer to recover from the Provider the amount of any loss suffered by the Customer resulting from the termination; or

25.13.4 entitle the Customer to be indemnified by the Provider for any additional costs losses, damages or expenses incurred in re-procuring and obtaining the Goods, Services and/or Works (if applicable) from another party.

**26. DISCRIMINATION**

26.1 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

26.2 The Provider shall take all reasonable steps to secure the observance of Clause 26.1 by all servants, employees or agents of the Provider and all Providers and sub-contractors employed in the execution of the Contract.

**27. THE CONTRACTS (RIGHTS OF THIRD PARTYS) ACT 1999**

A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

**28. ENVIRONMENTAL REQUIREMENTS**

The Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer’s environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

**29. HEALTH AND SAFETY**

29.1 The Provider shall promptly notify LPP and the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Provider in the performance of its obligations under the Contract.

29.2 While on the Premises, the Provider shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.

29.3 The Provider shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

29.4 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the provision of the Goods, Services and/or Works (if applicable) under the Contract.

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

**PROTECTION OF INFORMATION**

30. DATA PROTECTION

30.1 For the purposes of this Clause 30, the terms "Data Controller", "Data Processor", “Data Subject” "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA

30.2 The Provider shall (and shall procure that all of its Staff and Sub-Contractors and/or Agents) comply with any notification requirements under the DPA and all Parties will duly observe all of their obligations under the DPA which arise in connection with this Contract.

30.3 The Provider shall not disclose Personal Data to any third parties other than:

30.3.1 to staff, Sub-Contractors and agents to whom such disclosure is reasonably necessary in order to perform the Agreement; or

30.3.2 to the extent required under a court order

30.4 Notwithstanding the general obligation in Clause 30.1, where the Provider is processing Personal Data as a Data Processor for the Customer the Provider shall:-

30.4.1 Process the Personal Data only in accordance with instructions from the Customer as set out in this Contract or as otherwise notified by the Customer;

30.4.2 comply with all applicable laws;

30.4.3 Process the Personal Data only to the extent, and in such manner as is necessary for the provision of the Provider's obligations under the Agreement;

30.4.4 implement appropriate technical and organisational measures to ensure the security of the Authorised Personal Data (and to guard against unauthorised or unlawful processing of the personal data) as required under the “Seventh Data Protection Principle” and protect the Personal Data against accidental loss, destruction, damage, alteration or disclosure;

30.4.5 take reasonable steps to ensure the reliability of its employees and agents who may have access to the Personal Data and use all reasonable endeavours to ensure that such persons have sufficient skills and training in the handling of Personal Data;

30.4.6 The Provider shall not cause or permit to be processed, stored, accessed and/or otherwise transferred outside the European Economic Area any Personal Data or other Personal Data supplied to it by LPP or the Customer, as the case may be, and, where LPP and/or the Customer consents to such processing, storage, access and/or transfer outside the European Economic Area, shall comply with the obligations of a Data Controller under the Eighth Data Protection Principle by providing an adequate level of protection.

30.4.7 not disclose the Personal Data to any third parties in any circumstances other than with the written consent of the Customer or in compliance with a legal obligation imposed upon the Customer; and

30.4.8 co-operate with the Customer to enable the Customer to comply with any request under Section 7 of the DPA.

30.4.9 notify the Customer within five Working Days if it receives

(a) a request from a Data Subject to have access to that person’s Personal Data; or

(b) a complaint or request relating to the Customer’s obligations under the DPA.

 30.5 The Provider shall indemnify and keep indemnified LPP, the Customer and the end user against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this Clause by the Provider and/or any act or omission of any staff, sub-contractor or agent.

* 1. The provisions of this Clause shall apply during the Term and indefinitely after its expiry.

**31. FREEDOM OF INFORMATION**

31.1 The Provider acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable them to comply with its Information disclosure obligations

 31.2 The Provider shall and shall procure that its employees, agents and sub-contractors shall:

31.2.1 transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

31.2.2 provide the Customer with a copy of all Information in its possession, or power in the form that the Customer requires within five Working Days (or such other period as the Customer may specify) of the Customer’s request; and

31.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

31.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

31.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Customer.

31.5 The Provider acknowledges that (notwithstanding the provisions of Clause 31.2) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider of the Goods, Services and/or Works (if applicable):

### 31.5.1 in certain circumstances without consulting the Provider; or

### 31.5.2 following consultation with the Provider and having taken their views into account;

### 31.5.3 provided always that where Clause 31.2 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider’s attention after any such disclosure.

 31.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

##  31.7 The Provider acknowledges that the Commercially Sensitive Information listed in Schedule 6 is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 31.5.

1. **OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989**
	1. The Provider shall comply with and shall ensure that its Staff comply with, the provisions of:-

32.1.1 the Official Secrets Acts 1911 to 1989; and Section 182 of the Finance Act 1989.

32.1.2 In the event that the Provider or its Staff fail to comply with this Clause, the Customer reserves the right to terminate the Contract by giving notice in writing to the Provider.

**33. C****ONFIDENTIAL INFORMATION**

33.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

### 33.1.1 treat the other Party's Confidential Information as confidential [and safeguard it accordingly]; and

### 33.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

33.2 Clause 33.1 shall not apply to the extent that:

### 33.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 31 (Freedom of Information);

### 33.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

### 33.2.3 such information was obtained from a third party without obligation of confidentiality;

### 33.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

33.2.5 it is independently developed without access to the other party's Confidential Information.

33.3 The Provider may only disclose the Customer’s Confidential Information to its Staff who are directly involved in the provision of the Goods, Services and/or Works (if applicable) and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

33.4 The Provider shall not, and shall procure that its Staff do not, use any of the Customers Confidential Information received otherwise than for the purposes of this Contract.

33.5 Nothing in this Agreement shall prevent the Customer from disclosing the Provider's Confidential Information:

### 33.5.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;

### 33.5.2 to any consultant, Provider or other person engaged by the Customer or any person conducting a gateway review;

### 33.5.3 for the purpose of the examination and certification of the Customer’s accounts;

### 33.5.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 or the Audit Commission Act 1998 or any relevant Law making similar provision with regard to the Customer of the economy, efficiency and effectiveness with which the Customer has used its resources.

33.6 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Provider's Confidential Information is disclosed pursuant to Clause 33 is made aware of the Customer’s obligations of confidentiality.

33.7 Nothing in this Clause 33 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party’s Confidential Information or an infringement of Intellectual Property Rights.

33.8 The Provider shall not without the prior written consent of the Customer divulge the existence of the Agreement, the Contract or any Order or disclose any information relating to or contained in the Agreement, the Contract or any Order to any person who is not engaged in the provision of the Goods, Services and/or Works (if applicable).

33.9 In the event that the Provider fails to comply with this Clause 33 the Customer reserves the right to terminate the Contract by notice in writing with immediate effect.

33.10 The provisions of this Clause shall apply notwithstanding termination of the Contract.

**34.**  **PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

34.1 The Provider shall not make any press announcements or publicise the Contract in any way without the Customer’s prior Approval and shall take reasonable steps to ensure that its servants, agents, employees, sub-contractors, suppliers, professional advisors and consultants comply with this Clause 34.1.

34.2 The Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.

34.3 The Providers shall not do anything or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

**35. INTELLECTUAL PROPERTY RIGHTS**

35.1 Save as granted elsewhere under the Contract, neither the Customer nor the Provider shall acquire any right, title or interest in the other's Pre-Existing IPR.

35.2 The Provider shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Customer’s Pre-Existing IPR or the Project Specific IPRs to any third party.

35.3 All title to and all rights and interest in the Project Specific IPRs shall vest in the Customer. The Provider hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and/or shall procure that the first owner of the Project Specific IPRs also does so.

35.4 The assignment under Clause 35.3 shall either take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.

35.5 The Provider shall waive or procure a waiver of any moral rights in any copyright works assigned to the Customer under the Contract.

35.6 If requested to do so by the Customer, the Provider shall without charge to the Customer execute all documents and do all such further acts as the Customer may require perfecting the assignment under Clause 35.3 or shall procure that the owner of the Project Specific IPRs does so on the same basis.

35.7 The Customer hereby grants to the Provider a non-exclusive, revocable, non-assignable licence to use the Customer’s Pre-Existing IPR and the Project Specific IPRs during the Contract Period for the sole purpose of enabling the Provider to supply the Goods, Services and/or Works (if applicable) [and/or supply the Deliverables].

35.8 Prior to using any third party Intellectual Property Rights, the Provider shall obtain the Approval of the Customer. The Provider shall provide the Customer with details of any third party licence required by the Provider and/or the Customer in order for the Provider to carry out its obligations under the Contract using the third party Intellectual Property Rights. The Customer reserves the right to withhold Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.

35.9 Where the Provider is granted Approval by the Customer to use the third party rights, the Provider shall procure that the owner of third party rights grants to the Customer a licence upon the terms informed to the Customer when seeking the Approval.

35.10 The Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold LPP, the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which LPP, the Customer or the Crown may suffer or incur as a result of any claim that the performance by the Provider of the Goods, Services and/or Works (if applicable) and/or supply of the Deliverables and/or the possession or use by the Customer of the Deliverables infringes or allegedly infringes a third party’s Intellectual Property Rights (“**Claim**”) except where the Claim arises from:-

35.10.1 items or materials based upon designs supplied by the Customer; or

35.10.2 the use of data supplied by the Customer which is not required to be verified by the Provider under any provision of the Contract.

35.11 The Customer shall notify the Provider in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Provider:

35.11.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;

35.11.2 shall take due and proper account of the interests of the Customer; and

35.11.3 shall not settle or compromise the Claim without the Customer's prior Approval (not to be unreasonably withheld or delayed).

35.12 If a Claim is made in connection with the Contract or in the reasonable opinion of the Provider is likely to be made, the Provider shall immediately notify the Customer and, at its own expense and subject to the consent of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to:-

35.12.1 modify the relevant part of the Goods, Services and/or Works (if applicable) or the Deliverables without reducing the performance or functionality of the same, or substitute alternative Goods, Services and/or Works (if applicable) or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified Goods, Services and/or Works (if applicable) or deliverables or to the substitute Goods, Services and/or Works (if applicable); or

35.12.2 procure a licence to use and provide the Goods, Services and/or Works (if applicable) or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer,

and in the event that the Provider is unable to comply with Clause 35.12 within 20 Working Days of receipt of the Provider's notification the Customer may terminate the Contract with immediate effect by notice in writing and the Provider shall, upon demand, refund the Customer with all monies paid in respect of the Goods, Services and/or Works (if applicable) or Deliverable that is subject to the Claim.

35.13 In the event that a modification or substitution in accordance with Clause 35.12.1 is not possible so as to avoid the infringement, or the Provider has been unable to procure a licence in accordance with Clause 31.12.2 the Customer shall be entitled to delete the relevant Service from the Contract.

35.14 This Clause 35.14 sets out the entire financial liability of the Provider with regard to the infringement of any Intellectual Property Rights as a result of the provision of the Goods, Services and/or Works (if applicable) [and/or the provision of the Deliverables] hereunder. This shall not affect the Provider's financial liability for other Defaults or causes of action that may arise hereunder.

**36. RECORDS AND AUDIT ACCESS**

* 1. The Provider shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including: the Goods, Services and/or Works (if applicable) provided under the Agreement and the Call-Off Contracts entered into with LPP, the Customer and each individual Contracting Authority and the amounts paid by the Customer and each Contracting Authority.

36.2 The Provider shall keep the records and accounts referred to in Clause 36.1 above in accordance with good accountancy practice.

* 1. The Provider shall on request afford the Customer, the Customer's representatives and/or the Auditor such access to such records and accounts as may be required by the Customer from time to time.
	2. The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) during the Contract Period and for a period of six (6) years after the expiry of the Contract Period to the Customer and the Auditor.
	3. The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Goods, Services and/or Works (if applicable) save insofar as the Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
	4. Subject to the Customer's rights of Confidential Information, the Provider shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including:-
		1. all information requested by the Customer within the scope of the audit;
		2. reasonable access to sites controlled by the Provider and to Equipment used in the provision of the Goods, Services and/or Works (if applicable); and
		3. access to the Staff.

36.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, unless the audit reveals a material Default by the Provider in which case the Provider shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

**CONTROL OF THE CONTRACT**

1. **TRANSFER AND SUB CONTRACTING**
	1. The Provider shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Provider of any obligation or duty attributable to the Provider under the Contract.
	2. The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own. All sub-contractors must be appropriately managed and responsibility for the quality of workmanship, warranties and guarantees will remain the responsibility of the Provider.
	3. Where the Customer has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Customer, be sent by the Provider to the Customer as soon as reasonably practicable.
	4. Subject to Clause 37.6, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:-

37.4.1 any Contracting Authority; or

37.4.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or

37.4.3 any private sector body which substantially performs the functions of the Customer,

provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Contract.

* 1. Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to Clause 37.6, affect the validity of the Contract. In such circumstances,the Contract shall bind and inure to the benefit of any successor body to the Customer.
	2. If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 37.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as "**the Transferee**"):-
		1. the rights of termination of the Customer in Clause 49 (Termination) shall be available to the Provider in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
		2. the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Provider
	3. The Customer may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider's obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.
	4. Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.
1. **WAIVER**
	1. The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
	2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 8 (Notices).
	3. A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.
2. **VARIATION**
	1. Subject to the provisions of this Clause 39.1, the Customer may request a variation to the Goods, Services and/or Works (if applicable) ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
	2. The Customer may request a Variation by completing and sending the Variation form attached at Appendix 2 (**"the Customer Variation Form"**) to the Provider giving sufficient information for the Provider to assess the extent of the Variation and any additional cost that may be incurred. The Provider shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
	3. In the event that the Provider is unable to provide the Variation to the Goods, Services and/or Works (if applicable) or where the Parties are unable to agree a change to the Contract Price, the Customer may:

39.3.1 agree to allow the Provider to continue to perform their obligations under the Contract without the Variation; or

39.3.2 terminate the Contract with immediate effect, except where the Provider has already delivered part or all of the Order in accordance with the Order Form or where the Provider can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 58.

* 1. If the Parties agree the Variation and any variation in the Contract Price, the Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.
1. **SEVERABILITY**
	1. If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
	2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Provider shall immediately commence good faith negotiations to remedy such invalidity.
2. **REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE GOODS, SERVICES AND/OR WORKS**
	1. Where a complaint is received about the standard of Goods, Services and/or Works (if applicable) or about the manner in which any Goods and Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under the Contract, then the Customer shall take all reasonable steps to investigate the complaint.
	2. Where a complaint is received about the quality of the Goods or of installation of the Goods then the Provider may at their own cost and expense arrange for the Goods to be tested either at an Independent Testing House/Organisation or inspected in situ by an Independent Testing Engineer.
	3. The Customer may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 49 (Termination) of the Contract.
	4. In the event that the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Provider, then the Customer may, without prejudice to its rights under Clause 49 (Termination), do any of the following:
		1. without terminating the Contract, itself provide or procure the provision of all or part of the Goods, Services and/or Works (if applicable) until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Customer that the Provider will once more be able to provide all or such part of the Goods, Services and/or Works (if applicable) in accordance with the Contract;
		2. without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods, Services and/or Works only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself provide or procure a third party to provide such part of the Goods, Services and/or Works (as applicable);
		3. terminate, in accordance with Clause 4 (Termination), the whole of the Contract; and/or
		4. charge the Provider for and the Provider shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the provision of any part of the Goods, Services and/or Works by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Goods, Services and/or Works and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods, Services and/or Works (as applicable).
	5. If the Provider fails to provide any of the Goods, Services and/or Works in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within [ten (10)] Working Days of the Customer's instructions or such other period of time as the Customer may direct.
	6. In the event that the Provider
		1. fails to comply with Clause 41.4 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
		2. persistently fails to comply with Clause 41.4 above;

the Customer may terminate the Contract with immediate effect by giving the Provider notice in writing.

1. **LIQUIDATED DAMAGES**
	1. If the Provider fails to deliver the Goods or perform the Services and/or Works (if applicable) by the date(s) agreed, or specified in the Order Form or (where an extension of time has been agreed by the Parties) the revised date for delivery (as the context requires, the"Agreed Delivery Date"):**-**
		1. the Provider shall pay the Customer a sum by way of liquidated damages for each day between the Agreed Delivery Date and thedate on which the Goods are delivered or Services and/or Works are provided to the Customer, equal to [                    ]% of the Contract Price for the relevant Goods, Services and/or Works, up to amaximumamount of [                    ]% of the Contract Price for the relevant Goods, Services and/or Works ("Liquidated Damages Threshold"). Subject to Clause 42.3, during the period in which liquidated damages are payable under this Clause 42.1.1 ("Liquidated Damages Period") the liquidated damages payable in accordance with this Clause 42.1.1 shall be the Customer's only remedy for any loss or damage suffered or incurred by the Customer in relation to the failure by the Provider to deliver the Goods or provide the Services and/or Works by the Agreed Delivery Date; and
		2. if the sums payable by the Provider pursuant to Clause 42.1.1 meet or exceed the Liquidated Damages Threshold, the Customer shall be entitled to:
			* 1. claim any remedy available to it (whether under the Contract or otherwise) for loss or damage incurred or suffered over and above the Liquidated Damages Threshold; and
				2. without prejudice to Clause 42.1.2 (i), the Customer shall be entitled to terminate the Contract with immediate effect by giving notice in writing to the Provider.
	2. The Provider shall not be obliged to pay any sums pursuant to Clause 42.1.1 if and to the extent the failure by the Provider to deliver the Goods and provide the Services and/or Works by the Agreed Delivery Date directly results from the Customers Default provided that the Provider notifies the Customer immediately of such circumstances in sufficient detail to enable the Customer to remedy the situation. Except as set out in this Clause 42.2, no payment or concession to the Provider by the Customer or other act or commission of the Customer shall in any way affect its rights to liquidated damages pursuant to Clause 42.1 or be deemed to be a waiver of the right of the Customer to recover any damages unless such waiver has been expressly made in writing by the Customer.
	3. Notwithstanding Clause 42.1.1 the Provider does not exclude responsibility for performing or re-performing the obligation or duty which gave rise to the relevant claim at its own cost in such manner as would (if possible) result in the same or substantively similar effect for the Customer, whether or not such performance or re-performance gives rise to additional costs for the Provider and the cost of re-performance shall be borne solely by the Provider and shall not be re-charged to the Customer whether by way of costs, reimbursement or otherwise.
	4. Having given careful consideration to this matter, all monies payable by the Provider under Clause 42.1.1 are considered by the Parties to be a genuine pre-estimate of the losses which the Customer will incur in relation to the Provider's failure to deliver the Goods or perform the Services and/or Works by the Agreed Delivery Date it being impossible to quantify the actual aggregate losses sustainable by the Customer in terms of both loss of revenue as well as loss of reputation and prestige (the Parties acknowledging that hypothetically the losses sufferable by the Customer might be more or less than the agreed liquidated damages calculation); arrived at without any inequality of bargaining position as between the Parties as a true bargain between the Parties; fair, given the nature and circumstances of the Contract; neither excessive, extravagant, unconscionable or oppressive in all the circumstances; and as such these monies are payable as liquidated damages such that the Provider waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 42.4. The Parties' joint intention in agreeing a scheme of liquidated damages in such circumstances is to substantially reduce and, to the fullest extent possible in law, eliminate, the risk of a dispute and potential litigation in relation to such circumstances.
	5. Each Party confirms that:-
2. it has taken specific legal advice on the effect of this clause; and
3. based on such advice, it does not enter into the Contract in anticipation that, or with any expectation that this Clause will be unenforceable for any reason.
4. **CUMULATIVE REMEDIES**

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

1. **MONITORING OF CONTRACT PERFORMANCE**

The Provider shall comply with the monitoring arrangements set out in the Order Form including, but not limited to, providing such data and information as the Provider may be required to produce under the Contract.

**LIABILITIES**

1. **LIABILITY, INDEMNITY AND INSURANCE**
	1. Nothing in the Contract shall be construed to limit or exclude either Party's liability for:-
		* + 1. death or personal injury caused by its negligence or that of its Staff;
				2. Fraud or fraudulent misrepresentation by it or that of its Staff;
				3. any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982;
				4. any claim under Clause 45.3; or
				5. any claim under the indemnity in Clause 45.2
	2. Subject to Clause 45.2 and Clause 45.4 the Provider shall indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the provision, or late or purported provision, of the Goods, Services and/or Works or the performance or non-performance by the Provider of its obligations under the Contract or the presence of the Provider or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider . The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.
	3. Subject always to Clause 45.3 and Clause 45.4, the liability of either Party for Defaults shall be subject to the following financial limits:-

45.3.1 the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed [                    ]; and

45.3.2 the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the greater of [                    ] or [                    ] per cent of the Contract Price payable by the Customer to the Provider in the year in which the liability arises.

45.4 Subject to Clause 54 (Recovery Upon Termination), in no event shall either Party be liable to the other for any:

* + 1. loss of profits;
		2. loss of business;
		3. loss of revenue;
		4. loss of or damage to goodwill;
		5. loss of savings (whether anticipated or otherwise); and/or
		6. any indirect or consequential loss or damage.
	1. The Customer may, amongst other things, recover as a direct loss:-
		1. any additional operational and/or administrative expenses arising from the Provider's Default;
		2. any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Provider's Default; and
		3. the additional cost of procuring replacement Goods, Services and/or Works (if applicable) for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Provider.

45.6 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

45.7 The Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under 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. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of [6 (six)] years following the expiration or earlier termination of the Contract.

* 1. The Provider shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
	2. The Provider shall hold public liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
	3. The Provider shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
	4. If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
	5. The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in Clause 45.
1. **PROFESSIONAL INDEMNITY**

The Provider shall effect and maintain a professional indemnity insurance policy during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the provision of the Goods, Services and/or Works (if applicable) effect and maintain appropriate professional indemnity insurance during the Contract Period. To comply with its obligations under this Clause and as a minimum, the Provider shall ensure professional indemnity insurance held by the Provider and by any agent, sub-contractor or consultant involved in the provision of the Goods, Services and/or Works (if applicable) has a limit of indemnity of not less than [                    ] for each individual claim [or such higher limit as the Customer may reasonably require (and as required by law) from time to time]. Such insurance shall be maintained for a minimum of [6 (six)] years following the expiration or earlier termination of the Contract.

1. **TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY**

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Goods, Services and/or Works (if applicable) and not a contract of employment. The Provider shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

1. **WARRANTIES AND REPRESENTATIONS**
	1. The Provider warrants and represents that:-
		1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
		2. the Contract is executed by a duly authorised representative of the Provider;
		3. in entering the Contract it has not committed any Fraud;
		4. as at the Commencement Date, all information, statements and representations contained in their submission to both the Request to Participate and the Invitation to Tender for the Goods, Services and/or Works (if applicable) are true, accurate and not misleading save as may have been specifically disclosed in writing to LPP and the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
		5. 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 its assets which will or might affect its ability to perform its obligations under the Contract;
		6. it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
		7. 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;
		8. it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
		9. the Goods, Services and/or Works (if applicable) shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
		10. in the three (3) years prior to the date of the Contract:-
			1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and
			2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

(c) it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

* + 1. all obligations of the Provider pursuant to this Contract shall be performed by appropriately experienced, certified, qualified and trained Staff with all due skill, care and diligence;
		2. it will ensure that the Provider and all Staff, agents, sub-contractors, self-employed staff or personnel employed by the Provider in connection with the Goods, Services and/or Works (if applicable) will comply with the relevant Legislation, Codes of Conduct and Regulations governing the delivery of Goods, Services and/or Works (if applicable).

**DEFAULT, DISRUPTION AND TERMINATION**

1. **TERMINATION**

**Termination - Insolvency and Change of Control**

* 1. The Customer may terminate the Contract with immediate effect by giving notice in writing where the Provider is a company and in respect of the Provider:-
		1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
		2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bonafide reconstruction or amalgamation); or
		3. a petition is presented for its winding up (which is not dismissed within14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
		4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
		5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
		6. it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
		7. being a "small company" within the meaning of Section 382 of the Companies Act 2006 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

49.1.8 any event similar to those listed in Clause 49.1 occurs under the law of any other jurisdiction.

49.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Provider is an individual and:

* + 1. an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors; or
		2. a petition is presented and not dismissed within 14 days or order made for the Provider's bankruptcy; or
		3. a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
		4. the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
		5. a creditor or encumbrance 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 Provider's assets and such attachment or process is not discharged within 14 days; or
		6. he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
		7. the Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
	1. The Provider shall notify the Customer immediately if the Provider undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Customer may terminate the Contract by notice in writing with immediate effect within six months of:

49.3.1 being notified that a Change of Control has occurred; or

49.3.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

49.4 The Customer may terminate the Contract with immediate effect by notice in writing where:

49.4.1 the Provider are using staff that are not experienced, certified, qualified and trained in the delivery of these types of Goods, Services and/or Works (if applicable);

49.4.2 the Provider and its Staff, agents, sub-contractors, or personnel employed by the Provider in connection with the Goods, Services and/or Works have failed to comply with the relevant Legislation, Codes of Conduct and Regulations governing the delivery of Goods, Services and/or Works (if applicable).

 **Termination on Default – Minor Breaches**

49.5 Where the Provider commits a Minor Breach of the Contract, the Customer shall be entitled to issue the Provider with an “Improvement Notice”. Such Improvement Notice shall state the nature of the Minor Breach and give the Provider a minimum of ten (10) working days to remedy the Minor Breach.

49.6 If the Provider commits three (3) Minor Breaches in a twelve (12) month rolling period this will be classed as a Material Default and the Contract may be terminated in accordance with Clause 49.7(c).

**Termination on Default – Material Default**

49.7 Where the Provider commits a Material Default and:-

(a) the Provider has not remedied the Material Default to the satisfaction of the Customer within twenty (20) Working Days, or such other period as may be specified by the Customer, after issue of a written notice specifying the Material Default and requesting it to be remedied; or

(b) the Material Default is not, in the reasonable opinion of the Customer, capable of remedy; or

(c) if the Provider has committed three (3) or more Minor Breaches within a twelve (12) month rolling period.

(d) where any Contracting Authority terminates a Call-Off Contract awarded to the Provider under this Agreement as a consequence of a default by the Provider.

(e) where any Goods have been tested by an Independent Testing House/Organisation or an Independent Testing Engineer and certifies/states that the Goods and Installation Services do not meet the minimum required standards/specification, the Agreement, and any Orders or Contracts may be terminated and all outstanding Orders may be cancelled at no cost and without any liability to LPP or the Customer.

49.8 If the Customer fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within [ninety (90)] Working Days of the date of such written notice, the Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clause 23 (Recovery of Sums Due).

1. **BREAK**

The Customer shall have the right to terminate the Contract at any time by giving [[ 30 ] days'] written notice to the Provider.

1. **TERMINATION OF THE DYNAMIC PURCHASING SYSTEM**

The Customer may terminate the Contract by giving written notice to the Provider with immediate effect if the Dynamic Purchasing System is terminated for any reason whatsoever.

1. **CONSEQUENCES OF EXPIRY OR TERMINATION**
	1. Where the Customer terminates the Contract under Clause 49 (Termination) and then makes other arrangements for the provision of Goods, Services and/or Works, the Customer may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 49 (Termination), no further payments shall be payable by the Customer to the Provider until the Customer has established the final cost of making those other arrangements.
	2. Where the Customer terminates the Contract under Clause 50 (Break), the Customer shall indemnify the Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Provider by reason of the termination of the Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider shall reduce its unavoidable costs by any insurance sums available. The Provider shall submit a fully itemised and costed list ofsuch loss, with supporting evidence, of losses reasonably and actually incurred by the Provider as a result of termination under Clause 50 (Break).
	3. The Customer shall not be liable under Clause 52.2 to pay any sum which:-
		1. was claimable under insurance held by the Provider, and the Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
		2. when added to any sums paid or due to the Provider under the Contract, exceeds the total sum that would have been payable to the Provider if the Contract had not been terminated prior to the expiry of the Contract Period.
	4. Save as otherwise expressly provided in the Contract:-

52.4.1 Termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

* + 1. Termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Provider under [Clauses 21 (Payment and Contract Price), 23 (Recovery of Sums Due), 30 (Data Protection Act), 32 (Official Secrets Acts 1911to 1989, Section 182 of the Finance Act 1989), 33 (Confidential Information), 31 (Freedom of Information), 35 (Intellectual Property Rights), 36 (Records and Audit Access), 43 (Cumulative Remedies), 45 (Liability, Indemnity and Insurance), 46 (Professional Indemnity), 52 (Consequences of Expiry or Termination), 54 (Recovery upon Termination) and 56 (Governing Law and Jurisdiction)].
1. **DISRUPTION**
	1. The Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other Provider employed by the Customer.
	2. The Provider shall immediately inform the Customer of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
	3. In the event of industrial action by the Staff, the Provider shall seek the Customer’s Approval to its proposals for the continuance of the provision of the Goods, Services and/or Works in accordance with its obligations under the Contract.
	4. If the Provider's proposals referred to in Clause 53.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer by notice in writing.
	5. If the Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.
2. **RECOVERY UPON TERMINATION**

54.1 On the termination of the Contract for any reason, the Provider shall:

* + - 1. immediately return to the Customer all Confidential Information, Personal Data and Customer’s Pre-Existing IPR’s and the Project Specific IPR’s in its possession or in the possession or under the control of any permitted Providers or sub-contractors, which was obtained or produced in the course of providing the Goods, Services and/or Works;
			2. immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Provider. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
			3. assist and co-operate with the Customer to ensure an orderly transition of the provision of the Goods, Services and/or Works to the Replacement Provider and/or the completion of any work in progress.
			4. promptly provide all information concerning the provision of the Goods, Services and/or Works which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods, Services and/or Works have been provided or for the purpose of allowing the Customer or the Replacement Provider to conduct due diligence.

54.2 If the Provider fails to comply with Clause 54.1 (a) and (b), the Client may recover possession thereof and the Provider grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted Providers or sub-contractors where any such items may be held.

54.3 Where the end of the Contract Period arises due to the Provider’s Default, the Provider shall provide all assistance under Clause 54.1 (c) and (d) free of charge. Otherwise, the Customer shall pay the Provider’s reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

54.4 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 35.7 shall automatically terminate without the need to serve notice.

1. **FORCE MAJEURE**
	1. Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.
	2. Any failure or delay by the Provider in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or Provider shall be regarded as due to Force Majeure only if that agent, sub-contractor or Provider is itself impeded by Force Majeure from complying with an obligation to the Provider.
	3. If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 55.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
	4. It is expressly agreed that any failure by the Provider to perform or any delay by the Provider in performing its obligations under the Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Provider shall have entered into any contract, supply arrangement or sub‑contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub‑contract or otherwise as a result of circumstances of Force Majeure.

55.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

**DISPUTES AND LAW**

1. **GOVERNING LAW**
	1. The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts or, if different, to the jurisdiction of the courts and agree that the Contract is to be governed exclusively by and construed under English law.
	2. This Agreement is binding on the Customer and its successors and assignees and the Provider and the Provider’s successors and permitted assignees.
2. **TUPE**

57.1 During the period of six months preceding the expiry of this Contract or after the Customer has given notice to terminate the Contract or the Provider stops trading, and within 20 working days of being so requested by the Customer, the Provider shall fully and accurately disclose to the Customer, for the purposes of TUPE, all information relating to its Staff engaged in providing the Goods, Services and/or Works under the Contract, in particular but not necessarily restricted to, the following:

* + 1. the total number of Staff whose employment with the Provider is liable to be terminated at the expiry of the Contract but for any operation of law; and
		2. for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given); and
		3. full information about the other terms and conditions on which the affected or about where that information can be found; and
		4. details of pensions entitlements, if any; and
		5. job titles of the members of Staff affected and the qualifications required for each position.

57.2 The Provider shall permit the Customer to use the information for the purposes of TUPE and of re-tendering.  The Provider will co-operate with the re-tendering of the Goods, Services and/or Works by allowing the transferee to communicate with and meet the affected Staff and/or their representatives.

57.3 The Provider agrees to indemnify the Customer fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 57.2.

57.4 In the event that the information provided by the Provider in accordance with Clause 57.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected Staff made subsequent to the original provision of such information or by reason of the Provider becoming aware that the information originally given was inaccurate, the Provider shall notify the Customer of the inaccuracies and provide the amended information.

57.5 The provisions of this Clause 57 shall apply during the continuance of the Contract and indefinitely after its termination.

1. **DISPUTE RESOLUTION**
	1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within [twenty (20) Working Days] of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the [finance director] (or equivalent) of each Party.
	2. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
	3. If the dispute cannot be resolved by the Parties pursuant to Clause 58.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 58.5 unless:-

58.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or

58.3.2 the Provider does not agree to mediation.

58.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation (or arbitration) and the Provider and the Staff shall comply fully with the requirements of the Contract at all times.

58.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-

* + 1. A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to [specify relevant mediation Provider] to appoint a Mediator;
		2. The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from [specify relevant mediation Provider] to provide guidance on a suitable procedure;
		3. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
		4. If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
		5. Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
		6. If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

**APPENDIX 1**

**ORDER FORM**

**Dynamic Purchasing System**

*[****Guidance Note****: Guidance Notes are highlighted in green shading. The Customer should read the Guidance Notes and consider the information contained within them and insert details as appropriate to the requirement within this Order Form****.***

*Before signing, the Customer should ensure that all Guidance Notes have been deleted before issuing the Contract to the Provider.*

|  |  |  |  |
| --- | --- | --- | --- |
| **Date of Order** |  | **Order Reference Number** |  |

**FROM**

|  |  |
| --- | --- |
| **Contracting Authority/Customer** |  |
| **Address** |  |
| **Invoice Address** |  |
| **Contract Manager** | Name Address: Phone: e-mail: |

**TO**

|  |  |
| --- | --- |
| **Provider:** |  |
| **Address:** |  |
| **Contract Manager** | Name Address: Phone: e-mail: |

[*Guidance Note: Where a parent company guarantee is required, include the wording below and populate the box below with the parent company's details. Where a parent company guarantee is not required then the section below and other references to the guarantee should be deleted.]*

**[PARENT COMPANY**

This Call-Off Contract is conditional upon the provision of a Guarantee to the Contracting Authority from the Guarantor in respect of the Provider.

|  |  |  |
| --- | --- | --- |
| **Parent Company** | **[**Company Name**]** | "Guarantor" |
| **Parent Company Address** | **[**Company Address**]** |
| **Account Manager:** | **Name:** | [Account Manager Name] |
|  | **Address:** | [Account Manager Address] |
|  | **Phone:** | [Account Manager Address] |
|  | **Email:** | [Account Manager email] |
|  | **Fax:** | [Account Manger Fax (if applicable)] |

|  |
| --- |
| **TERM** |
| * 1. **Effective Date**

1.1.1This Contract shall commence on **[dd/mm/yyyy].**[***Guidance Note:*** *The Customer should insert the date on which the Contract is to take effect.*] |
| **1.2 Expiry Date**1.2.1 This Contract shall expire on:1.2.1.1 [**dd/mm/yyyy]** unless extended at the Customer’s sole discretion for [**INSERT TIME PERIOD]**1.2.1.2 [Completion in accordance with the terms of the Contract, of the Contract Services specified in this Appendix 1]whichever is the earlier, unless terminated earlier pursuant to this Contract.*[****Guidance Note:*** *The Customer should insert in sub-paragraph 1.2.1.1 the date on which the Contract is to expire or choose sub-paragraph 1.2.1.2; or insert a date in sub-paragraph 1.2.1.1 and retain both sub-paragraphs on a “whichever is the earlier” basis.* *If the Customer makes reference to an “Initial Period” this should be reflected above, but care should be taken to check the termination clause as termination is not normally permitted within an “Initial Period”]* |

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| --- |
| **GOODS, SERVICES AND/OR WORKS REQUIREMENTS** |
| **2.1 Contract Goods, Services or Works Required****The Contract Goods, Services or Works required are as set out in the Specification attached at Appendix 1***[****Guidance Note****: The Customer should include a description of the Contract Goods, Services and/or Works required, to include any Milestones and associated Deliverables. Consider how requirements specified in this section fit with milestones, key performance indicators and associated Deliverable which should be detailed in Section 3.1 below.**The Customer should also consider if there is a need to include any requirement for the following or whether this is something they wish to include in the Specification at Appendix 1:* * *compliance with internal policies and procedures and/or Government code and practices (e.g. relating to, but not limited to, staff vetting, security, equality and diversity, confidentiality undertakings and sustainability etc.*
* *training / skills transfer that the Customer requires the Supplier to provide to the Customer’s personnel;.*
* *Accreditation of either the Services being delivered/ the Supplier or accredited outcome following training*
* *disclosure of Relevant Convictions (e.g. where the Contract Services are being provided -for example at hospitals- it may be necessary to bar certain staff of the Provider who have particular convictions and include details of such convictions in this section. If Relevant Convictions are not required*
* *adherence to relevant quality / technical standards that apply to the Contract Services to be delivered.*
* *The need to name any specific Key Personnel for delivery of the Contract Services*
* *Timescales for delivery*
* *Do you need an exit strategy? Disaster Recovery Plan? Any information for compensation events as may be included in the NEC 3 Suite of Contracts?*
 |

|  |
| --- |
| **PERFORMANCE OF THE CONTRACT SERVICES AND DELIVERABLES** |
| **3.1 Implementation Plan and Milestones (including dates for completion)**\*The customer requires an implementation plan to be either \*(a) submitted with the Providers bid submission; or \*(b) submitted within 14 days of the commencement of the contract.\*Such milestones/key performance indicators below shall be applicable in addition to any milestones/key performance indicators mutually agreed between the parties and set out in the implementation plan.**\*Once agreed the Implementation Plan will form part of the contractual documents and failure to meet the milestones/key performance indicators by the stipulated dates may be enforced as a breach of contract.****\*TIME IS OF THE ESSENCE FOR DELIVERY OF THE MILESTONES/KEY PERFORMANCE INDICATORS.*****[Guidance Note:*** *The Customer should consider which Milestones/KPI’s should be inserted into the table below, together with associated Deliverables].* *\* Delete if not appropriate*(i) The Implementation Plan as at the Effective Date is set out below:

| Milestone | Deliverables(bulleted list showing all Deliverables (and associated tasks) required for each Milestone) | Duration(Working Days) | Milestone Date | Customer Responsibilities (if applicable) |
| --- | --- | --- | --- | --- |
| \*Provide an Implementation Plan | Parties to agree a mutually acceptable Implementation Plan that must include:-\*Particular milestones\* deadlines for completing the milestones | \*14 | \*If not submitted with bid within 14 days of contract commencement | To mutually agree the Implementation Plan with the Supplier  |
| \*Various | *Any other milestones or Key Performance indicators as set out in the Implementation Plan* ***extra lines as required]*** |  | As indicated in the Implementation Plan |  |

(ii) If so required by the Customer, the Provider shall produce a further version of the Implementation Plan (based on the above plan) in such further detail as the Customer may reasonably require. The Provider shall ensure that each version of the Implementation Plan is subject to approval.  The Provider shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services.(iii) The Customer shall have the right to require the Provider to include any reasonable changes or provisions in each version of the Implementation Plan.(iv) The Provider shall perform its obligations so as to achieve each Milestone by the Milestone Date.(v) Changes to the Milestones shall only be made in accordance with the variation procedure and provided that the Provider shall not attempt to postpone any of the Milestones using the variation procedure or otherwise (except in the event of a Customer default which affects the Provider’s ability to achieve a Milestone by the relevant Milestone Date). |
| **3.2 Performance Monitoring****\*Performance will be monitored by the milestones/key performance indicators set out in \*(a) The Specification \*(B) the Implementation Plan; or \*(c) Point 3.1 above or any combination of the above.*****[Insert any additional details of how the Customer will monitor the Provider’s performance].*** ***\*Delete if not appropriate*** ***[Guidance Note:*** *The Customer should include details of how the Customer intends to monitor the Provider’s performance, e.g. reporting, review meetings etc. including frequency of meetings. If a Post Contract Review is required by the Customer this should be stated here]* |

|  |
| --- |
| **CALL-OFF TERMS AND CONDITIONS**  |
| **4.1** Customers **must state** which set of call-off terms and conditions they will be adopting in relation to the provision of these contract works, goods or services. 1. These call off terms and conditions
2. The Customers own terms and conditions
3. Industry standard terms and conditions i.e. the NEC 3suite of contracts, JCT or other nationally recognised suite of contracts for estates professional services.

  |
| **SPECIAL TERMS AND CONDITIONS****5.1** **GRANT FUNDING MONIES SHOULD ONLY BE USED FOR THE PROVISION OF THE GOODS, SERVICES AND WORKS THEY HAVE BEING APPLIED FOR (Provide further details eg sustainability, environmental, goods being made from renewable sources etc) (Delete if not applicable)** |
| **5.2 CLAWBACK: Please include any details here where the costs of the Goods, Services and Works can be clawed back in whole or in part from the Provider) (Delete if not applicable )** |
| **5.3 DEADLINES: Please insert the date when the Goods, Services and/or Works should be provided**  |
| **5.4 KEY PERFORMANCE INDICATORS: (Please indicate all KPI’s linked to compliance of funding terms and conditions (Delete if not applicable)** |
| **5.5 PROVISION OF MANAGEMENT, MONITORING AND REPORTING INFORMATION (Please indicate the documentation required from the Provider including invoicing provisions to enable compliance with grant funding terms and conditions) (Delete if not applicable)**  |
| *PLEASE NOTE THAT CUSTOMERS SHOULD NOT JUST INCLUDE THE FUNDING TERMS AND CONDITIONS AS A SCHEDULE WITHOUT FIRST GETTING APPROVAL FROM THE FUNDING STREAM UNDER THE CONFIDENTIALITY TERM.**[Guidance note: Customers* ***must also include any SPECIAL TERMS AND CONDITIONS*** *they need to incorporate into their call-off to comply with any funding requirements]* |

|  |
| --- |
| **CONFIDENTIAL INFORMATION** |
| **6.1 The following information shall be deemed Commercially Sensitive Information or Confidential Information:**6.2 Duration that the information shall be deemed Commercially Sensitive Information or Confidential Information |

**Appendix 2:**

**CHARGES FOR GOODS**

**AS DETAILED IN THE ATTACHED PRICING SCHEDULE**

**CHARGES FOR SERVICES**

**Contract Charges / Daily Rates / Fees**

***[Guidance Note:*** *Customers should consider if it is sufficient to incorporate the pricing elements in the format presented within the Provider’s tender proposal. If not, Customers should include the following information as obtained from the Provider’s proposal in tabular or similar format.]*

|  |  |
| --- | --- |
| **Charging mechanism, price and Day Rates**  | [***Guidance Note:*** *This may be:** *Day Rates*
* *fixed price*
* *Day Rates, capped*
* *other mechanism, as agreed*

*Where this is a fixed or capped price, state the price. Where this is Day Rates, include a table of agreed rates by grade – or by named individual if relevant.]*As detailed in the **Pricing Schedule submitted by the Provider in support of their bid.** |
| **Invoicing arrangements** | ***[Guidance Note:*** *This may include monthly invoicing; invoicing on Milestones etc. If Milestone payments, these should be specified, including sign-off arrangements for satisfactory completion]*The Provider is to invoice the Customer on a monthly basis providing an invoice that contains a breakdown of:* \*Dates worked
* \*Hours worked per day
* \*Name of individual
* \*Charging Rate
* \*Purchase Order Number
* \*Timesheets

On a receipt of a valid Invoice payment will be made to the Supplier within 30 days of the date of the invoice.If an invoice is disputed it will be returned to the Provider with details on why the invoice cannot be processed for payment.**Any changes to this standard requirement will need to be set out in the Specification** |
| **Performance-related payment** | ***[Guidance Note:*** *Detail any performance-related payment arrangements which may have been agreed.]****Not applicable unless stated in the Specification or agreed and confirmed in writing and signed by both Parties.*** ***IF this is used you will need to ensure that it has been robustly addressed in all documentation*** |
| **Travel and Subsistence** | ***[Guidance Note:*** *Insert details of any applicable rates and conditions.]* ***May Not be applicable – depends on how you structure the pricing schedule whether you ask for them to be included within the price or you arrange for the pricing schedule to list them separately*** |

**CHARGES IN RESPECT OF SERVICES**

**AS DETAILED IN THE ATTACHED ACTIVITY SCHEDULE/BILL OF QUANTITIES**

[*Guidance Note: If using NEC 3 Suite of Contracts will need to amend above and also request that the Provider Completes and Returns Contract Data Part 2 (if applicable)]*

**Appendix 3: (Variations and/or supplements to the Call-Off Terms)**

 **THIS WILL HAVE TO BE CONSIDERED WITH YOUR LEGAL DEPARTMENT AS TO WHETHER OR NOT ANY OF THE CALL-OFF TERMS AND CONDITIONS NEED TO BE AMENDED.**

**CUSTOMERS WILL NEED TO TAKE THEIR OWN INDEPENDENT LEGAL ADVICE IN RELATION TO COMPLETION OF THIS SCHEDULE**

*[Guidance Note: Customers* ***must state*** *which set of call-off terms and conditions they will be adopting in relation to the provision of these contract services. Consider a contract precedence clause]*

***[Guidance Note:*** *Please insert variations and / or supplements to the Call-Off Terms as required by the Customer (for example, a variation to the standard aggregate limit of liability )*

**By signing and returning this Order Form the Provider agrees** to enter a legally binding contract with the Customer to provide to the Customer the Goods, Services and/or Works specified in this Order Form (together with where completed and applicable, the Call-Off order (additional requirements) set out in this Order Form) incorporating the rights and obligations in the Call-Off Terms and Conditions set out in the Agreement entered into by the Provider and LPP on [                    ] 201[ ].

|  |
| --- |
| For and on behalf of the Provider: |
| Name and Title |  |
| Signature |  |
| Date |  |

|  |
| --- |
| For and on behalf of the Customer: |
| Name and Title |  |
| Signature |  |
| Date |  |

**APPENDIX 2**

**CUSTOMER VARIATION FORM**

# CALL-OFF TERMS AND CONDITIONS FOR GOODS, SERVICES AND/OR WORKS (IF APPLICABLE)

**No of Order Form being varied:………………………………………………………………………**

**Variation Form No:………………………………………………………………………………………**

**BETWEEN:**

|  |
| --- |
|  [ ][[1]](#footnote-2) ("**the Customer"**)and[ ][[2]](#footnote-3) (**"the Provider"**) |

1. The Order is varied as follows; [list details of the Variation]
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**Authorised to sign for and on behalf of the Customer**

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name in Capitals |  |
| Address |  |
|  |  |

**Authorised to sign for and on behalf of the Provider**

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name in Capitals |  |
| Address |  |
|  |  |
|  |  |

1. Insert name of Contracting Authority [↑](#footnote-ref-2)
2. Insert name of Provider [↑](#footnote-ref-3)