

**DPS AGREEMENT FOR THE PROVISION OF CONSTRUCTION, ESTATES AND PROPERTY
PROFESSIONAL SERVICES**

BETWEEN

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY

-and-

THE SERVICE PROVIDER

Project Reference: LCP/DPS/PS/2018

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THIS AGREEMENT is made on

BETWEEN:-

- (1) **THE MAYOR AND BURGESS OF THE LONDON BOROUGH OF HARINGEY** whose principal place of business is at River Park House, 225 High Road, London N22 8HQ (**"the Council"**) of the one part and
- (2) [] whose registered address is at [] Company Registration Number: [] (the "**Service Provider**").

BACKGROUND

- (A) The Council is a London Borough Council constituted under the Local Government Act 1963 and enters into this DPS Agreement pursuant to its powers under the Local Government Contracts Act 1997.
- (B) The Council placed a Contract Notice 2018/S [] on [] ("the Contract Notice") in the Official Journal of the European Union to establish a Dynamic Purchasing System ("DPS") for the procurement of 'Construction, Estates and Property Professional Services'.
- (C) On the basis of the Service Provider's Request to Participate, the Council admitted the Service Provider onto the DPS to be able to provide the Services to Contracting Authorities on a call-off basis.
- (D) All DPS Providers indicated in their Requests to Participate that they will comply with the relevant Laws and Regulations governing the provision of these professional services.
- (E) This Agreement sets out the award ordering procedure for the 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 DPS Providers during and after the term of this Agreement.
- (F) It is the Parties' intention that there will be no obligation for any Contracting Authority to award any Orders or other commitments to pay for Services under the DPS Agreement during its Term.
- (G) The DPS will be established and managed by the Council.
- (H) 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

1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

- "Agreement" or "DPS Agreement"** means this DPS agreement together with all schedules and appendices attached hereto
- "Approval"** means the prior written approval of the Council
- "Audit"** means an audit carried out pursuant to Clause 21

"Auditor"	means the Contracting Authority Auditor and/or the National Audit Office as the context requires
"Award Criteria"	means the award criteria to be applied to tenders received following a Call-Off pursuant to Clause 12.1(c) and as derived from those set out in Schedule 2
"Call-Off"	means the issue of an Invitation to Tender in relation to any Call Off Contract which may be awarded under the DPS Agreement to a DPS Provider admitted to the DPS Agreement
"Call-Off Contract"	means the legally binding agreement for the provision of any of the Services made between a Contracting Authority and a DPS Provider comprising of the 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 5 (Call Off Terms and Conditions) or alternative terms and conditions as the Contracting Authority may determine in its sole discretion shall be used in respect of the Services which are the subject of a particular Call-Off
"Change of Control"	means a change of control within the meaning of Section 1124 of the Corporation Tax Act 2010
"Charges"	means any charges paid or payable by a Contracting Authority to the Service Provider under any Call-Off Contract
"Commencement Date"	means [DN: TBC]
"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 47
"Confidential Information"	<p>Means 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 Data Protection Legislation</p> <p>but does not include any information:-</p> <ol style="list-style-type: none"> 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 Information
"Contract Notice"	means the contract notice 2018/S [] on [] published in the Official Journal of the European Union

"Contracting Authority"	means the Council and any of the contracting authorities referred to, identified or described in the OJEU Notice which in each case is permitted by the Council to make particular purchases under this DPS Agreement as a "Contracting Authority", as notified by the Council to the relevant DPS Providers from time to time. 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
"Contract Managers"	means the individuals appointed by the Council and the Service Provider from time to time to exercise their respective rights under this Agreement, and initially identified in Annex 1 to Schedule 3 (Governance and Management Information Requirements)
"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
"Data Protection Legislation"	the General Data Protection Regulation (GDPR) (and any legislation implemented in connection with the GDPR), the Data Protection Act 2018 (DPA), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any replacement legislation coming into effect from time to time and any other applicable Laws relating to the processing of Personal Data (as defined in the GDPR and the DPA), together with any guidance and/or codes of practice issued by the Information Commissioner's Office UK or relevant UK government department in relation to such legislation
"Default"	means any breach of the obligations of the relevant Party in connection with the Agreement, the Contract or the Order Form or any other default, act, omission, negligence or negligent statement of the relevant Party or its staff in connection with the subject matter of the Agreement, the Contract or the Order Form, including any Material Default
"DPS Providers"	means the persons appointed (including the Service Provider) under agreements on the same or similar terms to this Agreement as part of the DPS
"Dynamic Purchasing System ("DPS")"	means the electronic system of limited duration which is (a) established by the Council for it and Other Contracting Authorities to purchase the Services and (b) open throughout its duration for the admission of economic operators which (i) satisfy the Selection Criteria; and (ii) submit a Request to Participate to the Council which complies with the specification required by the Council
"EIRs"	mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner's Office UK or relevant UK Government department in relation to such regulations
"ESPD"	means a self-declaration submitted by a DPS Provider in accordance with the requirements of regulation 59 of the

"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 or replacement legislation following the exit or partial exit of the UK from the European Union, regulatory policy, guidance or industry code, codes of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Bodies of which the Service Provider is bound to comply from time to time
"Management Information"	means the management information specified in Schedule 3 (Governance and Management Information Requirements)
"Material Default"	means any breach of Clauses 5 (Special Terms and Conditions – Funding), 10.3 (Safeguard against Fraud), 11 (Statutory Requirements), 16 (Disclosure and Barring Service Checks), 17 (Safeguarding) 18 (Non-Discrimination and Whistleblowing), 19 (Equal Opportunities and Human Rights), 20 (Provision of Management Information), 21 (Records and Audit Access), 24 (Data Protection and Freedom of Information), 31 (Transfer and Sub-contracting), 8 (Prevention of Bribery and Corruption, Anti Tax evasion and Modern Slavery), 9 (Conflicts of Interest), 22 (Confidentiality), 23 (Official Secrets), 7 (Warranties and Representations), 29.1(Insurance), 36 (Consortia) 37 (National Minimum Wage Act 1998 and Statutory Payments) or any other breach of the Agreement which is material, serious or persistent
"Month"	means a calendar month
"Open-book"	means, without limitation, the declaration of all price components including profit, overheads and the actual cost of materials, goods, equipment, work and services with all and any relevant books of account, correspondence, agreements, orders, invoices, receipts and other relevant documents available for inspection
"Order"	means an order for Services issued by any Contracting Authority to the Service Provider in accordance with Clause 12 (Tendering from the DPS – Call Off Procedure)
"Order Form"	means a document setting out details of an Order in the form set out in Schedule 6 (Order Form)
"Other Contracting Authorities"	means all Contracting Authorities except the Council
"Parent Company"	means any company which is the ultimate Holding Company of the Service Provider and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged in the same or similar business to the Service Provider. The term " Holding Company " shall have the meaning ascribed by Section 1261 of the Companies Act 2006 or any statutory re-enactment or amendment thereto
"Party"	means the Council and/or the Service Provider
"Prohibited Act"	means:- a.to directly or indirectly offer, promise or give any person working for or engaged by the Council or Other Contracting Authority a financial or other advantage to: (i) induce the person to perform improperly a relevant function or activity; or

	<ul style="list-style-type: none"> (ii) reward that person for improper performance of a relevant function or activity; b. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; c. to breach any tax or social security obligations d. to commit a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; e. to commit a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017 f. committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act 2010; (ii) under the Criminal Finances Act 2017 (iii) under legislation or common law concerning fraudulent acts; or (iv) defrauding, attempting to defraud or conspiring to defraud the Council or Other Contracting Authority; g. any activity, practice or conduct which would constitute one of the offences listed under (a) to (f), if such activity, practice or conduct had been carried out in the UK
"Project"	means any project being undertaken by or on behalf of an Contracting Authority in respect of which Services are being delivered by the Service Provider
"Regulations"	means the Public Contracts Regulations 2015 as amended or updated and any replacement legislation from time to time
"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 the Council
"Requests for Information"	means a request for information or an apparent request under the FOIA or the EIRs
"Request to Participate"	means 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 the Council to evaluate Requests to Participate submitted by DPS Providers for their admission onto the Dynamic Purchasing System, as set out in Schedule 2
"Pre-Qualification Questionnaire"	means the pre-qualification questionnaire issued by the Council containing the Selection Criteria
"Service Provider"	includes any employee, agent, servant, sub-contractor, or representative of the Service Provider or person employed on behalf of the Service Provider to provide the Services
"Services"	means the Services to be provided under this Agreement as specified in Schedule 1 (Service Specification) through one or more Call-Off Contracts

"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
"Specification"	means the specification of the Services as set out at Schedule 1 (Service Specification)
"PQQ Response"	means the response submitted by the Service Provider to the Pre-Qualification Questionnaire issued by the Council in respect of an application to participate in this DPS
"Tender"	means the tender submitted by the Service Provider to the Contracting Authority following a Call-Off attached to the Call-Off Contract
"Term"	means the Initial Term unless the Agreement is extended in accordance with Clause 2.1 (subject to termination in accordance with that Clause)
"Variation Procedure"	means the procedure set out in Schedule 4 (Council Dynamic Purchasing System Variation Procedure)
"Working Days"	means any day other than a Saturday, Sunday or public holiday in England and Wales
"Year"	means a calendar year

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

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing one gender include a reference to another gender;
- 1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.2.4 any phrase introduced by the term "in particular", or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms
- 1.2.5 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;
- 1.2.6 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;
- 1.2.7 a reference to writing or written includes faxes and e-mail;
- 1.2.8 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;

- 1.2.9 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;
- 1.2.10 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;
- 1.2.11 reference to a Clause is a reference to the whole of that clause unless stated otherwise; and
- 1.2.12 The Service Provider shall perform all Call-Off Contracts entered into with a Contracting Authority in accordance with:
 - (a) The requirements of this Agreement; and
 - (b) The terms and conditions of the Call-Off Contract.
 - (c) The relevant Law and Regulations governing the delivery of Services.
- 1.2.13 In the event of, and only the extent of, any conflict or inconsistency between the terms and conditions of this Agreement such conflict or inconsistency shall be resolved according to the following order of priority:
 - (a) Applicable Laws and Regulations;
 - (b) The terms of this Agreement;
 - (c) The Schedules to this Agreement.
- 1.2.14 In performing any Call-Off Contract, if there is any conflict between the provisions of this Agreement and provisions of any Call-Off Contract, the provisions of the relevant Call Off Contract shall prevail over the provisions of this Agreement.

2. TERM OF THIS AGREEMENT

- 2.1 This Agreement shall take effect on the Commencement Date and shall expire at the end of the Initial Term unless:
 - 2.1.1 it is terminated earlier in accordance with the terms of this Agreement under Clause 25 (Termination); or
 - 2.1.2 it is extended by the Council giving not less than 3 months' written notice prior to the expiry of the Initial Term so that the Agreement will (subject to Clause 25 (Termination)) continue thereafter on a rolling twelve (12) month basis, provided that the total duration of the Term shall be no longer than twelve (12) years). If the Council elects to extend the Term beyond the Initial Term in accordance with this Clause 2.1.2, then, following the expiry of the Initial Term, the Council may terminate the Agreement by giving not less than 3 months' written notice prior to any anniversary of the Commencement Date.

3. SCOPE OF THIS AGREEMENT

- 3.1 This Agreement governs the relationship between the Council and the Service Provider in respect of the provision of the Services by the Service Provider to the Council and to Other Contracting Authorities.

- 3.2 The Council and Other Contracting Authorities may, at their absolute discretion and from time to time, order Services from the Service Provider in accordance with Clause 12 (Tendering from the DPS – Call Off Procedure) during the Term.
- 3.3 The Service Provider acknowledges that there is no obligation on the Council or any Other Contracting Authority to enter into any Call-Off Contract with the Service Provider or to otherwise purchase any Services from the Service Provider during the Term and, for the avoidance of doubt, neither the Council nor any of the Other Contracting Authorities shall be liable for any loss of profits, loss of contracts or other costs or losses suffered by the Service Provider as a result of the Service Provider not being awarded one or more Call-Off Contracts during the Term.
- 3.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council or any Other Contracting Authority in respect of the total quantities or values of the Services to be ordered by them pursuant to this Agreement and the Service Provider acknowledges and agrees that it has not entered into this Agreement on the basis of any such undertaking, statement, promise or representation.

4. SERVICE PROVIDER'S APPOINTMENT

- 4.1 The Council admitted the Service Provider to the Dynamic Purchasing System as a potential Provider of the Services and the Service Provider shall be eligible to be considered for the award of Orders for such Services by the Council and Other Contracting Authorities during the Term.

5. SPECIAL TERMS AND CONDITIONS – FUNDING

- 5.1 Where a Contracting Authority is able to access grant Funding for any element of the provision of Services 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**").
- 5.2 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 Schedule 6 (Order Form) at Section 5.
- 5.3 Without prejudice to the Contracting Authority's ability otherwise vary or supplement the Call-Off Terms and Conditions in accordance with Annex 3 of the Order Form, any Special Terms and Conditions included in the Order must relate solely to the funding terms and conditions imposed on the Contracting Authority.
- 5.4 The Service Provider should ensure when competing following any Call-Off **they incorporate the impact and additional costs of complying with the Special Terms and Conditions into their submission**. The Council will not accept any responsibility whatsoever or be liable for any Special Terms and Conditions included in the Order Form or any impact the Special Terms and Conditions may have on this Agreement or the Call-Off Contract.
- 5.5 If the Service Provider does not want to accept the Special Terms and Conditions they are not obligated to submit a tender for that particular Call-Off.

6. NON-EXCLUSIVITY

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

7. WARRANTIES AND REPRESENTATIONS

DPS for Construction, Estates and Property Consultancy Services

7.1 The Service Provider warrants and represents to the Council that:-

- 7.1.1 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;
- 7.1.2 it acknowledges that it will not be able to bid for any further competitions under the DPS following the issue of any Call-Off if it has not signed and returned this Agreement;
- 7.1.3 it will ensure that the Agreement and any Call-Off Contract is performed in compliance with all Law and Regulations and that the Service Provider and all Staff, agents, sub-contractors, self-employed staff or personnel employed by the Service Provider in connection with the Services will comply with the relevant Law and Regulations governing the delivery of Services;
- 7.1.4 it holds and will continue to hold all licenses, authorisations, permits, consents, regulatory approvals and accreditations necessary to provide the Services;
- 7.1.5 the Service 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;
- 7.1.6 the Service 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;
- 7.1.7 this Agreement is executed by a duly authorised representative of the Service Provider;
- 7.1.8 in entering into this Agreement or any Call-Off Contract it, or any of its staff, has not committed any Fraud;
- 7.1.9 as at the Commencement Date, all information, statements and representations contained in the Request to Participate/ completed Selection Questionnaire (including statements made in relation to the categories referred to in regulation 57 of the Regulations) for the Services are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of this Agreement and it will promptly advise the Council 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;
- 7.1.10 all information that it provides in respect of the delivery of the Services (save for information which originated from the Council) shall in all material respects be accurate, complete and not be misleading in any way;
- 7.1.11 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;
- 7.1.12 it has not caused or induced any person to enter such agreement referred to in Clause 7.1.11 above;
- 7.1.13 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 Services under the Agreement;

- 7.1.14 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 the Council or Other Contracting Authorities;
- 7.1.15 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 the Council or Other Contracting Authorities;
- 7.1.16 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 Service 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 Service Provider's assets or revenue; and
- 7.1.17 in the three (3) years prior to the date of this Agreement:-
 - (a) 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;
 - (b) it has been in full compliance with all applicable securities, laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Service Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Agreement.
- 7.1.18 The Service Provider shall perform the Services in a conscientious and timely manner in accordance with the Contract Standard as described in this Agreement or as reasonably required by the Council and/or the Contracting Authority.
- 7.1.19 The Service Provider shall notify the Council's Contract Manager immediately of any circumstances relating to the Service Provider and/or the Council and/or the Contracting Authority concerning the Services of which the Service Provider is aware or anticipates which may justify the Council and/or the Contracting Authority taking action to protect its interests (including its reputation and standing).

7.2 The Service Provider warrants and represents the statements in Clause 7.1 above to each of the Other Contracting Authorities.

8. PREVENTION OF BRIBERY AND CORRUPTION, ANTI-TAX EVASION AND MODERN SLAVERY

8.1 The Service Provider:

- 8.1.1 represents and warrants that prior to the Commencement Date it (including its staff and sub-contractors) has not committed a Prohibited Act, has not been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act and/or any criminal offence detailed in the Public Contracts Regulations 2015, and not been listed by any government department or agency as being debarred, suspended, proposed for suspension

or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act;

- 8.1.2 will not and will procure its staff and sub-contractors will not commit a Prohibited Act and shall not do or suffer anything to be done which would cause the Council or any Other Contracting Authority or any of the Council's or any Other Contracting Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act 2010 or the Criminal Finances Act 2017 or any guidance or codes of practice issued by the relevant government department concerning the legislation or otherwise incur any liability in relation to the same;
 - 8.1.3 has not given and will not give and will procure its staff and subcontractors 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
 - 8.1.4 warrants represents and undertakes that it (including its staff and sub-contractors) are not aware of any financial or other advantage being given to any person working for or engaged by the Council 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 the Council, excluding any arrangements of which full details have been disclosed in writing to the Council prior to the execution of this Agreement.
- 8.2 The Service Provider will upon request provide the Council with all reasonable assistance to enable the Council to perform any activity required for the purposes of complying with the Bribery Act 2010 or the Criminal Finances Act 2017 (or associated guidance or codes of practice) as may be required of the Council by any relevant government or agency in any relevant jurisdiction. Should the Council request such assistance the Council shall pay the reasonable expenses of the Service Provider arising as a result.
- 8.3 The Service Provider will provide to the Council certification, in writing and signed by an officer of the Service Provider, of the compliance with this Clause 8 by:
- 8.3.1 the Service Provider and
 - 8.3.2 all persons associated with the Service Provider; and
 - 8.3.3 any other persons who are supplying Services in connection with this Agreement.
- 8.4 Certification will be provided to the Council within 15 working days of the Commencement Date and annually thereafter for the Term. The Service Provider will provide any evidence of compliance as may reasonably be requested by the Council.
- 8.5 The Service Provider will have in place, maintain and enforce and shall procure its sub-contractors have in place, maintain and enforce throughout the Term adequate procedures and policies to ensure compliance with the Bribery Act 2010 and reasonable procedures and policies under the Criminal Finances Act 2017 to prevent the occurrence of a Prohibited Act and prevent facilitation of tax evasion, including without limitation an anti-bribery policy and anti-tax evasion policy for the purpose of preventing any of its staff from committing any Prohibited Act, keeping records of its compliance with the same. Such policies and records shall be disclosed to the Council on request.
- 8.6 Should the Service Provider become aware of or suspect any breach of Clause 8.1 by any person directly or indirectly connected with this Agreement or receive a request or demand to facilitate the evasion of tax or receive a request or demand for any undue financial or other advantage of any kind in connection with this Agreement, it will notify the Council immediately.

- 8.7 Following notification under Clause 8.6 the Service Provider will respond promptly and fully to the enquiries of the Council, cooperate with any investigation undertaken by the Council and allow the Council to audit any books, records and other relevant documentation. The Service Provider's obligations under this Clause 8.7 shall survive the expiry or termination of this Agreement for a further period of 6 years.
- 8.8 The Council may terminate this Agreement and any Call-Off Contract or Order immediately upon serving written notice if the Service Provider, its staff, any sub-contractor or self-employed staff whether or not acting with the Service Provider's knowledge, breaches Clause 8.1. Before exercising its right of termination under this Clause 8.8 the Council will give all due consideration to other action beside termination (including without limitation requiring the removal of the individual(s) whose acts or omissions have caused the breach) unless the Prohibited Act is committed by:
- 8.8.1 the Service Provider or a senior officer of the Service Provider; or
 - 8.8.2 a member of staff, sub-contractor or agent who is not acting independently of the Service Provider. The expression 'not acting independently of' (when used in relation to the Service Provider, sub-contractor or agent) 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 Service Provider's or sub-Contractors or agent (as applicable) directors or partners; or
 - (c) in circumstances where any one or more of the directors (or partners) of the Service Provider or sub-provider (as applicable) ought reasonably to have had knowledge.
- 8.9 Any notice of termination by the Council under Clause 8.8 must specify:
- 8.9.1 the nature of the Prohibited Act;
 - 8.9.2 the identity of the person whom the Council believes has committed the Prohibited Act; and
 - 8.9.3 the date on which this Agreement will terminate.
- 8.10 In the event of any breach of Clause 8.1 the Council is entitled to recover from the Service Provider the value of any gift, consideration or commission.
- 8.11 Notwithstanding Clause 49 (Dispute Resolution) any dispute relating to:
- 8.11.1 the interpretation of this Clause 8 or
 - 8.11.2 the amount or value of any gift, consideration, commission or other financial advantage shall be determined by the Council and its decision shall be final and conclusive
- 8.12 Termination under Clause 8.8 will :
- 8.12.1 be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council under this Agreement.
 - 8.12.2 prohibit the Service Provider from claiming any damages for early termination; and

- 8.12.3 allow the Council to recover from the Service Provider the amount of any loss suffered by the Council resulting from the termination; or
 - 8.12.4 entitle the Council to be indemnified by the Service Provider for any additional costs losses, damages or expenses incurred in re-procuring and obtaining the Services from another party.
- 8.13 In performing its obligations under this Agreement, the Service Provider shall:
- 8.13.1 comply with all applicable laws relating to anti-slavery and human trafficking including the Modern Slavery Act 2015;
 - 8.13.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
 - 8.13.3 include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this Clause 8.13;
 - 8.13.4 notify the Council as soon as the Service Provider becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement;
 - 8.13.5 maintain a complete set of records to trace the supply chain of all Services provided to the Council or any Other Contracting Authority in connection with this Agreement and permit the Council or any Other Contracting Authority to inspect the Service Provider's premises and relevant records, and to meet the Service Provider's personnel, to audit the Service Provider's compliance with its obligations under this Clause 8.13.
- 8.14 The Service Provider shall keep appropriate records of its compliance with its obligations under this Clause 8 and make such records available to the Council on request.
- 8.15 The Council may recover in full from the Service Provider and the Service Provider shall indemnify the Council in full from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, any criminal and/or civil penalty imposed by a regulatory body or analogous organization and legal and other professional costs and expenses) sustained by the Council in consequence of any breach of this Clause 8 (Prevention of Bribery and Corruption, Anti-Tax Evasion and Modern Slavery), whether or not this Agreement has been terminated.

9. CONFLICTS OF INTEREST

- 9.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff are placed in a position where (in the reasonable opinion of the Council) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or its staff or sub-contractors and the duties owed to the Council and Other Contracting Authorities under the provisions of this Agreement or any Call-Off Contract.
- 9.2 The Service Provider shall promptly notify and provide full particulars to the Council or the relevant Contracting Authority if such conflict as referred to in Clause 9.1 above arises or is reasonably foreseeable to arise.
- 9.3 The Council reserves the right to terminate this Agreement immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Council under the provisions of this Agreement or any Call-Off Contract. The

action of the Council 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 Council.

10. SAFEGUARDS AGAINST FRAUD

- 10.1 The Service Provider shall take all reasonable steps, in accordance with good industry practice, to prevent any fraudulent activity by its staff and the Service Provider (including its shareholders, members and directors).
- 10.2 The Service Provider shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 10.3 If the Service Provider or its staff commits Fraud in relation to this Agreement or any Call-Off Contract, the Council shall be entitled:
- (a) to treat such commission as a Material Default and accordingly terminate the Agreement with immediate effect in accordance with Clause 25 (Termination); and/or
 - (b) to recover from the Service Provider on a full indemnity basis the amount of any loss suffered by the Council as a result of such commission, including (where applicable) any loss resulting from the consequential termination of this Agreement.

11. STATUTORY REQUIREMENTS

The Service 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.

12. TENDERING FROM THE DPS – CALL-OFF PROCEDURE;

- 12.1 If a Contacting Authority decides to source Services through the Agreement, then it shall;
- (a) subject always to Clause 12.6, shall identify all the DPS Providers entitled under the DPS to submit a tender in relation to its specific Service requirements strictly in accordance with the terms of the DPS and the Public Contracts Regulations 2015;
 - (b) invite tenders by conducting a mini-tender for each specific procurement under the DPS Agreement for the relevant Services requirements in accordance with the following procedure:
 - (i) issue the Invitation to Tender including the proposed Call-Off Terms and Conditions and required Services to the DPS Providers identified in clause 12.1(a);
 - (ii) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the Call-Off and the time needed to submit tenders; and
 - (iii) inform the relevant DPS Providers of the Award Criteria that will be used to assess those DPS Providers' compliant tenders; and

- (iv) keep each tender confidential and unopened until the expiry of the time limit for the receipt by it of tenders;
- (c) apply the Award Criteria to the relevant DPS Provider's compliant tenders received within the Call-Off deadline to identify the successful DPS Provider in the mini-competition (the "**Preferred DPS Provider**");
- (d) request from the Preferred DPS Provider any up-to-date supporting documents that the Contracting Authority considers necessary to demonstrate that the Preferred DPS Provider satisfies the Selection Criteria (regardless of whether such supporting documents have been previously identified or referred to in the Preferred DPS Provider's Pre-Qualification Questionnaire, ESPD or otherwise) (the "**Supporting Documents**");
- (e) on the basis of the above, and subject to the provision of all Supporting Documents requested pursuant to Clause 12.1(d) to the satisfaction of the Contracting Authority within such timescales as the Contracting Authority determines, award the relevant Services requirements by issuing to the successful DPS Provider an Order which:-
 - (i) is substantially in the form as set out in Schedule 6 (Order Form) or such similar or analogous form agreed with the Service Provider including systems of ordering involving facsimile, electronic mail or other on-line solutions; and
 - (ii) incorporates the relevant elements of the tender submitted by the successful DPS Provider including the fees payable for the relevant Services.

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 shall not constitute an Order under this DPS Agreement. The Contracting Authority will endeavour to have its Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.

- (f) Notify the relevant DPS Providers of the award decision and provided with feedback relating to their tender;
- (g) The Contracting Authority may implement a voluntary standstill period of 10 days but will not be bound to do so;
- (h) In the event that the successful DPS Provider fails to provide all Supporting Documents requested pursuant to Clause 12.1(d) to the satisfaction of the Contracting Authority within such timescales as the Contracting Authority determines then the Contracting Authority reserves the right to treat the DPS Provider that obtained the next highest score under the relevant mini-competition as the Preferred DPS Provider.

12.2 The Award Criteria shall be derived from the criteria set out in Schedule 2 (Selection Criteria and Award Criteria), but with such amendments and applying such weightings as the relevant Contracting Authority considers appropriate to take account of the particular Services requirements in question.

12.3 For the purposes of, and if invited by the relevant Contracting Authority to participate in, a mini tender process under Clause 12.1, the Service Provider acknowledges and agrees as follows

- (a) while the Contracting Authority shall use its reasonable endeavours to ensure that all information given to the Provider in connection with the process is accurate in all material respects, the Contracting Authority in no way warrants the

same and the Service Provider shall be responsible for satisfying itself of the accuracy of any information provided by the Contracting Authority;

- (b) the Service Provider shall in writing, by the time and date specified by the Contracting Authority, provide the Contracting Authority with either:-
 - (i) a statement to the effect that it does not wish to tender in relation to the relevant Services requirement; or
 - (ii) full details of its tender made in respect of the relevant Services requirement;
- (c) the Service Provider shall submit a tender in the manner described in the relevant Call-Off;
- (d) the Service Provider may be required to provide presentations to the Contracting Authority in relation to a tender. The Service Provider shall ensure that relevant staff are available to attend presentations as required by the Contracting Authority;
- (e) the Service Provider shall keep all information supplied by the Contracting Authority in connection with the process confidential and shall not make use of such information for its own purposes or disclose such information to any person other than for the purpose of responding to the relevant Call-Off in accordance with Clause 12.1;
- (f) the Service Provider shall ensure that any document it submits as part of its tender does not infringe any Intellectual Property Rights of a third party;
- (g) the Service Provider shall indemnify the Contracting Authority against all actions, claims, demands, liability, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any breach of the provisions of Clauses 12.3(e) or 12.3(f).

12.4 The Service Provider agrees that all tenders submitted by it in relation to a mini tender held pursuant to Clause 12.1 shall remain open for acceptance for whichever is the longer of the following periods:

- (a) thirty (30) days;
- (b) such other period specified in the Call-Off issued by the relevant Contracting Authority in accordance with Clause 12.1; or
- (c) such period as is necessary for the Service Provider to provide all Supporting Documents requested pursuant to Clause 12.1(d) to the satisfaction of the Contracting Authority.

12.5 Notwithstanding the fact that the Contracting Authority has followed the procedure set out in Clause 12.1, the Contracting Authority shall be entitled at all times to decline to make an award for its Services requirements. Nothing in this DPS Agreement or any Call-Off shall oblige any Contracting Authority to issue an Order or otherwise place any order with the Service Provider for any Services.

Exclusion from consideration

12.6 The relevant Contracting Authority shall be entitled (but not obliged), at its discretion, to exclude a particular DPS Provider from consideration for a particular Services requirement in any of the following circumstances if at the relevant time:-

- (a) the DPS Provider in question has confirmed in writing that it does not want to or cannot provide the Services in question;
- (b) the participation of the DPS Provider in the DPS has been suspended by the Council under Clause 26 (Suspension of Service Provider's Appointment);
- (c) the Contracting Authority reasonably considers that the awarding of the relevant Services requirement to the DPS Provider in question would create an actual or potential conflict between the pecuniary or personal interests of that DPS Provider or its staff and the duties that would be owed to the Contracting Authority under the relevant Call-Off Contract.

Responsibility of Awards

12.7 The Service Provider acknowledges that each Contracting Authority is independently responsible for the conduct of its award of Call-Off Contracts under the Agreement and that the Council is not responsible or accountable for and shall have no liability whatsoever in relation to:-

12.7.1 the conduct of Other Contracting Authorities in relation to the Agreement; or

12.7.2 the performance or non-performance of (including payments due under) any Call-Off Contracts between the Service Provider and Other Contracting Authorities entered into pursuant to the Agreement.

Accepting and Declining Orders

12.8 Following receipt of an Order, the Service 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 Service 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:

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

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

12.9 If the Service Provider:

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

12.9.2 the time-limit referred to in Clause 12.8 has expired;

then the offer from the Contracting Authority to the Service Provider shall lapse and the relevant Contracting Authority reserves the right to treat the DPS Provider that obtained the next highest score under the relevant mini-competition as the Preferred DPS Provider.

12.10 The Service Provider in agreeing to accept such an Order pursuant to Clause 12.8 above shall enter a Call-Off Contract with the relevant Contracting Authority for the provision of Services referred to in that Order. A Call-Off Contract shall be formed on the Contracting Authority's receipt of the signed relevant Order Form provided by the Service Provider (or such similar or analogous form agreed with the Service Provider).

13. INFORMATION SHARING AND ON-GOING COMPLIANCE WITH SELECTION CRITERIA

13.1 Subject to Clause 13.3, the Service Provider shall provide the Council and the relevant Contracting Authorities from time to time with all such information in relation to the performance of the Services as either of them may require.

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- 13.2 The Service Provider shall notify the Council in writing with immediate effect upon the occurrence of any of the following circumstances:
- 13.2.1 the Service Provider undergoes a Change of Control;
 - 13.2.2 any change in any consortium structure or sub-contracting arrangements to which the Service Provider is party for the purposes of this DPS;
 - 13.2.3 any change in relation to the information included in the PQQ Response that may result in the Service Provider no longer complying with the Selection Criteria; and/or
 - 13.2.4 any other reason that the Service Provider becomes aware of that may affect the compliance of the Service Provider with the Selection Criteria.
- 13.3 Without prejudice to the other provisions in Clause 13, the Service Provider shall on each anniversary of the Commencement Date and at such other times as the Council may reasonably require:
- 13.3.1 make a full and accurate disclosure to the Council in writing of the following (to the extent not previously disclosed to the Council):-
 - (a) any convictions (of the Service Provider or any of its directors or any other person who has powers of representation, decision or control of the Provider) falling within the scope of regulation 57 (1) of the Regulations which occurred during the previous twelve months; and
 - (b) any adjudication, arbitration, court claims or other legal action or claims made or instigated against the Service Provider during the previous twelve months;
 - 13.3.2 confirm that there has been no change to the information included in the PQQ Response that may result in the Service Provider no longer complying with the Selection Criteria;
 - 13.3.3 provide to the Council within 5 Working Days of request by the Council a renewed ESPD (if applicable); and
 - 13.3.4 provide to the Council such other information as the Council requires in relation to the Service Provider's compliance with the Selection Criteria.
- 13.4 The Service Provider shall not be required to volunteer or share:
- 13.4.1 trade secrets known only to it that are essential to the successful functioning of its business operations;
 - 13.4.2 knowledge or information which it is legally and/or contractually prohibited from disclosing; or
 - 13.4.3 knowledge or information that is privileged from disclosure.
- 13.5 The Service Provider shall (as soon as practicable and at least within forty-eight (48) hours) notify the Council's Contract Manager of any issue which might prejudice the Service Provider's ability to deliver its obligations under this DPS Agreement or any of the Services under any Call-Off Contract (whether temporarily or permanently).

14. SOCIAL RESPONSIBILITY

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

- 14.1.1 Perform its obligations under this Agreement and any Call-Off Contract 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) The Council's or any Other Contracting Authorities equality and diversity policy as provided to the Service Provider from time to time and any reasonable instructions given by the Council 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
 - (d) 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).
- 14.2 The Service 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 Services 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 Laws relating to the health and safety of persons and any amendment or re-enactment thereof.
- 14.3 The Service Provider must ensure that all employees of the Service Provider involved in the supply of the Services are eligible to work in the UK.
- 14.4 The Council shall be entitled at the Council's expense to inspect such books, accounts and records belonging to the Service Provider as are necessary to demonstrate compliance with Clause 14.
- 14.5 The cost to the Service Provider of complying with this Clause 14 shall be included in the prices.

15. SERVICE PROVIDER STAFF

- 15.1 The Service 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 experienced, skilled, certified, qualified and trained in the delivery of these Services and will ensure that the staff are properly managed to ensure the Services are delivered with all due skill, care and diligence;
- 15.2 The Service Provider and the Service Provider's sub-contractors, staff and agents shall comply with all reasonable requirements of the Council and any Other Contracting Authority.
- 15.3 The Service Provider shall use reasonable endeavours to ensure that its sub-contractors are subject to the provisions of Clauses 15.1 and 15.2.
- 15.4 The Service Provider, its agents, and sub-contractors shall employ sufficient staff to ensure that the Services listed in the Order Form are provided at all times and in accordance with the Agreement and each Call-Off Contract, including without limitation Schedule 1 (Service Specification). Without prejudice to the generality of this obligation, it shall be the duty of the Service Provider to ensure that a sufficient reserve of staff is available to supply the Services in accordance with this Agreement during staff holidays or absence through sickness or any other cause.

16. DISCLOSURE AND BARRING SERVICE (DBS) CHECKS

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- 16.1 If it is deemed necessary by the Council or any Other Contracting Authority that DBS checks are required for this Agreement or any Call-Off Contract, the Service Provider will follow the procedures set out in Schedule 7 (Disclosure and Barring Service Checks – Procedure).
- 16.2 Failure by the Service Provider to comply with its obligations under this Clause may be regarded as a Material Default of this Agreement.

17. SAFEGUARDING

- 17.1 The Service Provider shall ensure that (if in delivering any Services under this DPS it means that its personnel will have contact with children and/or vulnerable adults) it shall comply with the Safeguarding Vulnerable Groups Act 2006 in respect of all staff, volunteers and other persons engaged in the delivery of the Services.
- 17.2 The Service Provider shall comply at all times with national policy and with the Council's Multi Agency Policy and Procedures as attached to the Order Form as may be updated or replaced from time to time, together with any other policy or procedure which the Council notifies the Service Provider of from time to time.
- 17.3 The Service Provider shall have in place policies and shall implement robust up-to-date procedures for avoiding and responding to actual or suspected physical, sexual, racial, psychological, financial or other discriminatory abuse and acts of neglect or omission. Such procedures shall be reviewed at least annually and where required the policies will be provided to the Council's Contract Manager.
- 17.4 The Service Provider shall have in place a robust safeguarding training program for all staff (including volunteers) that is appropriate to their level of responsibility, with records of training maintained for audit purposes. This will, as a minimum standard reflect the outcomes identified for the relevant safeguarding courses in the Council training programme.
- 17.5 Failure by the Service Provider to comply with its obligations under this Clause may be regarded as a Material Default of this Agreement.

18. NON-DISCRIMINATION AND WHISTLEBLOWING

- 18.1 The Service Provider shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order, or regulation relating to discrimination (whether in respect of age, race, gender, religion, disability, sexual orientation or otherwise) in employment or in the delivery of the Services under the DPS.
- 18.2 The Service Provider shall in the delivery of the Services comply with the provisions of Section 71[1] of the Race Relations Act 1976 (as amended) (for the purposes of this Clause, "the Act") and shall not discriminate directly or indirectly against any person and shall provide the Services having regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups.
- 18.3 The Service Provider shall take all reasonable steps to secure the observance of this Clause by all employees, volunteers or agents of the Service Provider and all sub-contractors employed in the delivery of the Services under the DPS.
- 18.4 The Service Provider shall notify the Council's Contract Manager in writing as soon as it becomes aware of any investigation of or proceedings brought against the Service Provider under the Act.
- 18.5 In the event of any finding of unlawful discrimination being made against the Service Provider, or any sub-contractor employed by the Service Provider, during the Term or the term of a Call-Off Contract under the DPS, or of an adverse finding in any formal investigation by the Commission for Racial Equality over the same period, the Service Provider shall inform the Council of this finding and shall take appropriate steps to prevent any repetition of the unlawful

discrimination. The Service Provider shall provide the Council with details of the steps taken under this Clause.

- 18.6 Where any investigation is conducted or proceedings are brought which arise directly or indirectly out of any act or omission of the Service Provider or any of its employees or sub-contractors and where there is a finding against the Service Provider in such investigation or proceedings, without prejudice to the generality of this Clause and for the avoidance of doubt it is hereby specifically provided that the Service Provider shall fully, promptly and effectively indemnify and keep so indemnified the Council and each Other Contracting Authority, their servants and agents from and against all and any actions, charges, claims, reasonable costs, damages, demands, reasonable expenses (including legal and administrative expenses), liabilities, direct losses and proceedings whatsoever howsoever arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council or any Other Contracting Authority may have been ordered or required to pay to a third party. For the avoidance of doubt, this indemnity shall be reduced in respect of the Council to the extent that the act(s) or omission of the Council itself, its employees, sub-contractors, servants or agents contributed to such a claim and this indemnity shall be reduced in respect of an Other Contracting Authority to the extent that the act(s) or omission of the Other Contracting Authority itself, its employees, sub-contractors, servants or agents contributed to such a claim.
- 18.7 The Service Provider shall provide such information as the Council may reasonably request for the purpose of assessing the Service Provider's general compliance with the provisions of this Clause during the Term.
- 18.8 If so required, the Service Provider shall answer any queries raised by the Council in respect of compliance with this Clause and shall co-operate with any investigation that the Council may wish to carry out. This co-operation shall be deemed to include the completion and return of any questionnaire provided by the Council on race relations or any other matter concerning equality of opportunity during the Term or within twelve (12) months of the termination of this Agreement or termination of a Call-Off Contract, if later.
- 18.9 Subject to Clause 31.1 (Transfer and Sub-Contracting), in the event that the Service Provider enters into any sub-contract in connection with this DPS, it shall impose obligations on its sub-contractor in terms substantially similar to those imposed on it pursuant to this Clause.

Whistleblowing

- 18.10 The Service Provider shall ensure that it has a whistleblowing procedure which shall be approved by the Council from time to time.
- 18.11 The Service Provider confirms that the Council is authorised as a person whom the Service Provider's personnel may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of its personnel making a protected disclosure (as defined by the said Act) shall not be subjected to any detriment and its personnel will be made aware of this provision. The Service Provider further declares that any provision in any Call-Off Contract purporting to preclude a member of its personnel from making such protected disclosures is null and void.
- 18.12 Failure by the Service Provider to comply with its obligations under this Clause may be regarded as a Material Default of this Agreement.

19. EQUAL OPPORTUNITIES AND HUMAN RIGHTS

- 19.1 The Service Provider shall ensure that it operates an equal opportunities policy in respect of the recruitment of employees and sub-contractors and in respect of the delivery of the Services under the DPS to the full satisfaction of the Council.

- 19.2 The Service Provider's equal opportunities policy shall be set out in any instructions circulated to those of the Service Provider's employees or sub-contractors who are concerned with recruitment training and promotion and in relevant documentation available to its employees, sub-contractors and others and in its recruitment advertisements and other relevant literature. The Service Provider may be required to provide to the Council copies of such instructions documents advertisements and other literature.
- 19.3 The Service Provider shall at all times abide by and comply with the provisions of the Human Rights Act 1998 and any subordinate legislation made thereunder and the Parties have agreed that the Service Provider should be treated as a public authority within the meaning of the Human Rights Act 1998 and should act compatibly with the Human Rights Act 1998.
- 19.4 Without prejudice to the generality of this Clause, and for the avoidance of doubt, it is hereby specifically provided that the Service Provider shall fully, promptly and effectively indemnify and keep so indemnified the Council and each Other Contracting Authority from and against all and any actions, reasonable charges, claims, reasonable costs, damages, demands, reasonable expenses (including legal and administrative expenses), liabilities, direct losses and proceedings whatsoever howsoever arising resulting from the Service Provider's breach of this Clause. For the avoidance of doubt, the indemnity offered by the Provider under this Clause for the benefit of the Council will be reduced proportionally to the extent that the Council's act(s) and/or omission contributed to such claim and the indemnity offered by the Provider under this Clause for the benefit of each Other Contracting Authority shall be reduced proportionally in respect of an Other Contracting Authority to the extent that the relevant Other Contracting Authority's act(s) and/or omission contributed to such claim.
- 19.5 If a third party threatens or commences proceedings or complaint against the Council on the grounds that there has been a breach of any person's rights under the Human Rights Act 1998 in connection with the delivery of the Services, the Council and the Service Provider shall use all reasonable endeavours to co-operate so as to enable the Council to achieve the aim of successfully averting or defending the proceedings or complaint and/or to complying with any order, judgement or direction made pursuant to the same by any duly authorised authority provided that neither Party can be required to incur additional expense pursuant to this obligation. The Parties may additionally mutually determine such modifications to this Agreement as may be required to enable the Parties to achieve the abovementioned end and the Service Provider shall forthwith comply with such mutually agreed modifications provided that the Council shall bear the additional costs directly incurred by the Service Provider in consequence. The Service Provider shall use all reasonable endeavours to mitigate any such costs and shall supply such documentation of the costs as the Council may reasonably require.
- 19.6 Failure by the Service Provider to comply with its obligations under this Clause may be regarded as a Material Default of this Agreement.

20. PROVISION OF MANAGEMENT INFORMATION

- 20.1 The Service Provider shall submit Management Information to the Council in the form set out in Schedule 3 (Governance and Management Information Requirements) throughout the Term on a Monthly basis (or less frequently if otherwise agreed by the Council) and by the date each Month specified by the Council in respect of any Call-Off Contract entered into with any Contracting Authority.
- 20.2 The Council may share the Management Information supplied by the Service Provider with any Contracting Authority.
- 20.3 The Council may make changes to the Management Information which the Service Provider is required to supply and shall give the Service Provider at least one (1) month's written notice of any changes.

21. RECORDS AND AUDIT ACCESS

- 21.1 The Service Provider shall keep and maintain full and accurate records and accounts of the operation of this Agreement including the Services 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 six (6) years following termination or expiry of the Agreement; or
 - 21.1.2 the expiry of a period of six (6) years following the date on which the Service Provider ceases to provide Services under any Call-off Contract.
 - 21.1.3 the expiry of the period six (6) years following the date provided in any Order Form or Special Terms and Conditions
- 21.2 The Service Provider shall keep the records and accounts referred to in Clause 21.1 above in accordance with good accountancy practice.
- 21.3 The Service Provider shall on request afford the Council (or a relevant Contracting Authority) and/or the Auditor access to and/or provide copies of such records and accounts (together with copies of the Service Provider's published accounts) as may be required by the Council from time to time during the Term and for a period of six (6) years after expiry of the Term to the Council (or the relevant Contracting Authority) and the Auditor.
- 21.4 The Council shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Service Provider or delay the provision of the Services pursuant to the Call-Off Contracts, save insofar as the Service Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Council.
- 21.5 Subject to the Council's rights of confidentiality, the Service 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 Service Provider and to equipment used in the provision of the Services; and
 - 21.5.3 access to the Service Provider's 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 Default by the Service Provider in which case the Service Provider shall reimburse the Council 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 22.1 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 EIRs;
- (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 Service Provider may only disclose the Council's Confidential Information to its staff who are directly involved in the provision of the Services 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 Service Provider shall not, and shall procure that its Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement.

- (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, other DPS Provider or other person engaged by the Contracting Authority or any person conducting a gateway review;
- (c) to the extent that the Council or any Other Contracting Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) for the purpose of the examination and certification of the Council's accounts;
- (e) for any examination pursuant to Section 6(1) of the National Audit Act 1983 or the Local Audit and Accountability Act 2014 of the economy, efficiency and effectiveness with which the Contracting Authority has used its resources;
- (f) for the purpose of exit management from the Service Provider to the Council or a replacement provider;
- (g) to a proposed successor body of the Contracting Authority in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement.

22.5 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

22.6 The Service Provider shall not without the Approval of the Council 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, including without limitation, making any press announcements.

- 22.7 The Council shall be entitled to publicise this Agreement in accordance with any legal obligation upon the Council, including any examination of this Agreement by the Auditor.
- 22.8 In the event that the Service Provider fails to comply with this Clause 22, the Council reserves the right to terminate the Agreement by notice in writing with immediate effect.

23. OFFICIAL SECRETS ACT

- 23.1 The Service 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 Service Provider or its staff fail to comply with this Clause 23, the Council reserves the right to terminate this Agreement with immediate effect by giving notice in writing to the Service Provider.

24. DATA PROTECTION, FREEDOM OF INFORMATION AND ENVIRONMENTAL REGULATIONS

- 24.1 The Parties acknowledge and agree that no data processing by one Party on behalf of the other or data sharing as between the Parties of personal data (as defined in relevant Data Protection Legislation) has taken or is taking place in connection with this Agreement as at the Commencement Date and is not expected to take place during the Term.
- 24.2 Notwithstanding the above, the Service Provider shall comply at all times with Data Protection Legislation and shall, at its own expense, ensure that it complies with and assists the Council and any Other Contracting Authority to comply with the Data Protection Legislation, including without limitation, immediately notifying the Council should it become aware of the need for or believed any data processing is to occur and entering into such data processing or sharing clauses as the Council deems necessary at the Service Provider's own expense.
- 24.3 The Parties acknowledge that the content of this Agreement, including any changes to this Agreement agreed from time to time, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Council or an Other Contracting Authority as appropriate (the "**Transparency Information**") are not Confidential Information.
- 24.4 Notwithstanding any other provision of this Agreement, the Service Provider hereby gives its consent for the Council to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Council shall, prior to publication, consult with the Service Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 24.5 The Service Provider shall assist and co-operate with the Council to enable the Council to publish the Transparency Information.
- 24.6 If the Council believes that publication of any element of the Transparency Information would be contrary to the public interest, the Council shall be entitled to exclude such information from publication. The Council acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Council acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Service Provider.
- 24.7 The Council shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to

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ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Service Provider.

- 24.8 The Service Provider agrees that any information it holds that is reasonably relevant to or that arises from the provision of the Services shall be provided to the Council on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Council may disclose such information under the FOIA and the EIRs and may (except for Confidential Information (subject to clause 22.4)) publish such Information. The Service Provider shall provide to the Council within 5 working days (or such other period as the Council may reasonably specify) any such Information requested by the Council.
- 24.9 The Service Provider acknowledges that the Council and the Other Contracting Authorities are subject to the requirements of the FOIA and the EIRs. The Service Provider shall:
- 24.9.1 provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council and/or an Other Contracting Authority to comply with its obligations under the FOIA and EIRs;
 - 24.9.2 transfer to the Council all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 24.9.3 provide the Council with a copy of all information held on behalf of the Council which is requested in a Request For Information and which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such information; and
 - 24.9.4 not respond directly to a Request For Information addressed to the Council unless authorised in writing to do so by the Council.
- 24.10 The Service Provider acknowledges that the Council and/or an Other Contracting Authority may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Service Provider. The Council shall take reasonable steps to notify the Service Provider of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Council or the relevant Other Contracting Authority shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and EIRs.

25. TERMINATION

- 25.1 The Council may by serving written notice on the Service Provider terminate this DPS Agreement with immediate effect or with effect from such other date as may be specified in such notice where:-
- 25.1.1 The Service Provider commits a Material Default;
 - 25.1.2 the Service Provider commits a Default which is not a Material Default and, where that Default is capable of remedy, the Service Provider has not remedied that Default to the reasonable satisfaction of the Council within ten (10) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the breach and requesting it to be remedied;
 - 25.1.3 the Service Provider does not comply with the Selection Criteria;
 - 25.1.4 the Service Provider should have been excluded from the procurement under regulation 57 of the Regulations;

- 25.1.5 (in the reasonable opinion of the Council), there is a material detrimental change in the financial standing and/or the credit rating of the Service Provider which adversely impacts or is likely adversely to impact on the Service Provider's ability to supply Services under this DPS Agreement;
 - 25.1.6 the Service Provider fails to accept an Order pursuant to Clause 12.9 (Tendering from the DPS – Call-Off Procedure);
 - 25.1.7 the Council terminates a Call Off Contract due to the Service Provider's breach of that Call Off Contract;
 - 25.1.8 the Service Provider commits a material default or material breach as defined in any Call Off Contract (if applicable) and/or the Service Provider seriously, materially or persistently breaches or fails to perform any one or more of its obligations under any one or more Call Off Contracts as determined by the Council, acting reasonably (which shall include basing any such determination on objective and/or measurable findings provided such information is readily available to the Council);
 - 25.1.9 the Agreement has been substantially varied other than as permitted under regulation 72 of the Regulations;
 - 25.1.10 the Service Provider should have been excluded from the procurement process under Regulation 57 of the Regulations; and/or
 - 25.1.11 the Agreement should not have been awarded because the Service Provider is in serious breach of its obligations under the TFEU, the Treaty on European Union or Directive 2014/24, as declared by the CJEU in a procedure under Article 258 of the TFEU.
- 25.2 The Council may by serving notice on the Service Provider in writing terminate this DPS Agreement with immediate effect where in respect of the Service Provider:-
- 25.2.1 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;
 - 25.2.2 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 bona fide reconstruction or amalgamation);
 - 25.2.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) 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;
 - 25.2.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - 25.2.5 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;
 - 25.2.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
 - 25.2.7 being a "small company" within the meaning of sections 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986;

- 25.2.8 any event similar to those listed in Clause 25.2.1 to Clause 25.2.7 occurs under the law of any jurisdiction; and/or
 - 25.2.9 the Service Provider ceases or threatens to cease carrying on in business.
- 25.3 The Council may terminate the DPS Agreement by giving notice in writing to the Service Provider with immediate effect within six (6) months of:-
- 25.3.1 being notified that a Change of Control has occurred; or
 - 25.3.2 where no notification has been made, the date that the Council becomes aware of the Change of Control,
- if it believes, acting reasonably, that such change is likely to have an adverse effect on performance of the Services, but it shall not be permitted to terminate where Approval was granted prior to the Change of Control.
- 25.4 The Council 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 Service Provider. The Parties acknowledge that if the Council exercises its rights under this Clause, it shall exercise its equivalent rights under all agreements with DPS Providers admitted to the Dynamic Purchasing System.
- 25.5 Subject to Clause 27.2 (Consequences of Termination and Expiry), the Service Provider shall have the right to terminate this Agreement at any time by giving three months' written notice to the Council.

26. SUSPENSION OF SERVICE PROVIDER'S APPOINTMENT

- 26.1 Without prejudice to the Council's rights to terminate the Agreement in Clause 25 above, if a right to terminate this Agreement arises in accordance with these terms and conditions, the Council may suspend the Service Provider's appointment to supply Services to Contracting Authorities by giving notice in writing to the Service Provider. If the Council provides notice to the Service Provider in accordance with this Clause 26, the Service Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Service Provider by the Council in writing from time to time.

27. CONSEQUENCES OF TERMINATION AND EXPIRY

- 27.1 Notwithstanding the service of a notice to terminate this Agreement, the Service 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 27.
- 27.2 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.
- 27.3 If the Council terminates this Agreement under Clause 25.1.1 (termination due to Material Default), 25.1.2 (termination due to Default), 25.1.3 (termination due to failure to meet Selection Criteria), 25.1.4 (termination on basis of mandatory exclusion grounds) 25.1.6 (termination due to failure to accept an Order), 25.1.7 (termination following of termination of a Call-Off Contract for breach) or 25.1.8 (termination following a breach of a Call-Off Contract) and then makes other arrangements for the supply of the Services to the Council, the Service Provider shall indemnify the Council in full upon demand for the cost of procuring, implementing and operating any alternative or Replacement Services to the Services and no further payments shall be payable by the Council under the Agreement or any Call-Off Contract until the Council has established and recovered from the Service Provider the full amount of such cost.

- 27.4 Within thirty (30) Working Days of the date of termination or expiry of this Agreement and/or the Dynamic Purchasing System, the Service Provider shall return to the Council any data and Confidential Information belonging to the Council in the Service Provider's possession, power or control, either in its then current format or in a format nominated by the Council, together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Council, 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.
- 27.5 The Council shall be entitled to require access to data or information arising from the provision of the Services from the Service Provider until the latest of:-
- 27.5.1 the expiry of a period of twelve (12) Months following termination or expiry of this Agreement; or
 - 27.5.2 the expiry of a period of three (3) Months following the date on which the Service Provider ceases to provide Services under any Call-Off Contract
- 27.6 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.
- 27.7 The provisions of Clauses 5 Special Terms and Conditions - Funding, 7 Warranties and Representations, 8 Bribery and Corruption, 9 Conflicts of Interest, 10 Fraud, 22 Confidentiality, 16 Provision of Management Information, 21 Records and Audit Access, 24 Data Protection, Freedom of Information and Environmental Regulations, 25 Termination, 27 Consequences of Termination and Expiry and 28 Liberty 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.
- 27.8 In the event of any termination of the Agreement whether under this Clause 27 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 obtain a refund of any Charges paid by the Contracting Authority in respect of any Services which have not been performed by the Service Provider in accordance with the terms of the Agreement.

28. LIABILITY

- 28.1 Neither Party excludes or limits its liability for:-
- 28.1.1 death or personal injury caused by its negligence, or that of its Staff;
 - 28.1.2 fraud or fraudulent misrepresentation by it or its Staff; or
 - 28.1.3 breach of any obligations as to title implied by Section 2 of the Supply of Goods and Services Act 1982; or
 - 28.1.4 any liability to the extent it cannot be excluded or limited by Law.
- 28.2 Subject to Clause 28.1, neither the Council nor any Other Contracting Authority shall be liable to the Service Provider (whether by reason of any negligence, non-fraudulent misrepresentation, breach of contract or otherwise) for any:
- 28.2.1 loss of profits;
 - 28.2.2 damage to reputation;
 - 28.2.3 loss of anticipated revenues;

- 28.2.4 loss of contracts;
- 28.2.5 loss of goodwill; or
- 28.2.6 indirect loss, damage, cost, expense or claim whatsoever;

which arises out of or in connection with this DPS Agreement.

- 28.3 The Service Provider shall indemnify and keep indemnified the Council 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 Service Provider, financial loss arising from provision and the quality or installation of any Services or any other loss which is caused directly or indirectly by any act or omission of the Service Provider. This Clause shall not apply to the extent that the Service 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.

29. INSURANCE

- 29.1 On or before the Commencement Date, the Service Provider shall produce to the Council, for inspection, documentary evidence that the required insurances are properly in place, adequate and valid. Failure to do so may be regarded as a Material Default.
- 29.2 The Service Provider shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Service Provider under this Agreement including death or personal injury, or loss of or damage to property.
- 29.3 The Service Provider shall effect and maintain the following insurances for the duration of the Agreement in relation to the performance of the Agreement:-
 - 29.3.1 public liability insurance adequate to cover all risks in the performance of this Agreement from time to time;
 - 29.3.2 employer's liability insurance with a minimum limit of indemnity as required by law from time to time; and
 - 29.3.3 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 the Council may reasonably require (and as required by law or best industry practice) from time to time.
- 29.4 Any excess or deductibles under such insurance (referred to in Clause 29.3 above) shall be the sole and exclusive responsibility of the Service Provider.
- 29.5 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities arising under this Agreement.
- 29.6 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by this Agreement then the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 29.7 The Service Provider shall maintain the insurances referred to in Clause 29.3 above for a minimum of six (6) years following the expiration or earlier termination of this Agreement

30. GUARANTEE

30.1 If required by the Council, in which case it shall notify the Service Provider no later than one (1) month before the Commencement Date, the Service Provider shall, prior to the Commencement Date, procure that the Guarantor shall:

30.1.1 execute and deliver to the Council the Guarantee;

30.1.2 deliver to the Council a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee.

31. TRANSFER AND SUB-CONTRACTING

31.1 This Agreement is personal to the Service Provider and the Service Provider shall not assign, novate, sub-contract or otherwise dispose of this Agreement or any part thereof without the Approval of the Council.

31.2 The Council shall be entitled to:-

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

31.2.2 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 the Council;

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

31.3 Any change in the legal status of the Council shall not affect the validity of the Agreement. In such circumstances, the Agreement shall bind and inure to the benefit of any successor body to the Council.

31.4 The Service Provider shall promptly on being required to do so, at its own cost, execute and deliver up to the Council such deeds of assignment or novation or such other documents as the Council may reasonably require in order to give effect to any assignment, novation or other disposal permitted under this Clause 31.

32. VARIATIONS TO THIS AGREEMENT

Any variations to this Agreement must be made only in accordance with the Variation Procedure set out in Schedule 4 (The Council Dynamic Purchasing System Variation Procedure).

33. GOVERNANCE AND DYNAMIC PURCHASING SYSTEM REVIEW

33.1 The Dynamic Purchasing System and this Agreement shall be governed, managed and reviewed in accordance with the provisions of Schedule 3 (Governance and Management Information) hereof.

34. BEST VALUE DUTY AND CONTINUOUS IMPROVEMENT

34.1 The Service Provider acknowledges that the Council and the Other Contracting Authorities are subject to a statutory duty pursuant to the Local Government Act 1999 to secure continual improvement in the way its functions are exercised having regard to a combination of economy, efficiency and effectiveness ("**the Best Value Duty**").

34.2 The Service Provider, and any sub-contractor appointed hereof, at the Service Provider's own expense, shall throughout the Term fully co-operate with the Council and the Other Contracting Authorities and give such assistance as is necessary in any area relating to value for money and any review initiated by the Council or an Other Contracting Authority whether relating to

the provisions of this Agreement or otherwise and whether directly associated therewith or not and the Service Provider shall ensure compliance with this Clause by any such sub-contractor.

- 34.3 If the Service Provider is at any time required to take any action pursuant to Clause 34.2 above it shall take such action fully in accordance with the instructions of the Council's Contract Manager and within such timescale as specified.
- 34.4 The Council shall be entitled to carry out value for money reviews of the DPS. Following any such review carried out by the Council whether or not carried out in accordance with this Clause, the Service Provider shall, acting reasonably, agree with the Council's Contract Manager what actions it shall take to implement any findings or proposals resulting from such a review and shall implement such actions fully in accordance with the Council's Contract Manager's instructions.

35. LOCAL GOVERNMENT OMBUDSMAN

- 35.1 Under the Local Government Act 1974, the Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007 (SI 2007/1889) and the Local Government and Public Involvement in Health Act 2007, members of the public are entitled to complain to the Local Government Ombudsman ("**LGO Complaints**") in connection with the delivery of Services by the Council.
- 35.2 In the event that an LGO Complaint is made in connection with the delivery of the Services under the DPS:
- 35.2.1 the Service Provider shall give their full co-operation (at no additional cost to the Council) in addressing the LGO Complaint. Such cooperation shall include (without limitation, promptly providing copies of all relevant Service Provider documentation and making available any Service Provider personnel or sub-contractors who are in any way connected with the LGO Complaint; and
 - 35.2.2 without prejudice to any other remedies under this Agreement or any Call-Off Contract, the Service Provider shall indemnify the Council in respect of all costs, losses, claims, expenses and proceedings whatsoever which may be incurred as a direct consequence of an LGO Complaint or any order, finding or recommendation made by the Local Government Ombudsman in respect of an LGO Complaint.

36. CONSORTIA

- 36.1 In the event that any Service Provider is, or appears to be a consortium, the members of the consortium shall be jointly and severally responsible to the Council for their obligations under this Agreement and the delivery of the Services under the DPS and jointly and severally liable to the Council in the event of any Default. The members of the consortium shall be jointly and severally responsible to the relevant Contracting Authority for their obligations under the relevant Call-Off Contract and the delivery of the Services and jointly and severally liable to the relevant Contracting Authority in the event of any default under that Call-Off Contract.
- 36.2 A consortium shall be regulated and bound by a consortium agreement between its respective members which shall ensure the timely and proper provision and monitoring of the Services under the DPS by the consortium and a copy of said consortium agreement shall be produced and agreed with the Council prior to the Commencement Date and a copy shall be annexed to this Contract.
- 36.3 If a consortium is established for the delivery of the Services under the DPS the Contracting Authority will be obliged to only make payments to the consortium and not to individual consortium members.

- 36.4 Without prejudice to Clause 36.1, a consortium shall appoint one 1 of its members as a lead member who will (unless otherwise agreed with the Council), act in a representative capacity in dealings with the Council and act to monitor the quality of Services being provided by the consortium members and inform the Council of any consortium members who are failing to achieve the expected standards of the Council and the consortium, and the steps being undertaken by the consortium to resolve matters.
- 36.5 If the Council has been advised of the lead member in accordance with this Clause then the Council will be entitled to refuse to discuss matters in relation to delivery of the Services with other individual consortium members.
- 36.6 Any variation to the consortium agreement shall be put in writing to the Council with at least one 1 month notice and the consortium shall obtain the Council's written consent, (which the Council shall not unreasonably withhold). The consortium shall meet the Council's costs in facilitating any such request.
- 36.7 Failure by the Service Provider to comply with its obligations under this Clause may be regarded as a Material Default of this Agreement.

37. NATIONAL MINIMUM WAGE ACT 1998 AND STATUTORY PAYMENTS

- 37.1 The Service Provider shall comply with any national minimum wage regulations introduced as a consequence of the National Minimum Wages Act 1998.
- 37.2 It is a fundamental term of the Agreement that the Provider pays the national minimum wage in force from time to time under the National Minimum Wage Act 1998 to all eligible employees and ensures that its sub-contractors pay the national minimum wage in force from time to time under the National Minimum Wage Act 1998 to all eligible employees.

Duty of Service Provider to keep proper records

- 37.3 It is a fundamental term of the Agreement that the Service Provider keeps the records required by the National Minimum Wage Regulations 1999.

Audit

- 37.4 The Service Provider shall produce and send to the Council a written annual audit of an anonymised random sample of employees demonstrating that the current national minimum wage has been paid. In particular, the audit shall demonstrate that the national minimum wage has been paid taking into account travel time under Regulation 15 and training under Regulation 19 of the National Minimum Wage Regulations 1999.
- 37.5 The Service Provider shall be deemed to have made full allowance in any tender or pricing schedule to ensure compliance with such Regulations.
- 37.6 It is a fundamental term of the Agreement that the Service Provider shall be responsible for collection, deduction (where appropriate) and payment to the responsible authority of all statutory payments (including national insurance contributions and training levy) in respect of all persons employed or taken on or directed by the Service Provider or by his sub-contractors in connection with the delivery of the Services under the DPS. The Service Provider shall indemnify the Council against all actions, claims, demands, costs, charges, and expenses related to such statutory payments and suffered or incurred by the Council. The Service Provider shall indemnify each Other Contracting Authority against all actions, claims, demands, costs, charges, and expenses related to such statutory payments and suffered or incurred by the relevant Contracting Authority.

- 37.7 Failure by the Service Provider to comply with its obligations under this Clause may be regarded as a Material Default of this Agreement.

38. WORKING TIME REGULATIONS 1998

- 38.1 The Service Provider shall comply with the Working Time Regulations 1998 and any amendment thereof. The Service Provider shall be deemed to have made full allowance in any tender or pricing schedule to ensure compliance with such Regulations. No claim will be entertained by any Contracting Authority for additional payments in respect of any costs arising from these Regulations or any amendment or re-enactment of the same.

39. COUNCIL'S CONTRACT STANDING ORDERS

- 39.1 This Agreement shall be subject to the Council's Contract Standing Orders at the date of the Agreement and the Service Provider shall on request be directed to an electronic copy of these including appendices and financial regulations. In the event of any conflict between the provisions of this Agreement and the Council's Contract Standing Orders then the Council's Contract Standing Orders shall take precedence.

40. GOOD FAITH

- 40.1 The Parties shall, and shall procure that their representatives shall, at all times in relation to the Agreement and the delivery of the Services under the DPS, act reasonably and in good faith.
- 40.2 Except where expressly stated otherwise, any decision, agreement, request, consent, approval (including whether performance is to the satisfaction of a Party), action or other step of a similar nature required to be taken by a Party shall be taken reasonably and in good faith and it shall be reasonable to withhold or delay such decision, agreement etc. on the grounds of non-compliance by the other Party with Laws or, a materially adverse effect on the proper delivery of the Services.

41. RIGHTS OF THIRD PARTIES

- 41.1 Any provision of this DPS Agreement which expressly or by implication is intended to grant a right to and/or confer a benefit on any Contracting Authority shall be enforceable directly by the relevant Contracting Authority pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 41.2 Subject to clause 41.1 above, and save as otherwise 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 the Contract (Rights of Third Parties) Act 1999. 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.

42. SEVERABILITY

- 42.1 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.
- 42.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Council and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

43. 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.

44. WAIVER

44.1 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.

44.2 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 46 (Notices).

44.3 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.

45. ENTIRE AGREEMENT

45.1 This Agreement, together with any Call-Off Contracts between the Parties, 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.

45.2 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.

45.3 Nothing in this Clause 45 shall operate to exclude Fraud or fraudulent misrepresentation.

46. NOTICES

46.1 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.

46.2 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 by electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 46.3. 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.

46.3 For the purposes of Clause 46.2 the address of each Party shall be:

For the Council:-

Address:

For the attention of: [title]

For the Service Provider:-

Address:

For the attention of: [title]

Tel:

Email:

Either Party may change its address for service by serving a notice in accordance with this Clause. If either Party receives any personal data pursuant to this Clause 46, it shall keep the personal data secure (or encrypted) and use such personal data only for the purpose stipulated in this Clause 46.

47. COMPLAINTS HANDLING AND RESOLUTION

- 47.1 The Service Provider shall notify the Council 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 Service Provider's plans to resolve such Complaint.
- 47.2 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 Service Provider to take remedial action under the provisions of this Agreement or a Call-Off Contract, the Service 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.

48. FORCE MAJEURE

- 48.1 Subject to clause 48.2, neither party shall be in breach of the Agreement 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 Service Provider's or its sub-contractors' 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. The Council or the appropriate Contracting Authority will notify the Service Provider within 30 days whether it requires the provision of the Services to be recommenced, varied or cancelled (without further liability on either party).
- 48.2 The Parties shall continue to be liable for its obligations under the Agreement in the event of:
- 48.2.1 any failure of any sub-contractor to perform its obligations under any sub-contract;
 - 48.2.2 any law or action taken by any 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; or
 - 48.2.3 the exit of the UK from the European Union together with any associated actions by any government or public authority in anticipation of or as a result of such exit.

49. DISPUTE RESOLUTION

- 49.1 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 [the Contract Managers].
- 49.2 If the dispute cannot be resolved by the Parties pursuant to Clause 49.1 it shall be referred to the Director or Executive Director of the respective Parties for resolution.

49.3 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.

49.4 If the dispute cannot be resolved by the Parties pursuant to Clause 49.2 the Parties shall refer it to mediation pursuant to the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure unless:

49.4.1 The Council considers that the dispute is not suitable for resolution by mediation; or

49.4.2 the Service Provider does not agree to mediation.

49.5 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 Service Provider and its employees, personnel and associates shall comply fully with the requirements of this Agreement at all times.

50. LAW AND JURISDICTION

50.1 The Council and the Service Provider accept the exclusive jurisdiction of the English courts and agree that this Agreement be governed by and construed according to English Law.

**SCHEDULE 1
THE SERVICES SPECIFICATION**

[DN: SEE SEPARATE DOCUMENT "SECTION 3 – SERVICE CATEGORIES" WHICH WILL FORM SCHEDULE 1.]

**SCHEDULE 2
SELECTION CRITERIA AND AWARD CRITERIA**

Selection Criteria for admission to the DPS

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

Award Criteria for DPS Call-off Contracts

Criterion Number	Criterion	Percentage Weightings (or rank order of importance where applicable)
1	[DN: to be set out in Invitation to Tender]	to be set by Contracting Authority conducting Call for competition
2	[DN: to be set out in Invitation to Tender]	to be set by Contracting Authority conducting Call for competition
3	[DN: to be set out in Invitation to Tender]	to be set by Contracting Authority conducting Call for competition
4	[DN: to be set out in Invitation to Tender]	to be set by Contracting Authority conducting Call for competition
5	[DN: to be set out in Invitation to Tender]	to be set by Contracting Authority conducting Call for competition

SCHEDULE 3
GOVERNANCE AND MANAGEMENT INFORMATION REQUIREMENTS

GOVERNANCE AND DPS REVIEW

1. The Service Provider and the Council shall each appoint a Contract Manager through whom the performance of this DPS Agreement shall be managed day to day.
2. Each Contract Manager shall hold a senior position within its respective organisation and shall be able to make decisions under the Agreement without the need for the matter to be escalated in the organisation. This will not limit in any way any other of the Service Provider's or the Council's rights or obligations.
3. Each Party's Contract Manager shall be entitled to appoint another person or persons to exercise some or all of his or her functions (each being known as that respective Party's "**Deputy Contract Manager**" as initially identified in Annex 1 to this Schedule 3).
4. If the Council's Contract Manager has reasonable grounds to believe that the Service Provider's Contract Manager appointed is not of the appropriate level, ability or skill to perform this function, then he or she shall be replaced at the Service Provider's own expense. Any replacement appointment shall be subject to approval of the Council's Contract Manager (such approval not to be unreasonably withheld or delayed).
5. Details of the Parties' respective appointed Contract Managers and Deputy Provider Managers from the Commencement Date, (telephone number, fax number, e-mail address and postal address) are set out in this Schedule 3. If no such details are set out, then each Party's Contract Manager will be the person who signs this Contract on that Party's behalf and each Party will supply the other Party with its Contract Manager's details within five (5) Working Days of the date of this Agreement. If either Party receives any personal data pursuant to this Schedule 3, it shall keep the personal data secure (or encrypted) and use such personal data only for the purpose stipulated in this Schedule 3.
6. During the Term of the Agreement, unless otherwise agreed by the Council, the Parties shall hold review meetings every six (6) months on such dates as determined by the Council where the first such meeting shall occur within a month of the Commencement Date. Such meetings shall be attended by such individuals as shall be determined by the Council and, at a minimum, by the Contract Managers of each Party. The Council's Contract Manager shall chair such meetings.
7. The Service Provider shall keep in regular contact with the Council by telephone and / or email as required by the Council and respond promptly to any queries or requests for information by the Council, acting reasonably.
8. Without prejudice to the generality of the foregoing, each Party shall use reasonable endeavours to agree:
 - a. The type(s) of boards and/or meetings which shall occur to appropriately review and manage the Agreement during its Term
 - b. the frequency at which each type of meeting shall be held
 - c. a process for agreeing the agenda for each type of meeting in advance of such meetings
 - d. what will constitute a quorum for each type of meeting
9. In the event the Parties are unable to agree the matters set out in paragraph 8 above within 1 Month of the Commencement Date, the Council shall, acting reasonably, determine the matters set out in paragraph 8.

MANAGEMENT INFORMATION

1. To allow the Council to plan the resources needed in order to service this Agreement, the Service Provider shall provide the Council with an electronic report (which shall be in the form required by the Council from time to time) no later than the date specified by the Council each Month (or on a less frequent basis if agreed by the Council) setting out all information with respect to any enquiries or possible purchases under this DPS Agreement by any Other Contracting Authority of which the Service Provider is aware prior to that date. Such information may include, without limitation:
 - a. Date
 - b. Contracting Authority name
 - c. Status of purchase i.e. initial discussions, tender in progress, implementation, live, unsuccessful
 - d. Opportunity i.e. existing Contracting Authority, new Contracting Authority
 - e. Description of Services

2. The Service Provider shall provide the Council with any other management information in the format and at the frequency reasonably required by the Council from time to time.

Annex 1 – Contract Managers and Deputy Contract Managers

Contract Manager COUNCIL	Deputy Contract Officer COUNCIL
Name: Title: Address: , Telephone: Fax: Email:	Name: Title: Address: , Telephone: Fax: Email:
Contract Manager SERVICE PROVIDER	Deputy Contract Manager SERVICE PROVIDER
Name: Title: Address Telephone: Fax: Email:	Name: Title: Address: Telephone: Fax: Email:

SCHEDULE 4
THE COUNCIL DYNAMIC PURCHASING SYSTEM VARIATION PROCEDURE

1 Introduction

- 1.1 This Schedule 4 details the scope of the variations permitted and the process to be followed where the Council proposes a variation to the Agreement.
- 1.2 The Council may propose a variation to the Agreement under Schedule 4 only where the variation does not amount to a modification of the Agreement of the type prohibited under Regulation 72 of the Regulations.

2 Procedure for proposing a Variation

- 2.1 Except where paragraph 4 applies, the Council may propose a variation using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, the Council shall serve each DPS Provider on the Dynamic Purchasing System with written notice of the proposal to vary the Agreement ("Notice of Variation").
- 2.3 The Notice of Variation shall contain details of the proposed variation providing sufficient information to allow each DPS Provider to assess the variation.
- 2.4 Upon receipt of the Notice of Variation, each DPS Provider has 10 days to respond in writing with any objections to the variation.
- 2.5 Where the Council does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Council may then serve each DPS Provider with a written agreement detailing the variation to be signed and returned by each DPS Provider within 10 days of receipt.
- 2.6 The Service Provider shall promptly on being required to do so execute and deliver up to the Council such variation agreement or such other documents as the Council may reasonably require in order to give effect to any such variation under this Schedule 4.
- 2.7 Upon receipt of a signed agreement from each DPS Provider, the Council shall notify all DPS Providers in writing of the commencement date of the variation.

3 Objections to a Variation

- 3.1 In the event that the Council receives one or more written objections to a variation, the Council may:-
- 3.1.1 withdraw the proposed variation; or
 - 3.1.2 propose an amendment to the variation.

4 Variations which are not permitted

- 4.1 In addition to the provisions contained in paragraph 1.2, the Council may not propose any variation which:-
- 4.1.1 may prevent one or more of the DPS Providers from performing its obligations under the Agreement; or

DPS for Construction, Estates and Property Professional Services

4.1.2 is in contravention of any Law

**SCHEDULE 5
CALL-OFF TERMS AND CONDITIONS**

The Contracting Authority has the option to use any of the following:-

- The call-off terms and conditions set out below
- Its own terms and conditions
- The NEC 3 Suite of Contracts
- Other standard forms of contract for professional services

IDN: SEE SEPARATE DOCUMENT "DPS SECTION 4 – CALL OF TERMS AND CONDITIONS" WHICH WILL FORM SCHEDULE 5. THE FORM OF CONTRACT TO BE USED WHEN CALLING OFF THIS AGREEMENT SHALL BE MADE KNOWN TO THE DPS PROVIDERS AT CALL-OFF STAGE.]

**SCHEDULE 6
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 Service Provider.

Date of Order		Order Reference Number	
----------------------	--	-------------------------------	--

FROM

Contracting Authority/Customer	
Address	
Invoice Address	
Authorised Representative	Name Address: Phone: e-mail:

TO

Service 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 Service 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 Manager Fax (if applicable)]

TERM
<p>1.1 Effective Date</p> <p>1.1.1 This Contract shall commence on [dd/mm/yyyy]. (the "Commencement Date")</p> <p>[Guidance Note: The Customer should insert the date on which the Contract is to take effect.]</p>
<p>1.2 Expiry Date</p> <p>1.2.1 This Contract shall expire on:</p> <p>1.2.1.1 [dd/mm/yyyy] unless extended at the Customer's sole discretion for [INSERT TIME PERIOD] in accordance with Clause [3] of the Call-Off Contract</p> <p>1.2.1.2 [Completion in accordance with the terms of the Contract, of the Contract Services specified in this Schedule 6]</p> <p>whichever is the earlier, unless terminated earlier pursuant to this Contract.</p> <p>[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"]</p>

SERVICES REQUIRED
<p>2.1 Services and Deliverables Required</p> <p>The Services and Deliverables required are as set out below (to be provided in accordance with the outline Specification at Schedule 1 of the Agreement)</p> <p>[Guidance Note: The Customer should include a detailed description of the Contract Services required, bearing in mind that the Specification referred to in Schedule 1 is in outline form only and anticipates further</p>

detail being set out in the Order Form. Please address any specific references within the Specification to more detail being provided in the Order Form here. Please include all Deliverables along with any Agreed Delivery Dates. Consider how requirements specified in this section fit with Milestones, and Key Performance Indicators (if applicable) (and associated Deliverables) 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 in the Contract:

- compliance with internal policies and procedures and/or 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 Service Provider to provide to the Customer's personnel;
- Accreditation of either the Services being delivered/ the Service Provider or accredited outcome following training
- disclosure of Relevant Convictions (and definition) (e.g. where the Contract Services are being provided -for example at hospitals- it may be necessary to bar certain staff of the Service 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?
- Quality Standards
- Any equipment to be provided by the Customer
- Any 'Agreed Delivery Date' by which any individual Deliverable must be delivered and if so, the daily loss anticipated to be suffered by Customer in event of such Agreed Delivery Date is missed - see clause 39 (Liquidated Damages) of Call-Off Contract, especially when calculating the 'Liquidated Damages Threshold'

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 Service Provider's 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

If using the Call-Off terms and conditions attached to the DPS Agreement, the level of detail with respect to KPIs should be based on the following as a minimum:

No	Title	Description (with reference to any Deliverables)	Frequency of measurement	Levels	Service Credits (if applicable)
KPI1				Target performance level: [eg 99%] Service Credit threshold: [eg 96% - 98.9%] Termination threshold level: [eg below 96%]	

(i) The Implementation Plan as at the Commencement Date is set out below:

Milestone	Description (bulleted list showing each item (and associated tasks) required for achievement of each Milestone, including any relevant Deliverables)	Duration (Working Days)	Milestone Date	Customer Responsibilities (if applicable)	Daily loss anticipated to be suffered by Customer in event of delayed delivery of each Milestone pursuant to clause 39 (Liquidated Damages) of Call-Off Contract)
*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 Service Provider	
*Various	<i>Any other milestones as set out in the Implementation Plan</i>		As indicated in the Implementation Plan		

(ii) If so required by the Customer, the Service 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 Service Provider shall ensure that each version of the Implementation Plan is subject to Approval. The Service 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 Service Provider to include any reasonable changes or provisions in each version of the Implementation Plan.
- (iv) The Service Provider shall perform its obligations so as to achieve each Milestone by its respective Milestone Date.
- (v) Changes to the Milestones shall only be made in accordance with the variation procedure and provided that the Service 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 Service Provider's ability to achieve a Milestone by the relevant Milestone Date).

3.2 Performance Monitoring

***Performance will be monitored by the achievement or otherwise of 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 Service Provider's performance].

****Delete if not appropriate***

[Guidance Note: The Customer should include details of how the Customer intends to monitor the Service 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, together with specifics of the process and what this will entail.

Importantly, the Customer should set out reporting requirements, including at what frequency and in what format and ensure these provide the information required by the Customer to assess performance of KPIs (including the % level of performance) and achievement of Milestones.]

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 the Services.

- (A)** The call off terms and conditions attached to the DPS Agreement
- (B)** The Customers own terms and conditions
- (C)** Industry standard terms and conditions i.e. the NEC 3suite of contracts..

SPECIAL TERMS AND CONDITIONS

**5.1 GRANT FUNDING MONIES SHOULD ONLY BE USED FOR THE PROVISION OF THE SERVICES THEY HAVE BEING APPLIED FOR (Provide further details eg sustainability, environmental, etc)
(Delete if not applicable)**

5.2 CLAWBACK: Please include any details here where the costs of the Services can be clawed back in whole or in part from the Service Provider) (Delete if not applicable)
5.3 DEADLINES: Please insert the date when the Services 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 Service Provider including invoicing provisions to enable compliance with grant funding terms and conditions) (Delete if not applicable)
<p>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.</p> <p><i>[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]</i></p>
DBS CHECKS AND SAFEGUARDING
<p>DBS CHECKS Please confirm whether DBS checks are required: YES NO</p> <p>If YES and not using the call off terms and conditions attached to the DPS Agreement, attach the DBS Checks procedure that should be followed.</p> <p>SAFEGUARDING Customer to attach relevant policies and procedures to be adhered to.</p>

CONFIDENTIAL INFORMATION
<p>6.1 The following information shall be deemed Commercially Sensitive Information or Confidential Information:</p>

6.2 Duration that the information shall be deemed Commercially Sensitive Information or Confidential Information

Annex 1:

CHARGES FOR SERVICES

Contract Price

[Guidance Note: Customers should ensure it is clear from the Order Form what the Contract Price (what the Service Provider can invoice for) consists of and/or how it is calculated by reference to the relevant call-off provisions. The Customer to consider if it is sufficient to incorporate the pricing elements in the format presented within the Service Provider’s tender proposal. If not, Customers should include the following information as obtained from the Service Provider’s proposal in tabular or similar format.]

<p>Charging mechanism, price and Day Rates</p>	<p>[Guidance Note: This may be:</p> <ul style="list-style-type: none"> • Day Rates • fixed price • Day Rates, capped • other mechanism, as agreed <p>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.]</p> <p>As detailed in the Pricing Schedule submitted by the Service Provider in support of their bid.</p>
<p>Performance-related payment</p>	<p>[Guidance Note: Detail any performance-related payment arrangements which may have been agreed.]</p> <p>Not applicable unless stated in the Specification or agreed and confirmed in writing and signed by both Parties.</p> <p>IF this is used you will need to ensure that it has been robustly addressed in all documentation</p>
<p>Travel and Subsistence</p>	<p>[Guidance Note: Insert details of any applicable rates and conditions.]</p> <p>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</p>
<p>Invoicing arrangements</p>	<p>[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]</p> <p>The Service Provider is to invoice the Customer on a monthly basis providing an invoice that contains a breakdown of:</p> <ul style="list-style-type: none"> • *Dates worked • *Hours worked per day • *Name of individual • *Charging Rate • *Purchase Order Number • *Timesheets

	<p>On a receipt of a valid Invoice payment will be made to the Service Provider within 30 days of the date of the invoice.</p> <p>If an invoice is disputed it will be returned to the Service Provider with details on why the invoice cannot be processed for payment.</p> <p>Any changes to this standard requirement will need to be set out in the Specification</p>
<p>Invoicing arrangements</p>	<p><i>[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]</i></p> <p>The Service Provider is to invoice the Customer on a monthly basis providing an invoice that contains a breakdown of:</p> <ul style="list-style-type: none"> • *Dates worked • *Hours worked per day • *Name of individual • *Charging Rate • *Purchase Order Number • *Timesheets <p>On a receipt of a valid Invoice payment will be made to the Service Provider within 30 days of the date of the invoice.</p> <p>If an invoice is disputed it will be returned to the Service Provider with details on why the invoice cannot be processed for payment.</p> <p>Any changes to this standard requirement will need to be set out in the Specification</p>

Annex 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 SERVICE PROVIDER AGREES to enter a legally binding contract with the Customer to provide to the Customer the Services specified in this Order Form (together with where completed and applicable, the Call-Off order (variations and/or supplements to the Call-Off Terms) set out in this Order Form) incorporating the rights and obligations in the Call-Off Terms and DPS for Construction, Estates and Property Professional Services

Conditions set out in the Agreement entered into by the Service Provider and the Council on [REDACTED] 201[REDACTED].

For and on behalf of the Service Provider:

Name and Title	
Signature	
Date	

For and on behalf of the Customer:

Name and Title	
Signature	
Date	

SCHEDULE 7

DISCLOSURE AND BARRING SERVICE CHECKS – PROCEDURE

1. The Service Provider shall not employ staff or engage volunteers to provide Services under this Agreement or any Call-Off Contract without first undertaking appropriate check of the Disclosure and Barring Service in respect of such person (“**DBS Checks**”), where required by statute to do so. For the purpose of any Children’s Services or Vulnerable Persons Services these shall be Enhanced Checks.
2. Any recruitment decisions made by the Service Provider shall take into account the DBS check.
3. The Service Provider shall confirm to the Council and the relevant Contracting Authority that DBS checks have been carried out. This Schedule relates both to paid employees and any volunteers who will provide the Services.
4. Ordinarily the Service Provider should not accept a DBS check obtained by any staff from previous employment with another council. The Service Provider must seek the Council’s Contract Manager’s consent (and the corresponding individual if the Contracting Authority is not the Council) if they seek to rely on a DBS check obtained by staff from previous employment with another council.
5. The Service Provider shall, whenever required, produce to the Council and the relevant Contracting Authority evidence that DBS Checks have been carried out on any individual employee or volunteer.
6. Neither the Council, nor the relevant Contracting Authority shall be liable for any expenses incurred by the Service Provider in obtaining DBS Checks or any other disclosure, nor for any other associated expenses incurred by the Service Provider.
7. The Service Provider shall indemnify the Council and the relevant Contracting Authority in respect of any claim or action against the Council or the relevant Contracting Authority arising from the Service Provider’s employment of any person in respect of whom the Service Provider has either failed to make a check with the Disclosure and Barring Service, or has failed to undertake the appropriate level of check with the Bureau (commensurate with the risks to the end-user individuals likely to attach to the particular post), such liability to include all losses damages costs and expenses (including legal costs) associated with any such claim or action.
8. Failure by the Service Provider to comply with its obligations under this Schedule may be regarded as a Material Default of this Agreement.