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| **DATED 2018**  CC logo 40mm  **THE CORNWALL COUNCIL**  **and**  **[xxxxxxxxxxxxxxx]**  **DYNAMIC PURCHASING AGREEMENT**  **for**  **DOMESTIC SUPPORT SERVICES**  Legal Services Cornwall Council  New County Hall  Treyew Road  Truro TR1 3AY  Ref: SBH/54038 |  |  |
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This agreement is made the day of 2018

Between:

1. **CORNWALL COUNCIL** of New County Hall, Treyew Road, Truro, Cornwall TR1 3AY (the **Council**); and
2. [ ] (the **Service Provider**).

Background:

1. The Council placed a contract notice [ ] on [ ] (the **OJEU Notice**) in the Official Journal of the European Union inviting providers of domestic services to apply to be admitted to a Dynamic Purchasing System for the supply of the Services to the Council.
2. The Service Provider made a request to participate by submitting its response to the Council's DPS Invitation to Tender in response to the OJEU Notice.
3. Through the Invitation to Tender Response, the Service Provider represented to the Council that it is capable of delivering the Services and, in particular, the Service Provider made representations to the Council in the ITT Response in relation to suitability, economic and financial standing and technical and professional ability.
4. On the basis of the Service Provider’s responses in the ITT Response the Service Provider was admitted to the Dynamic Purchasing System to provide the Services to the Council from time to time on a call off basis in accordance with this Dynamic Purchasing System Agreement.
5. This Dynamic Purchasing System Agreement sets out the award and Call for Competition procedure for purchasing the Services which may be required by the Council, the template terms and conditions for any Call Off Agreement which the Council may enter into and the obligations of the Service Provider during and after the DPS Period.
6. It is the Parties' intention that there will be no obligation for the Council to award any Call Off Agreements under this Dynamic Purchasing System Agreement during the DPS Period.

It is agreed as follows:

A PRELIMINARIES

1. Definitions and interpretation
   1. Definitions
      1. In this Dynamic Purchasing System Agreement, unless the context otherwise requires, capitalised expressions shall have the meanings set out in DPS Schedule 1 (Definitions) or the relevant DPS Schedule in which that capitalised expression appears.
      2. If a capitalised expression does not have an interpretation in DPS Schedule 1 (Definitions) or the relevant DPS Schedule, it shall have the meaning given to it in this Dynamic Purchasing System Agreement. If no meaning is given to it in this Dynamic Purchasing System Agreement, it shall in the first instance be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
   2. Interpretation
      1. In this Dynamic Purchasing System Agreement, unless the context otherwise requires:
         1. the singular includes the plural and vice versa;
         2. reference to a gender includes the other gender and the neuter;
         3. references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity;
         4. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
         5. the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
         6. references to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly;
         7. references to: “representations” shall be construed as references to present facts; to “warranties” as references to present and future facts; and to “undertakings” as references to obligations under this Dynamic Purchasing System Agreement;
         8. references to “Clauses” and “DPS Schedules” are, unless otherwise provided, references to the clauses and schedules of this Dynamic Purchasing System Agreement and references in any DPS Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the DPS Schedule or the part of the DPS Schedule in which the references appear;
         9. any reference to this Dynamic Purchasing System Agreement includes DPS Schedule 1 (Definitions) and the DPS Schedules; and
         10. the headings in this Dynamic Purchasing System Agreement are for ease of reference only and shall not affect the interpretation or construction of this Dynamic Purchasing System Agreement.
      2. Subject to Clause 1.2.3, in the event and to the extent only of a conflict between any of the provisions of this Dynamic Purchasing System Agreement, the conflict shall be resolved, in accordance with the following descending order of precedence:
         1. the Clauses and DPS Schedule 1 (Definitions);
         2. DPS Schedule 2 to Schedule 8;
      3. If there is any conflict between the provisions of this Dynamic Purchasing System Agreement and provisions of any Call Off Agreement, the provisions of this Dynamic Purchasing System Agreement shall prevail over those of the Call Off Agreement.
2. Service Provider's Admittance

2.1 The Council hereby admits 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 Call Off Agreements by the Council during the DPS Period.

2.2 In consideration of the Service Provider agreeing to enter into this Dynamic Purchasing System Agreement and to perform its obligations under it the Council agrees to pay and the Service Provider agrees to accept on the signing of this Dynamic Purchasing System Agreement the sum of one pound sterling (£1.00) (receipt of which is hereby acknowledged by the Service Provider).

1. Scope of Dynamic Purchasing System Agreement
   1. Without prejudice to Clause 35 (Third Party Rights), this Dynamic Purchasing System Agreement governs the relationship between the Council and the Service Provider in respect of the provision of the Services by the Service Provider.
   2. The Service Provider acknowledges and agrees that:
      1. there is no obligation whatsoever on the Council to invite or select the Service Provider to provide any Services and/or to purchase any Services under this Dynamic Purchasing System Agreement; and
      2. in entering into this Dynamic Purchasing System Agreement no form of exclusivity has been conferred on the Service Provider nor volume or value guarantee granted by the Council in relation to the provision of the Services by the Service Provider and that the Council are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all Services which are the same as or similar to the Services.
2. Call for Competition Procedure
   1. If the Council decides to source any of the Services through this Dynamic Purchasing System Agreement, then it shall be entitled at any time in its absolute and sole discretion during the DPS Period to award Call Off Agreements for the Services from the Service Provider by following the procedure set out in DPS Schedule 3 (Call for Competition Procedure).
   2. The Service Provider shall comply with the relevant provisions in DPS Schedule 3 (Call for Competition Procedure).
3. Representations and Warranties
   1. Each Party represents and warrants that:
      1. it has full capacity and authority to enter into and to perform this Dynamic Purchasing System Agreement;
      2. this Dynamic Purchasing System Agreement is executed by its duly authorised representative;
      3. there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Service Provider, any of its Affiliates) that might affect its ability to perform its obligations under this Dynamic Purchasing System Agreement; and
      4. its obligations under this Dynamic Purchasing System Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).
   2. The Service Provider represents and warrants that:
      1. it has obtained and will maintain all licences, authorisations, permits, Necessary Consents and regulatory approvals to enter into and perform its obligations under this Dynamic Purchasing System Agreement;
      2. it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Council before the DPS Commencement Date;
      3. its execution, delivery and performance of its obligations under this Dynamic Purchasing System Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;
      4. as at the DPS Commencement Date, all written statements and representations in any written submissions made by the Service Provider as part of the procurement process, its ITT Response, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Dynamic Purchasing System Agreement;
   3. Each of the representations and warranties set out in Clauses 5.1 and 5.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Dynamic Purchasing System Agreement.
   4. If at any time a Party becomes aware that a representation or warranty given by it under Clauses 5.1 and 5.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
   5. For the avoidance of doubt, the fact that any provision within this Dynamic Purchasing System Agreement is expressed as a warranty shall not preclude any right of termination the Council may have in respect of the breach of that provision by the Service Provider which constitutes a material Default of this Dynamic Purchasing System Agreement.
   6. Each time that a Call Off Agreement is entered into, the warranties and representations in Clauses 5.1 and 5.2 shall be deemed to be repeated by the Service Provider with reference to the circumstances existing at the time.

B DURATION OF DYNAMIC PURCHASING SYSTEM AGREEMENT

1. DPS Period
   1. This Dynamic Purchasing System Agreement shall take effect on the DPS Commencement Date and shall expire, unless it is terminated earlier in accordance with the terms of this Dynamic Purchasing System Agreement or otherwise by the operation of Law:
      1. at the end of the Initial DPS Period; or
      2. where the Council elects to extend the Initial DPS Period in accordance with Clause 6.2 below; or
      3. on either Party giving to the other three (3) Months written notice.
   2. The Council may extend the duration of this Dynamic Purchasing System Agreement by giving the Service Provider no less than three (3) Months’ written notice prior to the expiry of the then current DPS Period. Each extension period may be up to a maximum of twelve (12) Months.
   3. The maximum duration of this Dynamic Purchasing System will not exceed thirty-six (36) Months.

C DYNAMIC PURCHASING SYSTEM AGREEMENT PERFORMANCE

1. Dynamic Purchasing System Agreement Performance
   1. The Service Provider shall perform its obligations under this Dynamic Purchasing System Agreement in accordance with:
      1. the requirements of this Dynamic Purchasing System Agreement, including each of the DPS Schedules;
      2. the terms and conditions of the respective Call Off Agreements;
      3. Good Industry Practice;
      4. Best Practice;
      5. Guidance;
      6. all Necessary Consents;
      7. in compliance with all applicable Law; and
      8. the Caldicott Principles.
2. Geographical Areas

The Service Provider has been appointed to provide the Services in the Geographical Area.

1. Key Performance Indicators and Performance Measures

The Service Provider shall at all times during the DPS Period comply with the Key Performance Indicators and Performance Measures set out in DPS Schedule 2 (Specification).

1. Call Off Performance Under the Dynamic Purchasing System Agreement
   1. The Service Provider shall perform all its obligations under all Call Off Agreements entered into with the Council:
      1. in accordance with the requirements of this Dynamic Purchasing System Agreement; and
      2. in accordance with the terms and conditions of the respective Call Off Agreements.
2. Safeguarding
   1. The Service Provider shall use its best endeavours to ensure that Service Users are safeguarded from any form of harm, abuse, neglect or exploitation (whether physical, financial psychological or sexual) through intended or negligent acts or omissions of the Service Provider and/or Service Provider Staff.
   2. On or before the DPS Commencement Date, the Service Provider shall put or have in place a policy designed to safeguard the wellbeing of Service Users (the **Safeguarding Policy**). The Safeguarding Policy must effectively implement:
      1. any Law relating to safeguarding of children and/or vulnerable adults;
      2. the Council’s internal policies and procedures relating to the safeguarding of children and/or adults with care and support needs;
      3. the Cornwall and Isles of Scilly Safeguarding Adults Board policies and procedures, including but not limited to, the Multi-Agency Safeguarding Adults Policy, Organisational Abuse Policy and Person in Position of Trust Policy; and
      4. the Cornwall and Isles of Scilly Local Children’s Safeguarding Partnership safeguarding policies and procedures, including but not limited to, the South West Safeguarding and Child Protection Procedures and the Local Children’s Safeguarding Partnership Guidelines for Service Providers,

as applicable and as amended from time to time.

* 1. The Safeguarding Policy must actively encourage the immediate reporting by Service Provider Staff of any allegation, suspicion, incident or risk or incident of harm, neglect or abuse (whether physical, financial, psychological or sexual) of any individual affected by the Services, whether the Service User or otherwise, to the Council’s Representative.
  2. The Service Provider shall comply with its Safeguarding Policy:
     1. where allegations of abuse towards any individual affected by the Services, whether the Service User or otherwise, by a person other than the Service Provider or its Service Provider Staff are made or where the Service Provider or any Service Provider Related Party suspects abuse is taking place towards an individual.
     2. where allegations of abuse towards any individual affected by the Services, whether the Service User or otherwise are made against a member of Service Provider Staff or where the Service Provider suspects a member of Service Provider Staff or any other Service Provider Staff member of being guilty of abusing an individual. In either such case the Service Provider shall carry out a risk assessment and, where appropriate, suspend or dismiss the relevant Service Provider Staff member; and
     3. in any situation where the Service Provider believes that an adult with care and support needs or child is suffering or is likely to suffer significant harm.
  3. Where any of the situations set out in 11.4 apply, the Service Provider shall take all action as necessary to ensure the safety and wellbeing of the Service User and shall notify the Safeguarding Adults Co-ordinating Manager and the Council’s Representative immediately and in any event within one (1) Working Day.
  4. The Service Provider shall appoint an individual of sufficient seniority to have overall responsibility for and supervision of the implementation and monitoring of the Safeguarding Policy.
  5. The Service Provider shall:
     1. ensure that all Staff are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the two DBS "barred lists" for adults and children; and
     2. record, monitor and where necessary update the DBS checks referred to in this Clause 11.7 for all Staff.
  6. The Service Provider shall make referrals to the DBS as and when required by Law and inform the Council of any referrals as soon as possible and in any event within five (5) Business Days of the referral. The Service Provider shall ensure that all contracts of employment of its Service Provider Staff allow for the sharing of the information required under this Clause 11.8.
  7. The Service Provider shall not employ or otherwise engage any person who is in any way barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out a Regulated Activity or who may otherwise present a risk to Service Users.
  8. The Service Provider shall comply with all guidance issued by the DBS as applicable and as amended from time to time.
  9. The Service Provider shall provide Service Provider Staff with regular and appropriate training in relation to the safeguarding of Service Users.

D DYNAMIC PURCHASING SYSTEM AGREEMENT GOVERNANCE

1. Records and Audit Access
   1. The Service Provider shall keep and maintain, until the later of:
      1. seven (7) years after the date of termination or expiry of this Dynamic Purchasing System Agreement; or
      2. seven (7) years after the date of termination or expiry of the last Call Off Agreement to expire or terminate; or
      3. such other date as may be agreed between the Parties, full and accurate records and accounts of the operation of this Dynamic Purchasing System Agreement, including Call Off Agreements entered into with the Council, the Services provided pursuant to the Call Off Agreements, the amounts paid by the Council under the Call Off Agreements.
   2. The Service Provider shall keep the records and accounts referred to in Clause 12.1 in accordance with Good Industry Practice and Law.
   3. The Service Provider shall afford any Auditor access to the records and accounts referred to in Clause 12.1 at the Service Provider's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Auditors from time to time, in order that the Auditor may carry out an inspection to assess compliance by the Service Provider and/or its Sub-Contractors of any of the Service Provider’s obligations under this Dynamic Purchasing System Agreement.
   4. If an Audit reveals that the Service Provider has overcharged an amount equal to or greater than one per centum (1%) of the Charges due in respect of any Invoicing Period then, without prejudice to the Council's other rights under this Dynamic Purchasing System Agreement, the Service Provider shall reimburse as a debt on demand the Council the overcharged amount and the Council’s reasonable costs incurred in relation to the Audit.
   5. If an Audit reveals that the Council has been undercharged by the Service Provider during any Invoicing Period of any Call Off Agreement then the Service Provider shall raise an invoice and the Council shall pay the Service Provider the amount of the undercharge within 30 Business Days after receiving the invoice from the Service Provider.
   6. If an Audit reveals that:
      1. the Service Provider has overcharged an amount equal to or greater than five per centum (5%) of the Charges due during any Invoicing Period of this Dynamic Purchasing System Agreement and any Call Off Agreement; and/or
      2. a material Default has been committed by the Service Provider,

then the Council shall be entitled to terminate this Dynamic Purchasing System Agreement for material Default.

1. Service User Satisfaction Monitoring by the Council
   1. The Council may from time to time, undertake (or procure the undertaking of) a Service User satisfaction survey (**Service User Satisfaction Survey**) the purpose of which shall include assessing the level of satisfaction among Service Users with the provision of the Services.
   2. If the results of more than ten per centum (10%) of Service User Satisfaction Surveys undertaken by the Council at any one time identify that Service Users are not satisfied with the provision of the Services by the Service Provider the Council shall be entitled to serve a notice on the Service Provider to terminate this Dynamic Purchasing System Agreement and any and/or all Call Off Agreement(s).
2. Change
   1. Variation Procedure
      1. Subject to the provisions of this Clause 14, either Party may request in writing a variation to this Dynamic Purchasing System Agreement provided that such variation does not amount to a material change of this Dynamic Purchasing System Agreement within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a **Variation**.
   2. Legislative Change
      1. The Service Provider shall not be relieved of its obligations under this Dynamic Purchasing System Agreement as the result of:
         1. a General Change in Law; or
         2. a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the DPS Commencement Date.
      2. If a Specific Change in Law occurs or will occur during the DPS Period (other than as referred to in Clause 14.2.1(b)), the Service Provider shall notify the Council as soon as reasonably practicable of the likely effects of that change including whether any variation is required to the Services or this Dynamic Purchasing System Agreement.
      3. Any relief from the Service Provider’s obligations resulting from a Specific Change in Law (other than as referred to in Clause 14.2.1(b)) shall be implemented in accordance with Clause 14.1 (Variation Procedure).
3. Conflicts of Interest
   1. The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Service Provider Related Party 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 a Service Provider Related Party in the duties owed to the Council under the provisions of this Dynamic Purchasing System Agreement or any Call Off Agreement(s).

**E SERVICE PROVIDER PERSONNEL AND SUPPLY CHAIN MATTERS**

1. Service Provider Staff
   1. The Service Provider will at all times ensure that Services are performed by appropriately qualified and trained Service Provider Staff.
   2. The Service Provider shall and shall procure that its Sub-Contractors shall:
      1. provide a sufficient number of supervisory staff to ensure that any Service Provider Staff engaged in the provision of the Services are at all times adequately supervised and trained and properly perform their duties to the standards set out in this Dynamic Purchasing System Agreement and any Call Off Agreement(s);
      2. employ at all times an adequate number of sufficiently qualified and experienced Service Provider Staff to provide the Services as set out in the Specification in order to ensure adequate support for the Service Users;
      3. ensure that:
         1. all Service Provider Staff have the right to work in the United Kingdom; and
         2. it and all Service Provider Related Parties have current and valid evidence on file of such right

and indemnify and keep indemnified the Council against any claims, proceedings, loss or damages as may be occasioned in relation to any breach of the Service Provider's obligations under this sub-clause;

* + 1. provide a means of photographic identification to all Service Provider Staff in a form approved by the Council in writing and in advance, and require all Service Provider Staff to wear and keep visible such identification at all times whilst providing the Services and make it available for inspection on request by any officer(s) of the Council who shall similarly disclose their identity.

1. TUPE
   1. The Service Provider:
      1. acknowledges to the Council that the Council has made and makes no representations or warranty as to the application or otherwise of TUPE in relation to the commencement of the provision of any Services by the Service Provider or any Service Provider Related Party;
      2. has formed and shall form its own view as to whether or not TUPE applies to this Dynamic Purchasing System Agreement;
      3. has and shall have no cause of action or claim for compensation or other remedy whatsoever against the Council in relation to the application or otherwise of TUPE in relation to this Dynamic Purchasing System Agreement or any Call Off Agreement issued before submitting its ITT Response;
      4. shall indemnify and keep indemnified the Council against any claims, proceedings, loss or damages as may be occasioned by the Council arising out of or in relation to the application or otherwise of TUPE in relation to any of the arrangements contemplated by this Dynamic Purchasing System Agreement or any Call Off Agreement.
   2. The Service Provider agrees further that no Call Off Charges shall be varied on the grounds that TUPE does or does not apply in respect of any Call Off Agreement.
   3. Employment exit provisions:
      1. This Dynamic Purchasing System Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Dynamic Purchasing System Agreement, or in part or otherwise) resulting in a transfer of the Services in whole or in part (Subsequent Transfer). If a Subsequent Transfer is a Relevant Transfer then the Council or Replacement Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
      2. The Service Provider shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Dynamic Purchasing System Agreement or otherwise, on request from the Council, provide in respect of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services, the Service Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Council, including information as to the application of TUPE to the employees. The Service Provider shall notify the Council of any material changes to this information as and when they occur.
      3. At least 28 days prior to the Service Transfer Date, the Service Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Service Provider, the Service Provider's Final Staff List, which shall be complete and accurate in all material respects. The Service Provider's Final Staff List shall identify which of the Service Provider's and Sub-Contractor's personnel named are Relevant Employees.
      4. The Council shall be permitted to use and disclose the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Service Provider for any services that are substantially the same type of services as the Services (or any part of the Services).
      5. The Service Provider warrants to the Council and the Replacement Service Provider that the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information (TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Service Provider's Final Staff List.
      6. The Service Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Laws.
      7. The Council regards compliance with this clause 17.3 as fundamental to the Dynamic Purchasing System Agreement. In particular, failure to comply with clause 17.3.2 and clause 17.3.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Council to suspend payment of the Call Off Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this clause 17.3.7 shall not exceed an amount equivalent to the Call Off Charges that would be payable in the three month period following the Service Provider's failure to comply with clause 17.3.2 or clause 17.3.3, as the case may be.
      8. Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this Dynamic Purchasing System Agreement shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by Law. The Service Provider shall and shall procure that any Sub-Contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.
      9. In the six months prior to termination of this Dynamic Purchasing System Agreement, the Service Provider shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Service Provider's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Council's prior written consent.
      10. The Service Provider shall indemnify and keep indemnified in full the Council and each and every Replacement Service Provider against all Employment Liabilities relating to:
          1. any person who is or has been employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of any of the Services; or
          2. any trade union or staff association or employee representative,

arising from or connected with any failure by the Service Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive, under the Transfers of Undertakings Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

* + 1. The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
    2. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from clause 17.3.2 to clause 17.3.10(a), to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

1. Supply Chain Rights and Protection
   1. Appointment and Management of Sub-Contractors
      1. The Service Provider may sub-contract the Services (or part thereof) to Sub- Contractors, provided that the Service Provider shall not add or replace a Sub-Contractor except with the Approval of the Council in writing.
   2. Supply Chain Protection
      1. The Service Provider shall ensure that all Sub-Contracts contain a provision:
         1. requiring the Service Provider to pay any undisputed sums which are due from the Service Provider to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
         2. requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Service Provider in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed.
   3. Retention of Legal Obligations
      1. Notwithstanding the Service Provider's right to sub-contract pursuant to this Clause 18, the Service Provider shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

F INTELLECTUAL PROPERTY AND INFORMATION

1. Intellectual Property Rights

19.1 Save as granted under this Dynamic Purchasing System Agreement neither Party shall acquire any right, title or interest in or to the Intellectual Property Rights of the other Party.

19.2 The Service Provider shall ensure and procure that the availability, provision and use of the Services as permitted under the Call Off Agreement and the performance of the Service Provider's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.

1. Provision and Protection of Information

20.1 The Service Provider acknowledges and agrees that all information associated with this DPS that is received by the Council from, or relating to, the Service Provider may be shared with other public bodies.

20.2 Provision of Performance Information

20.2.1 The Service Provider shall, at no charge to the Council, submit to the Council such information, evidence and data as may be reasonably requested by the Council from time to time.

20.2.2 The Service Provider grants the Council a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to use and/or publish any Performance Information supplied to the Council.

20.2.3 The Council shall in its absolute and sole discretion determine whether any Performance Information is exempt from disclosure in accordance with the provisions of the FOIA.

20.3 Confidentiality

20.3.1 For the purposes of this Clause 20.3, the term “Disclosing Party” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “Recipient” shall mean the Party which receives or obtains directly or indirectly Confidential Information.

20.3.2 Except to the extent set out in this Clause 20.3 or where disclosure is expressly permitted elsewhere in this Dynamic Purchasing System Agreement, the Recipient shall:

* + - 1. treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
      2. not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Dynamic Purchasing System Agreement or without obtaining the Disclosing Party's prior written consent;
      3. not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Dynamic Purchasing System Agreement; and
      4. immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.

20.3.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

(a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 20.5 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;

(b) the need for such disclosure arises out of or in connection with:

* + - * 1. any legal challenge or potential legal challenge against the Council arising out of or in connection with this Dynamic Purchasing System Agreement;
        2. the examination and certification of the Council's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council is making use of its resources; or

(c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;

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

* + - 1. such information was obtained from a third party without obligation of confidentiality;
      2. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Dynamic Purchasing System Agreement or breach of a duty of confidentiality; and
      3. the information is independently developed without access to the Disclosing Party's Confidential Information.

20.3.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

20.3.5 Subject to Clauses 20.3.2 and 20.3.3, the Service Provider may only disclose the Confidential Information of the Council on a confidential basis to:

* + - 1. (a) Service Provider Staff who are directly involved in the provision of the Services and need to know the Confidential Information to enable the performance of the Service Provider’s obligations under this Dynamic Purchasing System Agreement; and
      2. its professional advisers for the purposes of obtaining advice in relation to this Dynamic Purchasing System Agreement.

20.3.6 Where the Service Provider discloses the Confidential Information of the Council pursuant to Clause 20.3.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Dynamic Purchasing System Agreement by the persons to whom disclosure has been made.

20.3.7 The Council may disclose the Confidential Information of the Service Provider:

(a) to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

(b) on a confidential basis to a professional adviser, consultant, (including any benchmarking organisation) for any purpose relating to or connected with this Dynamic Purchasing System Agreement;

* + - 1. on a confidential basis for the purpose of the exercise of its rights under this Dynamic Purchasing System Agreement;
      2. to a proposed transferee, assignee or novatee of, or successor in title to the Council; and
      3. for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Council under this Clause 20.3.7.

20.3.8 For the avoidance of doubt, the Confidential Information that the Council may disclose under Clause 20.3.7 shall include information relating to Call Off Agreements, including service levels, pricing information (which includes information on prices tendered pursuant to any competition conducted in accordance with DPS Schedule 3 (Call for Competition Procedure), even where such a competition does not result in the award of a Call Off Agreement), and the terms of any Call Off Agreement may be shared with any other local authority from time to time.

20.3.9 Nothing in this Clause 20.3 shall prevent a Recipient from using any techniques, ideas or Know-How which the Recipient has gained during the performance of this Dynamic Purchasing System Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party’s Confidential Information or an infringement of Intellectual Property Rights.

20.3.10 In the event that the Service Provider fails to comply with Clauses 20.3.2 to 20.3.5, the Council reserves the right to terminate this Dynamic Purchasing System Agreement for material Default.

* 1. Transparency
     1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Dynamic Purchasing System Agreement is not Confidential Information. The Council shall determine whether any of the content of this Dynamic Purchasing System Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
     2. The Service Provider shall assist and cooperate with the Council to enable the Council to publish this Dynamic Purchasing System Agreement.
  2. Freedom of Information
     1. The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Service Provider shall provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its Information disclosure obligations under the FOIA and EIRs.
     2. The Service Provider acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Service Provider.
  3. Protection of Personal Data
     1. With respect to the Parties' rights and obligations under this DPS Agreement, the Parties acknowledge that the Council is a Data Controller and that the Service Provider is a Data Processor.
     2. The Service Provider shall:
        1. prior to the Processing of any Personal Data under this DPS Agreement and where requested by the Council from time to time provide a Privacy Impact Assessment (“PIA”) to the Council which will include (but not be limited to);
           1. a systematic description of the envisaged processing operations and the purpose of the processing;
           2. an assessment of the necessity and proportionality on the processing operations in relation to the Services;
           3. an assessment of the risks to the rights and freedoms of Data Subjects; and
           4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;
        2. Process the Personal Data only in accordance with instructions from the Council to perform its obligations under this DPS Agreement, except where Processing is and as required by Law or any regulatory body; in which case the Service Provider shall inform the Council of the relevant requirement prior to Processing, unless prevented from doing so by law;
        3. ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised, unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data under the DPS Agreement, including all measures required by the Data Protection Laws, and in particular Article 32 of the GDPR;
        4. not disclose or transfer the Personal Data to or allow the processing of Personal Data by any Sub-Contractor, Affiliate and/or third party without the prior written consent of the Council, and in the case of any Sub-Contractor or other third party whom the Service Provider wishes to engage for the Processing of Personal Data under this DPS Agreement ("Sub-processor") such consent to be conditional upon:
           1. the Service Provider entering into a contract with the Sub- processor which includes terms which are substantially the same as those set out in this clause;
           2. the Service Provider remaining fully liable to the Council for any failure by the Sub-processor to fulfil its obligations in relation to the Processing of Personal Data; and
           3. the use of the Sub-processor being otherwise in accordance with Clause 20.6.3;
        5. take all reasonable steps to ensure the reliability and integrity of any Service Provider Staff who have access to the Personal Data and ensure that the Service Provider Staff:
           1. are aware of and comply with the Service Provider’s duties under this Clause 20.6 and Clause 20.3 (Confidentiality);
           2. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this DPS Agreement; and
           3. have undergone adequate training in the use, care, protection and handling of Personal Data;
        6. notify the Council within 48 hours if it:
           1. receives from a Data Subject (or third party on their behalf):

(A) a Data Subject Access Request (or purported Data Subject Access Request);

(B) a request to rectify, block or erase any Personal Data; or

(C) any other request, complaint or communication relating to the Council's obligations under the Data Protection Laws;

* + - * 1. receives any communication from the Information Council or any other regulatory body in connection with Personal Data; or
        2. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
        3. considers that any instructions from the Council infringe the Data Protection Laws;
        4. receives any regulator correspondence or any other communication from the Information Council or any other regulatory authority in connection with Personal Data processed under this agreement; or
        5. is required by Law to commit an act or omission that would constitute a breach of this Clause 20.6;
      1. provide the Council with full cooperation and assistance (within the timescales reasonably required by the Council) in relation to either Party’s obligations under the Data Protection Laws or any complaint, communication or request made as referred to in Clause 20.6.2(e), including by promptly providing:
         1. the Council with full details and copies of the complaint, communication or request;
         2. where applicable, such assistance as is reasonably requested by the Council to enable the Council to comply with any request from a Data Subject to exercise any right under the Data Protection Laws (including but not limited to a Data Subject Access Request) within the relevant timescales set out in the Data Protection Laws;
         3. the Council, on request by the Council, with any Personal Data it holds in relation to a Data Subject; and
         4. assistance following a Data Loss Event as required by the Council including with respect to the conduct of a data protection impact assessment and the Council 's consultation with the Information Commissioner’s Office;
      2. if requested by the Council, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 20.6 and provide to the Council copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.
      3. keep a record of all categories of processing activities carried out on behalf of the Council, containing;
         1. the name and contact details of the Service Provider and each Sub-processor, and where applicable, the Processor and each Sub-processor's data protection officer;
         2. the categories of processing carried out on behalf of the Council;
         3. where applicable, any transfers of Personal Data to Restricted Countries or an international organisation; and
         4. the written description of security measures referred to in Clause 20.6.2(h).
    1. The Service Provider shall not Process or otherwise transfer any Personal Data in or to any Restricted Country. If, after the DPS Agreement DPS Commencement Date, the Service Provider or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the following provisions shall apply:
       1. the Service Provider shall submit a Variation request to the Council which, if the Council agrees, shall be dealt with in accordance with the Variation Procedure;
       2. the Service Provider shall set out in its Variation request and/or Impact Assessment details of the following:
          1. the Personal Data which will be transferred to and/or Processed in any Restricted Country;
          2. the Restricted Country or Countries which the Personal Data will be transferred to and/or Processed in; and
          3. any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
          4. how the Service Provider will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Council's compliance with the Data Protection Laws;
       3. in providing and evaluating the Variation request and Impact Assessment, the Parties shall ensure that they have regard to and comply with the Council, Central Government Bodies and Information Commissioner’s Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Country; and
       4. the Service Provider shall comply with such other instructions and shall carry out such other actions as the Council may notify in writing, including:
          1. incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Laws) into this DPS Agreement or a separate data processing agreement between the Parties; and
          2. procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Country either enters into:

(A) a direct data processing agreement with the Council on such terms as may be required by the Council; or

(B) a data processing agreement with the Service Provider on terms which are equivalent to those agreed between the Council and the Sub-Contractor relating to the relevant Personal Data transfer,

and in each case which the Service Provider acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the Data Protection Laws) and technical and organisation measures which the Council deems necessary for the purpose of protecting Personal Data.

* + 1. The Service Provider shall assist the Council to comply with any obligations under the Data Protection Laws and shall not perform its obligations under this DPS Agreement in such a way as to cause the Council to breach any of the Council's obligations under the Data Protection Laws to the extent the Service Provider is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
    2. The Service Provider shall (and shall procure that all Service Provider Staff) comply with any notification requirements under Data Protection Laws and both Parties will duly observe all their obligations under Data Protection Laws which arise in connection with the agreement.
    3. The Service Provider will, in conjunction with the Council, in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with the provisions of the GDPR upon its implementation.
    4. The Service Provider will provide all reasonable assistance required by the Council to enable the Council to comply with any obligations arising under any relevant law implementing or otherwise giving effect to the Security of Network and Information Systems Directive, including by making any changes to the technical and organisational security measures implemented in accordance with Clause 20.6.2(c).
    5. The Service Provider will upon request provide the Council with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under Clause 27.7.
    6. The Service Provider will notify the Council immediately, and in any event no later than twelve (12) hours, after becoming aware of a Data Loss Event, in particular the Service Provider will;
       1. when notifying the Council of a Data Loss Event, describe the nature of the event including the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
       2. cooperate fully with any Council investigation into the Data Loss Event including but not limited to the causes and effects (actual or potential);
       3. provide immediate access to the Service Provider’s premises and systems for the purposes of any Council investigation being conducted pursuant to clause 20.6.9(b) under this DPS Agreement;
       4. take all necessary actions to remedy the causes of the Data Loss Event and to ensure the protection of Personal Data from any further loss;
       5. not make any public statement of any kind without the prior approval of the Council;
       6. where appropriate, provide all assistance necessary to enable the Council to fulfil its obligations to notify the Information Commissioner within seventy two (72) hours after becoming aware of the Data Loss Event.
    7. The Service Provider shall indemnify the Council on a continuing basis against any and all Losses incurred by the Council arising from the Service Provider’s Default under this Clause 20.6 and/or any failure by the Service Provider or any Sub-Contractor to comply with their respective obligations under Data Protection Laws.
    8. Nothing in this Clause 20.6 shall be construed as requiring the Service Provider or any relevant Sub-Contractor to be in breach of any Data Protection Laws.
    9. Immediately upon the termination or expiry of this Agreement (or any part thereof) the Service Provider shall cease Processing the Personal Data (or any part thereof, as applicable) (except as necessary to comply with the terms of any Exit Plan or an obligation under any Law), and as soon as reasonably practicable thereafter, at the Customer's option (to be exercised without undue delay), either (i) securely return to the Customer or securely transfer to a new supplier; or (ii) securely wipe from its systems (so that the Personal Data cannot reasonably be recovered or reconstructed), the Personal Data and any copies of it or the information it contains.

Data protection indemnity

20.6.13 The Service Provider shall indemnify the Council on a continuing basis against any and all Losses incurred by the Council arising from the Service Provider’s Default under this Clause 20.6 and/or any failure by the Service Provider or any Sub-Contractor to comply with their respective obligations under Data Protection Laws.

20.6.14 Nothing in this Clause 20.6 shall be construed as requiring the Service Provider or any relevant Sub-Contractor to be in breach of any Data Protection Laws.

1. Publicity and Branding
   1. The Service Provider shall not:
      1. make any press announcements or publicise this Dynamic Purchasing System Agreement in any way; or
      2. use the Council's name or brand in any promotion or marketing,

without Approval (the decision of the Council to Approve or not shall not be unreasonably withheld or delayed).

G LIABILITY AND INSURANCE

1. Liability
   1. Neither Party excludes or limits its liability for:
      1. death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
      2. bribery or Fraud by it or its employees; or
      3. any liability to the extent it cannot be excluded or limited by Law.
   2. Subject to Clause 22.1, neither Party shall be liable to the other Party for any:
      1. indirect, special or consequential Loss;
      2. loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
   3. Notwithstanding Clause 22.2, the Service Provider acknowledges that the Council may, amongst other things, recover from the Service Provider the following Losses incurred by the Council to the extent that they arise as a result of a Default by the Service Provider:
      1. any reasonable additional operational and/or administrative costs and expenses incurred by the Council, including costs relating to time spent by or on behalf of the Council in dealing with the consequences of the Default;
      2. any wasted expenditure or charges;
      3. the reasonable additional cost of procuring Replacement Services for the remainder of the DPS Period, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Dynamic Purchasing System Agreement;
      4. any compensation or interest paid to a third party by the Council;
      5. any fine, penalty or costs incurred by the Council pursuant to Law.
   4. Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Dynamic Purchasing System Agreement.
   5. For the avoidance of doubt, the Parties acknowledge and agree that this Clause 22 shall not limit the Service Provider’s liability to the Council under any Call Off Agreement.
2. Insurance
   1. The Service Provider shall effect and maintain insurances in relation to the performance of its obligations under this Dynamic Purchasing System Agreement or any Call Off Agreement and any other insurances as may be required by applicable Law. The Service Provider shall ensure that each of the Insurances is effective no later than the DPS Commencement Date.

H REMEDIES

1. Council Remedies for Failure to Achieve KPI Targets and/or Performance Measure Targets.
   1. Without prejudice to any other rights or remedies arising under this Dynamic Purchasing System Agreement, including under Clause 25.1 (Termination on Material Default), if the Service Provider fails to achieve the same KPI Target or Performance Measure Target on two or more occasions within any twelve (12) Month rolling period:
      1. upon request by the Council the Service Provider shall attend a meeting in order to resolve the issues raised by the Council in its notice to the Service Provider requesting such meeting;
      2. the Council shall be entitled to require the Service Provider, and the Service Provider agrees to prepare and provide to the Council an Action Plan within ten (10) Business Days of a written request by the Council or the Council Representative for such Action Plan. Such Action Plan shall be subject to Approval and the Service Provider will be required to implement any Approved Action Plan, as soon as reasonably practicable;
      3. the Council shall be entitled to serve an Action Notice on the Service Provider and the Service Provider shall implement such requirements for improvement as set out in the Action Notice;
      4. if the Service Provider:
         1. fails to implement such requirements for improvement as set out in the Action Notice; and/or
         2. fails to implement an Action Plan Approved by the Council;

then upon request by the Council the Service Provider shall attend a further meeting in order to resolve the issues raised by the Council in its notice to the Service Provider requesting such meeting and without prejudice to any other rights and remedies of termination provided for in this Dynamic Purchasing System Agreement, the Council shall be entitled to suspend the Service Provider's appointment under this Dynamic Purchasing System Agreement pursuant to Clause 26.

I TERMINATION AND SUSPENSION

1. Council’s Termination Rights
   1. Termination on Material Default
      1. The Council may terminate this Dynamic Purchasing System Agreement for material Default by issuing a Termination Notice to the Service Provider where:
         1. the Service Provider fails to accept a Call Off Agreement pursuant to paragraph 4.1.3 of DPS Schedule 3 (Call for Competition Procedure);
         2. the Service Provider committing more than two Critical Performance Failures in any Contract Year;
         3. the Council terminate a Call Off Agreement for the Service Provider’s breach of that Call Off Agreement; and/or
         4. the Service Provider by its act or omission will have committed a material Default as described anywhere in this Dynamic Purchasing System Agreement.
   2. Termination in Relation to Financial Standing
      1. The Council may terminate this Dynamic Purchasing System Agreement by issuing a Termination Notice to the Service Provider where 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:
         1. adversely impacts on the Service Provider's ability to supply the Services under this Dynamic Purchasing System Agreement; or
         2. could reasonably be expected to have an adverse impact on the Service Provider’s ability to supply the Services under this Dynamic Purchasing System Agreement.
      2. Any action under 25.2.1 will be aligned with the economic and financial standing tested in the ITT, such that the change in the Service Provider’s financial standing means the Service Provider would no longer be capable of demonstrating compliance with the Selection Questionnaire.
   3. Termination on Insolvency
      1. The Council may terminate this Dynamic Purchasing System Agreement by issuing a Termination Notice to the Service Provider where an Insolvency Event affecting the Service Provider occurs.
   4. Termination on Change of Control
      1. The Service Provider shall notify the Council immediately in writing and as soon as the Service Provider is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.
      2. The Council may terminate this Dynamic Purchasing System Agreement under Clause 25.4 by issuing a Termination Notice to the Service Provider at any time.
   5. Termination for Breach of Regulations
      1. The Council may terminate this Dynamic Purchasing System Agreement by issuing a Termination Notice to the Service Provider on the occurrence of any of the statutory provisions contained in Regulation 73 (1) (a) to (c).
   6. Termination Without Cause
      1. The Council shall have the right to terminate this Dynamic Purchasing System Agreement at any time by giving at least three (3) Months written notice to the Service Provider.
      2. The Service Provider shall have the right to terminate this Dynamic Purchasing System Agreement at any time by giving at least three (3) Months written notice to the Council.
2. Suspension of Service Provider's Appointment
   1. In the event the circumstances as more particularly described in Clause 24.1.4 arise or if the Council is entitled to terminate this Dynamic Purchasing System Agreement pursuant to Clause 25 (Council’s Termination Rights), the Council may elect in its sole discretion to suspend the Service Provider's ability to participate in the Call for Competition Procedure under this Dynamic Purchasing System Agreement by giving notice in writing to the Service Provider, and the Service Provider agrees that it shall not be entitled to participate in the Call for Competition Procedure or enter into any new Call Off Agreement during the period specified in the Council's notice.
   2. Any suspension under Clause 26.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Council.
   3. The Parties acknowledge that suspension shall not affect the Service Provider's obligation to perform any existing Call Off Agreements awarded prior to the suspension notice.
   4. If the Council provides notice to the Service Provider in accordance with this Clause 26, the Service Provider's appointment under this Dynamic Purchasing System Agreement 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.
   5. For the avoidance of doubt, no period of suspension under this Clause 26 shall result in an extension of the DPS Period.
3. Consequences of Expiry or Termination
   1. Notwithstanding the service of a notice to terminate this Dynamic Purchasing System Agreement, the Service Provider shall continue to fulfil its obligations under this Dynamic Purchasing System Agreement until the date of expiry or termination of this Dynamic Purchasing System Agreement or such other date as required under this Clause 27.
   2. Termination or expiry of this Dynamic Purchasing System Agreement shall not cause any Call Off Agreements to terminate automatically. For the avoidance of doubt, all Call Off Agreements shall remain in force unless and until they are terminated or expire in accordance with the provisions of the Call Off Agreement, notwithstanding the termination or expiry of this Dynamic Purchasing System Agreement.
   3. If the Council terminates this Dynamic Purchasing System Agreement under Clause 25.1 (Termination on Material Default) 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, no further payments shall be payable by the Council until the Council has established and recovered from the Service Provider the full amount of such cost.
   4. Within thirty (30) Business Days of the date of termination or expiry of this Dynamic Purchasing System Agreement, the Service Provider shall return to the Council any and all of the Council's Confidential Information in the Service Provider's possession, power or control, either in its then current format or in a format nominated by the Council, 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 to the extent reasonably necessary to comply with its obligations under this Dynamic Purchasing System Agreement or under any Law, for a period of up to twelve (12) Months (or such other period as Approved by the Council and is reasonably necessary for such compliance).
   5. Termination or expiry of this Dynamic Purchasing System Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Dynamic Purchasing System Agreement prior to termination or expiry.
   6. Termination or expiry of this Dynamic Purchasing System Agreement shall be without prejudice to the survival of any provision of this Dynamic Purchasing System Agreement which expressly (or by implication) is to be performed or observed notwithstanding termination or expiry of this Dynamic Purchasing System Agreement, including the provisions of:
      1. Clauses 1 (Definitions and Interpretation), 5 (Representations and Warranties), 7 (Dynamic Purchasing System Agreement Performance), 12 (Records and Audit Access), 19 (Intellectual Property Rights), 20.2 (Provision of Performance Information), 20.3 (Confidentiality), 20.4 (Transparency), 20.5 (Freedom of Information), 20.6 (Protection of Personal Data), 22 (Liability), 23 (Insurance), 27 (Consequences of Expiry or Termination), 28 (Compliance), 30 (Waiver and Cumulative Remedies), 32 (Prevention of Fraud and Bribery), 33 (Severance), 34 (Entire Agreement), 35 (Third Party Rights), 36 (Notices), 37 (Complaints Handling and Resolution), 38 (Dispute Resolution) and 39 (Governing Law and Jurisdiction); and
      2. DPS Schedule 2 (Specification) and DPS Schedule 5 (Performance Monitoring).

27.7 The Parties shall comply with their respective obligations set out in the Exit Plan.

J MISCELLANEOUS AND GOVERNING LAW

1. Compliance
   1. Compliance with Law
      1. The Parties shall comply with all applicable Law in connection with the performance of this Dynamic Purchasing System Agreement.
      2. In the event that the Service Provider or the Service Provider Staff fails to comply with Clause 28.1.1, the Council shall be entitled to terminate this Dynamic Purchasing System Agreement for material Default.
   2. No Better No Worse
      1. Any reference in this Dynamic Purchasing System Agreement to "no better and no worse" or to leaving the Service Provider in a "no better and no worse position" shall be construed by reference to the Service Provider’s:
         * 1. rights, duties and liabilities under or arising pursuant to performance of this Contract and any Call Off Agreement(s); and
           2. ability to perform its obligations and exercise its rights under this Dynamic Purchasing System Agreement Contract and any Call Off Agreement(s),

so as to ensure that the Service Provider is left in a no better and a no worse position.

* 1. Equality and Diversity
     1. The Service Provider shall:
        1. perform its obligations under this Dynamic Purchasing System Agreement (including those in relation to the provision of the Services) in accordance with:
           1. all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
           2. any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality Law; and
        2. take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

1. Assignment and Novation
   1. The Service Provider shall not assign, novate, or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Dynamic Purchasing System Agreement or any part of it without Approval.
   2. The Council may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Dynamic Purchasing System Agreement or any part thereof to:
      1. any contracting authority, as defined in the Regulations or other body which substantially performs any of the functions that previously had been performed by the Council;
      2. any private sector body which substantially performs the functions of the Council;

and the Service Provider shall, at the Council's request, enter into a novation agreement in such form as the Council shall reasonably specify in order to enable the Council to exercise its rights pursuant to this Clause 29.2.

* 1. A change in the legal status of the Council such that either of them ceases to be a contacting authority shall not affect the validity of this Dynamic Purchasing System Agreement and this Dynamic Purchasing System Agreement shall be binding on any successor body to the Council.

1. Waiver and Cumulative Remedies
   1. The rights and remedies under this Dynamic Purchasing System Agreement may be waived only by notice in accordance with Clause 36 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Dynamic Purchasing System Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise thereof.
   2. Unless otherwise provided in this Dynamic Purchasing System Agreement, rights and remedies under this Dynamic Purchasing System Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.
2. Relationship of the Council and the Service Provider
   1. Except as expressly provided otherwise in this Dynamic Purchasing System Agreement, no element of this Dynamic Purchasing System Agreement, nor any actions taken by the Parties pursuant to this Dynamic Purchasing System Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Council and the Service Provider, or authorise the Council or the Service Provider to make representations or enter into any commitments for or on behalf of the Service Provider or the Council as the case may be.
3. Prevention of Fraud and Bribery
   1. The Service Provider represents and warrants that neither it, nor to the best of its knowledge any Service Provider Staff, have at any time prior to the DPS Commencement Date:
      1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
      2. 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.
   2. The Service Provider shall not during the DPS Period:
      1. commit a Prohibited Act; and/or
      2. do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, sub- contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
   3. The Service Provider shall during the DPS Period:
      1. establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
      2. keep appropriate records of its compliance with its obligations under Clause 32.3.1 and make such records available to the Council on request;
      3. if so required by the Council, within twenty (20) Business Days of the DPS Commencement Date, and annually thereafter, certify in writing to the Council, the compliance with this Clause 32.3 of all persons associated with the Service Provider or its Sub-Contractors who are responsible for supplying the Services in connection with this Dynamic Purchasing System Agreement. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request; and
      4. have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Council on request) to prevent it and any Service Provider Staff or any person acting on the Service Provider's behalf from committing a Prohibited Act.
   4. The Service Provider shall immediately notify the Council in writing if it becomes aware of any breach of Clause 32.1, 32.2 or 32.3.2, or has reason to believe that it has or any of the Service Provider Staff has:
      1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
      2. 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; and/or
      3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Dynamic Purchasing System Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Dynamic Purchasing System Agreement has committed or attempted to commit a Prohibited Act.
   5. If the Service Provider makes a notification to the Council pursuant to Clause 32.4, the Service Provider shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to Audit any books, records and/or any other relevant documentation in accordance with Clause 12 (Records and Audit Access).
   6. If the Service Provider breaches Clause 32.1, the Council may by notice:
      1. require the Service Provider to remove from the performance of this Dynamic Purchasing System Agreement any Service Provider Staff whose acts or omissions have caused the Service Provider’s breach; or
      2. immediately terminate this Dynamic Purchasing System Agreement for material Default.
   7. Any notice served by the Council under Clause 32.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Dynamic Purchasing System Agreement shall terminate).
4. Severance
   1. If any provision of this Dynamic Purchasing System Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Dynamic Purchasing System Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Dynamic Purchasing System Agreement shall not be affected.
5. Entire Agreement
   1. This Dynamic Purchasing System Agreement constitutes the entire agreement between the Parties in respect of the subject matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
   2. Neither Party has been given, nor entered into this Dynamic Purchasing System Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Dynamic Purchasing System Agreement.
   3. Nothing in this Clause 34 shall exclude any liability in respect of misrepresentations made fraudulently.
6. Third Party Rights
   1. A person who is not Party to this Dynamic Purchasing System Agreement has no right to enforce any term of this Dynamic Purchasing System Agreement under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999.
7. Notices
   1. Except as otherwise expressly provided within this Dynamic Purchasing System Agreement, any notices issued under this Dynamic Purchasing System Agreement must be in writing. For the purpose of this Clause 36, an e-mail is accepted as being "in writing".
   2. Subject to Clause 36.3, the following table sets out the method by which notices may be served under this Dynamic Purchasing System Agreement and the respective deemed time and proof of service:

|  |  |  |
| --- | --- | --- |
| Manner of Delivery | Deemed time of delivery | Proof of service |
| Email (Subject to Clause 36.3) | 09.00am on the first Working Day after sending | Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message |

* 1. The following notices shall be served as an attachment to an email:
     1. any Termination Notice under Clause 25 (Council’s Termination Rights), including in respect of partial termination;
     2. any notice in respect of:
        1. Clause 26 (Suspension of Service Provider’s Appointment);
        2. Clause 30 (Waiver and Cumulative Remedies);
        3. Default or default of the Council.
  2. This Clause 36 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
  3. For the purposes of this Clause 36, the address of each Party shall be:
     1. For the Council:

**Cornwall Council**

New County Hall

Treyew Road

Truro

Cornwall

TR1 3AY

For the attention of: Commissioning Manager for Adults

email: contractsadult@cornwall.gov.uk

* + 1. For the Service Provider:

As stated in the Service Provider’s ITT Response.

* 1. Either Party may change its address for service by serving a notice in accordance with this Clause 36.
  2. This Clause 36 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).

1. Complaints Handling and Resolution
   1. The Service Provider shall establish a written formal procedure for dealing with any complaints about the provision of the Services. The Service Provider must make the complaints procedure known to and available to every Service User in a format which is suitable to each Service User's needs. These procedures must include the following details:
      1. how to lodge a complaint;
      2. who will deal with the complaint and carry out the investigation and how they will respond;
      3. the time limit within which a response will be made; and
      4. the following address and telephone number in order that the complainant may make use of the Council's own complaints procedure should they continue to be dissatisfied:

For Adult Social Care Complaints

Address: Complaints Manager Adult Social Care

E1 New County Hall

Treyew Road

Truro

TR1 3AY

Phone: 01872 323 164

Email: fca.feedback@cornwall.gov.uk

Website: http://www.cornwall.gov.uk/default.aspx?page=5056

* 1. The Service Provider shall clearly inform each Service User, his or her family and anyone representing them that they may opt to submit any complaint which they wish to make direct to the Council at the address is set out at Clause 37.1.4.
  2. Any potentially or actually serious complaint received from a Service User for whom the Council have statutory responsibility shall be notified to the Council by the Service Provider (refer to clause 37.1.4 for details) at the earliest opportunity or in any case within two (2) Business Days of its receipt.
  3. Should any Service User, his or her family or anyone representing him or her submit a complaint to the Council, the Service Provider shall co-operate fully with any ensuing investigation and use all reasonable endeavours to rectify or correct any matter giving rise to a complaint to the extent substantiated in whole or in part (time being of the essence).
  4. The Service Provider shall keep a centrally held written record of all Service Users’ compliments and complaints and any remedial action taken (the "Compliments and Complaints Log"). The Compliments and Complaints Log is to be available for inspection by the Council at all times on reasonable notice, except in the case of emergency. The Compliments and Complaints Log shall be retained by the Service Provider for a minimum period of six (6) years following expiry of earlier termination of this Dynamic Purchasing System Agreement.

1. Dispute Resolution

38.1 The Parties shall, in the first instance, attempt in good faith to negotiate a settlement of any Dispute between them arising out of or in connection with this Dynamic Purchasing System or any Call-Off Agreement within twenty (20) Business Days of either Party notifying the other of the Dispute.

38.2 If the Dispute cannot be resolved by the Parties pursuant to clause 38.1, the Parties may by agreement refer it to mediation pursuant to the procedure set out in clause 38.3.

38.3 If a Dispute is referred to mediation the Parties shall comply with the following provisions:

38.3.1 a neutral adviser or mediator (the “Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Business Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Business Days from the date of the proposal to appoint a Mediator or within ten (10) Business Days of notice to either Party that the Mediator is unable or unwilling to act, apply to the CEDR to appoint a Mediator;

38.3.2 the Parties shall within ten (10) Business Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;

38.3.3 unless otherwise agreed, all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

38.3.4 if the Parties reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on the Parties with effect from its signature by their duly authorised representatives;

38.3.5 if the Parties fail to reach an agreement on the resolution of the Dispute, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this DPS Agreement without the prior written consent of both Parties;

38.3.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Business Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then the relevant Dispute may be referred to the courts of England for final determination; and

38.3.7 all costs of mediation shall be borne equally by the Parties unless otherwise directed by the Mediator.

38.3.8 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.

38.3.9 The obligations of the Service Provider under this Dynamic Purchasing System or any Call Off Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation or the courts pursuant to this Clause 38 and the Service Provider an any Service Provider Related Party shall comply fully with the requirements of this Dynamic Purchasing System and any Call Off Agreement at all times.

1. Method Statements

The Service Provider shall comply with the method statements contained in DPS Schedule 6 when performing the Services.

1. Governing Law and Jurisdiction
   1. This Dynamic Purchasing System Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
   2. The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Dynamic Purchasing System Agreement or its subject matter or formation.

This agreement has been signed on the date appearing at the top of page 1.



Definitions

1. In accordance with Clause 1.1 (Definitions), in this Dynamic Purchasing System Agreement including its recitals the following expressions shall have the following meanings:

|  |  |
| --- | --- |
| **Acquired Rights Directive** | means Council Directive 77/187/EC |
|  |  |
| **Action Notice** | means the notice issued by the Council to the Service Provider pursuant to Clause 24.1.3 (Council Remedies) which will detail how the Service Provider shall improve the provision of the Services; |
| **Action Plan** | means the plan required by the Council from the Service Provider which shall detail how the Service Provider will improve the provision of the Services pursuant to Clause 24.1.2 (Council Remedies); |
| **Affiliates** | means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time; |
| **Approval** | means the prior written consent of the Council and "Approve" and "Approved" shall be construed accordingly; |
| **Audit** | means an audit carried out pursuant to Clause 12 (Records and Audit Access); |
| **Audit Report** | means a report summarising the testing completed and the actions arising following an Audit; |
| **Auditor** | means the Council, and/or the National Audit Office and /or the representatives of any of them; |
| **Best Practice** | means those standards, practices, methods and procedures of working that conform to Law and guidance issued by the Social Care Institute of Excellence, any Relevant Authority and any Regulatory Body in relation to the subject matter of the Services; |
| **Business Days** | means any day other than a Saturday, Sunday or public holiday in England and Wales; |
| **Caldicott Principles** | means those identified in the Department of Health report on the review of patient identifiable information December 1997 (or as updated from time to time) and as set out in Schedule 6;; |
| **Call for Competition Procedure** | means the process for awarding a Call Off Agreement pursuant to Clause 4 (Call for Competition Procedure) and DPS Schedule 3 (Call for Competition Procedure); |
| **Call Off Agreement** | means a legally binding agreement (entered into pursuant to the provisions of this Dynamic Purchasing System Agreement) for the provision of the Services made between a Council and the Service Provider, which shall comprise the terms and conditions of the Dynamic Purchasing System Agreement and the Call Off Terms (amended or refined where required by the Council and permissible pursuant to DPS Schedule 3 (Call for Competition Procedure) and the Call Off Charges; |
| **Call Off Charges** | means the prices payable to the Service Provider by the Council under a Call Off Agreement for the full and proper performance by the Service Provider of its obligations under the Call Off Agreement; |
| **Call Off Terms** | means the call off terms set out in Schedule 8, the Service Request, the Service Request Response and the Service Offer; |
| **Change in Law** | means any change in Law which impacts on the supply of the Services and performance of the Call Off Terms which comes into force after the DPS Commencement Date; |
| **Change of Control** | means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010; |
| **Commercially Sensitive Information** | means the Service Provider’s Confidential Information:   * + - 1. relating to the Service Provider, its IPR or its business or information which the Service Provider has indicated to the Council that, if disclosed by the Council, would cause the Service Provider significant commercial disadvantage or material financial loss; and       2. that constitutes a trade secret; |
| **Council's Confidential Information** | means all Council's Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know how, personnel, and suppliers of the Council , including all IPR, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably to be considered to be confidential; |
| **Council Personal Data** | means any Personal Data supplied for the purposes of or in connection with this Dynamic Purchasing System Agreement by the Council to the Service Provider; |
| **Council Representative** | means the representative appointed by the Council from time to time in relation to this Dynamic Purchasing System Agreement; |
| **Confidential Information** | means the Council's Confidential Information and/or the Service Provider's Confidential Information as the context requires; |
| **Contract Review Meeting** | has the meaning given to it in paragraph 1.8 of Schedule 4 (Performance Monitoring) ; |
| **Contract Year** | means a consecutive period of twelve (12) Months commencing on the DPS Commencement Date or each anniversary thereof; |
| **Control** | means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "**Controlled**" shall be construed accordingly; |
| **Critical Performance Failure** | means a fundamental breach of a Call Off Agreement by the Service Provider which shall include, for the avoidance of doubt, circumstances where the Service Provider is unable to perform the Services and the Parties acknowledge that such circumstances may be referred to by the Council as "handback" of a Call Off Agreement; |
| **Data Controller** | has the meaning given to it in the Data Protection Laws; |
| **Data Loss Event** | means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed; |
| **Data Processor** | has the meaning given to it in the Data Protection Laws; |
| **Data Protection Laws** | means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 and, with effect from 25 May 2018, the GDPR; |
| **Data Subject** | has the meaning given to it in the Data Protection Laws; |
| **Data Subject Access Request** | means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws, to access his or her Personal Data; |
| **DBS** | means the Disclosure and Barring Service; |
| **Default** | means any breach of the obligations of the Service Provider (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Service Provider or the Service Provider Staff in connection with or in relation to this Dynamic Purchasing System Agreement or the subject matter of this Dynamic Purchasing System Agreement and in respect of which the Service Provider is liable to the Council; |
| **Disclosing Party** | means a Party which discloses or makes available directly or indirectly its Confidential Information to the Recipient; |
| **Dispute** | means any dispute, difference or question of interpretation arising out of or in connection with this Dynamic Purchasing System Agreement, including any dispute, difference or question of interpretation relating to the Services, or any matter where this Dynamic Purchasing System Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure; |
| **Dispute Notice** | means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute; |
| **Dispute Resolution Procedure** | means the dispute resolution procedure set out in the clause 38 (Dispute Resolution); |
| **Domestic Support Services** | means the services described in DPS Schedule 2 Part A; |
| **Domestic Support Specification** | means the domestic support specification set out in DPS Schedule 2 (Specification) Part A; |
| **DPS Period** | means the period from the DPS Commencement Date and ending on the expiry of the Initial DPS Period or any Extension DPS Period or on earlier termination of this DPS Agreement; |
| **DPS Platform** | means the electronic means used by the Council to host the Dynamic Purchasing System and which can be found at: https:[insert address]; |
| **DPS Schedules** | means the schedules to this Dynamic Purchasing System Agreement; |
| **DPS Service Providers** | means the suppliers (including the Service Provider) appointed under this Dynamic Purchasing System Agreement or agreements on the same or similar terms to this Dynamic Purchasing System Agreement as part of the DPS; |
| **Dynamic Purchasing System Agreement or DPS Agreement** | means this agreement consisting of the Clauses together with the DPS Schedules and any appendices and annexes to the same; |
| **Dynamic Purchasing System or DPS** | means the arrangements established by the Council for the procurement of the Services by the Council from suppliers (including the Service Provider) pursuant to the OJEU Notice; |
| **Employee Liability Information** | the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE:   1. the identity and age of the employee; 2. the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); 3. information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; 4. information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Supplier arising out of the employee's employment with the transferor;   information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE; |
| **Employment Liabilities** | all claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses; |
| **Environmental Information Regulations or EIRs** | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Council or relevant Government department in relation to such regulations; |
| **Exit Plan** | means the exit plan contained in DPS Schedule 7; |
| **Extension DPS Period** | means such period or periods as may be specified by the Council pursuant to Clause 6.2 (DPS Period); |
| **FOIA** | means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Council or relevant Government department in relation to such legislation; |
| **Fraud** | means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery; |
| **General Change in Law** | means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Service Provider) or which affects or relates to a Comparable Supply; |
| **General Data Protection Regulation or GDPR** | means the General Data Protection Regulation EU 2016/679 http://eur-lex.europa.eu/legal- content/en/TXT/?uri=CELEX%3A32016R0679. Further information is available via the Information Council Office (ICO) website here: [https://ico.org.uk/for- organisations/data-protection-reform/overview-of-the- gdpr/](https://ico.org.uk/for-%20organisations/data-protection-reform/overview-of-the-%20gdpr/); |
| **Geographical Area** | means the County of Cornwall and/or such other geographical area as may be communicated by the Council to the Service Provider from time to time; |
| **Good Industry Practice** | means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector; |
| **Government** | 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 government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf; |
| **Guidance** | means any applicable guidance, code of practice or directions issued by a relevant authority or a Regulatory Body which the Service Provider is bound to comply pursuant to the requirements of any Law; |
| **Information** | has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time; |
| **Initial DPS Period** | means the period of twenty four (24) Months from the DPS Commencement Date; |
| **Insolvency Event** | means, in respect of the Service Provider (as applicable):   * + - 1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or       2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or       3. a petition is presented for its winding up (which is not dismissed within fourteen (14) Business Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or       4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or       5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or       6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or       7. being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or       8. where the Service Provider or DPS Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or       9. any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction; |
| **Invitation to Tender or ITT** | has the meaning given to it in Recital B of this Dynamic Purchasing System Agreement; |
| **Invitation to Tender or ITT Response** | has the meaning given to it in Recital C of this Dynamic Purchasing System Agreement; |
| **Invoicing Period** | means an ongoing period of four (4) weeks, Saturday to Sunday, commencing on the DPS Commencement Date; |
| **Key Performance Indicators or KPIs** | means the key performance indicators identified in the Specification; |
| **KPI Target** | means the acceptable performance level for a KPI as set out in relation to each KPI; |
| **Law** | means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Service Provider is bound to comply; |
| **Losses** | means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation on otherwise and “Loss” shall be interpreted accordingly; |
| **Method Statements** | means the proposals for meeting the Specification put forward by the Service Providers as part of its Invitation to Tender as set out in DPS Schedule 6 |
| **Monitoring Workbook** | means the quarterly performance monitoring reports completed by the Service Provider and returned to the Council, ten (10) Business Days after the end of each Quarter, the form of which will be provided by, and may be amended by, the Council from time to time; |
| **Necessary Consents** | means all approvals, permissions, consents, licences, certificates and authorisations (whether statutory or otherwise) and including any registration consents under any Law which are required for the purposes of carrying out the obligations of the Service Provider in connection with this DPS Agreement, whether required in order to comply with Law or as a result or as a result of the rights of any third party or otherwise; |
| **Outcomes** | has the meaning given to it in DPS Schedule 2; |
| **Party** | means the Council or the Service Provider and "Parties" shall mean both of them; |
| **Performance Information** | means the performance information to be provided to the Council by the Service Provider pursuant to Schedule 4 and such other information as may be provided to the Council pursuant to Clause 20.2.1 |
| **Performance Measure** | means a performance measures identified in the Specification; |
| **Performance Measure Target** | means the relevant performance measure target as set out in the Specification; |
| **Personal Data** | has the meaning given to it in the Data Protection Laws; |
| **Processing** | has the meaning given to it in the Data Protection Laws but, for the purposes of this Dynamic Purchasing System Agreement, it shall include both manual and automatic processing and “**Process**” and “**Processed**” shall be interpreted accordingly; |
| **Prohibited Act** | means:   * + - 1. to directly or indirectly offer, promise or give any person working for or engaged by a Council and/or the Council a financial or other advantage to:          1. induce that person to perform improperly a relevant function or activity; or          2. reward that person for improper performance of a relevant function or activity; or       2. committing any offence:          1. under the Bribery Act 2010; or          2. under legislation creating offences concerning Fraud; or          3. at common law concerning Fraud; or          4. committing (or attempting or conspiring to commit) Fraud; |
| **Quarter** | means a period of three (3) Months ending on 31 March, 30 June, 30 September and 31 December provided that:   * + - 1. the first Quarter during the DPS Period shall start on the DPS Commencement Date and end on the first to occur of 31 March, 30 June, 30 September and 31 December;       2. each such three (3) month period shall start on the day following the last day of the preceding Quarter;       3. the last Quarter during the DPS Period shall end upon the last day of the DPS Period; |
| **Regulated Activity** | has the meaning given to it in the Safeguarding Vulnerable Groups Act 2006; |
| **Regulations** | means the Public Contracts Regulations 2015; |
| **Regulatory Body** | means those government departments and regulatory, statutory and other entities, communities, 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 Dynamic Purchasing System Agreement or any other affairs of the Council or the Service Provider as applicable; |
| **Related Third Party** | a party to a Sub-contract or a Service User; |
| **Relevant Employees** | those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Service Provider by virtue of the application of TUPE; |
| **Relevant Person** | means any employee, agent, servant, or representative of the Council or other public body; |
| **Relevant Requirements** | means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010; |
| **Relevant Transfer** | a relevant transfer of the Services for the purposes of TUPE; |
| **Replacement Service Provider** | any third party supplier of Replacement Services appointed by the Council from time to time; |
| **Replacement Services** | means any services which are substantially similar to any of the Services and which are received in substitution for the Services following the expiry or termination of this Dynamic Purchasing System Agreement; |
| **Service Offer** | means an order as completed and forming part of the Call Off Agreement, which contains details of an Services to the provided together with any other relevant information, and placed by the Council with the Service Provider; |
| **Service Provider Related Parties** | means the Service Provider's Affiliates, Sub-Contractors and agents and its or their directors, officers, employees and workmen in relation to the provision of the Services; |
| **Service Provider’s Final Staff List** | the list of all the Service Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date; |
| **Service Provider’s Provisional Staff List** | the list prepared and updated by the Service Provider of all the Service Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list; |
| **Service Request** | means a request for a Service Request Response from the Council to the DPS Service Providers as described in paragraph 2.1.1(e) of Schedule 3 (Call for Competition Procedure) and in the Specification; |
| **Service Request Response** | means a service request reponse as described in paragraph 2.2.1(g) of DPS Schedule 3 (Call for Competition Procedure) |
| **Service Provider Staff** | means all persons employed or engaged by the Service Provider together with the Service Provider's servants, agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub- Contractor’s servants, consultants, agents, suppliers and sub-contractors) used in the performance of its obligations under this Dynamic Purchasing System Agreement or any Call Off Agreements; |
| **Service Provider Representative** | means the representative appointed by the Service Provider from time to time in relation to this Dynamic Purchasing System Agreement; |
| **Service Provider's Confidential Information** | means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Service Provider, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential; |
| **Services** | means the Domestic Support Services; |
| **Services Requirements** | means the requirements of the Council (as appropriate) for the Services from time to time; |
| **Service Transfer Date** | the date on which the Services (or any part of the Services), transfer from the Service Provider or Sub-Contractor to the Council or any Replacement Service Provider; |
| **Service User** | means the person directly receiving the Services provided by the Service Provider as specified in the Specification; |
| **Sites** | means:   * + - 1. any delivery point for the Services (including the Council Premises, the Service Provider’s premises, third party premises, or any non-premises location):          1. from, to or at which:   (1) the Services are (or are to be) provided; or  (2) the Service Provider manages, organises or otherwise directs the provision or the use of the Services; or   * + - * 1. where: the Service User is situated; |
| **Specification** | means the Domestic Support Services specification; |
| **Specific Change in Law** | means a Change in Law that relates specifically to the business of the Council and which would not affect a Comparable Supply; |
| **Staffing Information** | in relation to all persons detailed on the Service Provider's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services; |
| **Standards** | means:   * + - 1. any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with when delivering Services to Contracting Bodies under this DPS Agreement as a may be further detailed in the Specification;       2. any standards detailed in the specification in DPS Schedule 2 (Specification);       3. any standards detailed by the Council in the Call Off Agreement following a Call for Competition Procedure or agreed between the Parties from time to time;       4. any relevant Government codes of practice and guidance applicable from time to time that would apply to a Service Provider delivering Services to the Council under this DPS Agreement; |

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| **Statement of Requirements** | means a document produced by the Council detailing its Services Requirements; |

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| **Sub-Contract** | means any contract or agreement or proposed agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services (or any part thereof) or to provide facilities or services necessary for the provision of the Services (or any part thereof) or necessary for the management, direction or control of the provision of the Services or any part thereof; |
| **Sub-Contractor** | means the sub-contractors listed in the Service Provider’s ITT Response and/or any third party engaged by the Service Provider from time to time under a sub-contract permitted pursuant to this Dynamic Purchasing System Agreement; |
| **Termination Notice** | means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Dynamic Purchasing System Agreement on a specified date and setting out the grounds for termination; |
| **Transfer of Undertakings Directive** | means the Council Directive 2001/23/EC; |
| **TUPE** | The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended; |
| **Variation** | has the meaning given to it in Clause 14 (Variation Procedure); |
| **Variation Procedure** | means the procedure for carrying out a Variation as set out in Clause 14.1 (Variation Procedure); |
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Specification and Key Performance Indicators

Part A - xxxxx

**Part B - xxxxx**



Call for Competition Procedure

1. AWARDING A CALL OFF AGREEMENT
   1. Without prejudice to Appendix B (Direct Allocation procedure), where the Council sources its Services Requirement through this Dynamic Purchasing System Agreement then it will award its Services Requirement in accordance with the procedure in this DPS Schedule 3 (Call for Competition Procedure) and the requirements of the Regulations and the Guidance. For the purposes of this DPS Schedule 3, “Guidance” shall mean any guidance issued or updated by the UK Government from time to time in relation to the Regulations.
   2. The award of any Call Off Agreement under this Dynamic Purchasing System Agreement must be conducted using electronic means.
2. APPENDIX A - CALL FOR COMPETITION PROCEDURE
   1. The Council's obligations:
      1. In awarding a Call Off Agreement under this Dynamic Purchasing System Agreement through a Call for Competition Procedure the Council shall:
         1. develop a Statement of Requirements;
         2. identify the DPS Service Providers capable of supplying services that meet the Statement of Requirements who have indicated that they are capable of supplying the relevant services in the relevant Geographical Area or Areas in their ITT Response at the point that the Council undertake their Call for Competition (the "Capable Service Providers");
         3. amend or refine the Template Order Form and Template Call Off Terms to reflect its Statement of Requirements only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
         4. notify the Capable Service Providers of their intention to undertake a Call for Competition using the messaging function on the DPS Platform;
         5. invite tenders by issuing a Service Request;
         6. carry out invitations to tender by electronic means, and outside of the DPS Platform;
         7. keep each Service Request Response confidential until the expiry of the time limit for the receipt by it of tenders;
         8. set a time limit in the Service Request for the receipt by it of the Service Request Responses which takes into account factors such as the complexity of the subject matter of the proposed Call Off Agreement, the time needed to submit Service Request Responses, and the Regulations;
         9. on the basis that the award criteria to be applied to compliant Service Request Responses shall be the lowest price (the "Award Criteria"), apply the Award Criteria and award its Call Off Agreement to the successful DPS Service Provider in accordance with paragraph 4, and the Regulations;
   2. The Service Provider's Obligations:
      1. The Service Provider shall in writing, by the time and date specified by the Council following an Service Request pursuant to paragraph 2.1.1(e) above provide the Council with the full details of its Service Request Response made in respect of the relevant Service Request; constructed and submitted in accordance with the instructions contained within the Service Request and the Specification.
3. APPENDIX B – DIRECT ALLOCATION PROCEDURE
   1. The Council’s obligations:
      1. The Council shall not be obliged to implement the Call for Competition procedure in the following circumstances:
         1. (a) for the award of a Call Off Agreement for Out of Hours Services;
         2. (b) where a DPS Service Provider is delivering Services to an address where another Service User is also identified as eligible for the Services;
         3. (c) where a Court of law or legislation obliges the Council to allocate a Call Off Agreement to a named DPS Service Provider;
      2. The Council shall in awarding a Call Off Agreement without following the Call for Competition Procedure:
         1. develop a Statement of Requirements;
         2. (b) identify the specific DPS Service Provider capable of meeting that Statement of Requirement;
         3. (c) amend or refine the Call Off Terms to reflect its Statement of Requirements only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
         4. (d) notify the relevant DPS Service Provider of its intention to invite a tender response using the messaging function on the DPS Platform;
         5. (e) issue a Service Request inviting a tender response;
         6. (f) set a time limit in the Service Request for the receipt by it of the Service Request Response, taking account of the complexity of the Service Request and the time needed to submit a Service Request Response;
   2. The Service Provider's Obligations:
      1. The Service Provider shall in writing, by the time and date specified by the Council following a Service Request pursuant to paragraph 3.1.2(e) above provide the Council with the full details of its Service Request Response made in respect of the relevant Service Request; constructed and submitted in accordance with the instructions contained within the Service Request and the Specification.
4. NO AWARD
   1. Notwithstanding the fact that the Council has followed a procedure as set out in this Schedule, the Council shall be entitled at all times to decline to make an award for its Services Requirement. No element of this Dynamic Purchasing System Agreement shall oblige the Council to award any Call Off Agreement.
5. CALL OFF AWARD PROCEDURE
   * 1. Subject to paragraphs 1 to 4 above and this paragraph 5, the Council may award a Call Off Agreement to the Service Provider by sending the Service Provider by email or other electronic means, a Service Offer; and a legally binding agreement shall thereupon be formed on the date of dispatch of (and subject to the terms of) the Service Offer. For the avoidance of doubt, by issuing a Service Offer on the DPS Platform to the Service Provider, the Council is accepting the offer made by the Service Provider in its completed Service Request Response.
     2. The Parties agree that any document or communication (including any document or communication in the apparent form of a Call Off Agreement) which is not as described in this paragraph 5 shall not constitute a Call Off Agreement under this Dynamic Purchasing System Agreement.
     3. The Service Provider shall on receipt of a Service Offer as described in paragraph 5.1.1 above promptly acknowledge receipt of the Service Offer to the Council.

Performance Monitoring

1. Service Provider Monitoring
   1. The Service Provider shall monitor its performance under this Dynamic Purchasing System Agreement and any Call Off Agreement and in particular the Key Performance Indicators and Performance Measures at its own expense as part of this overall provision of the Services in accordance with this Schedule 4.
   2. The Performance Measures and Key Performance Indicators as set out in the Specification shall apply in full for the DPS Term.
   3. The Service Provider shall be responsible for the monitoring and accurate recording at all times of its own performance and delivery of the Services and of compliance with, or default under, the requirements of this DPS Agreement and any Call Off Agreement.
   4. Where a breach of or failure to satisfy any Performance Measure or KPI (“**Performance Failure**”) comes to the notice of the Service Provider, the Service Provider shall report this in reasonable detail to the Council Representative as soon as reasonably practicable and in any event in the same Month as the Performance Failure occurred.
   5. The Service Provider shall complete the Monitoring Workbook and shall return the same to the Council Representative on or before the date required.
   6. The Service Provider and the Council acknowledge and agree that the production of the Monitoring Workbook will enable, in particular, the Service Provider to keep up-to-date records and information in respect of its Service Provider Staff, its use of Sub-Contractors, the provision of the Services and any comments or other feedback from Service Users.
   7. The Council shall review the Monitoring Workbook in order to assess and measure, in particular, the Service Provider's performance in respect of the satisfaction of the Performance Standards.
   8. Following the Council’s review of the Monitoring Workbook, the Parties shall meet to discuss the contents of the Monitoring Workbook ("**Contract Review Meeting**").
   9. At each Contract Review Meeting, the Council and the Service Provider shall consider the Service Provider's overall performance of its obligations under this DPS Agreement and any Call Off Agreement and in particular the Service Provider's satisfaction of the Performance Standards.
   10. Notwithstanding any other remedy available to the Council in this DPS Agreement or any Call Off Agreement, where the Council reasonably considers the Service Provider is not meeting it obligations under this DPS Agreement or any Call Off Agreement or is otherwise failing to satisfy any or all of the Performance Standards, the Council reserves the right, at its absolute discretion to treat the matter in accordance with paragraph 2.2 of this Schedule 4.
   11. Notwithstanding the Council’s rights pursuant to paragraph 2 of this Schedule 4, the Council may at its absolute discretion, undertake its own assessment and monitoring in seeking to verify the accuracy of any submissions made to it by the Service Provider and the Service Provider shall facilitate such assessment acting reasonably and in good faith, promptly providing the Council with access to all records and granting to the Council all other assistance which it may reasonably require.
   12. The Performance Measures and KPIs shall be reviewed by the Service Provider and the Council each Contract Year to ensure they continue to align with this DPS Agreement, any Call Off Agreement and in particular the Outcomes and Service Users' needs.
   13. Following the review described in paragraph 1.12 of this Schedule 4 the Council may adapt and finesse the Performance Measures and KPIs but shall not increase the Service Provider's obligations so as to ensure the Service Provider is in No Better and No Worse position.
2. **Council Monitoring** 
   1. The Council shall, at its own cost, undertake its own performance monitoring of the operation of the Dynamic Purchasing System Agreement and any Call Off Agreement and in order to assess the Service Provider's quality and performance in respect of the delivery of the Outcomes. The Service Provider shall use all reasonable endeavours to assist the Council in such an exercise. The Council shall notify the Service Provider of the outcome of any performance monitoring exercise and the Service Provider shall have due regard to the Council’s comments in relation to the future provision of the Services.
   2. Without prejudice to the Council’s rights under Clause 35 of this DPS Agreement and any other express rights under this DPS Agreement, where the Service Provider had has been found to:
      1. been fraudulent in the submission of any monitoring reports; or
      2. to have submitted at least two (2) erroneous Monitoring Workbooks as required by paragraph 2.5 of this Schedule 4 (Performance Monitoring) in two (2) consecutive quarters, or
      3. following a Contract Review Meeting, not to be meeting its obligations under this Dynamic Purchasing System Agreement or any Call Off Contract or otherwise is failing to satisfy any or all of the Performance Measures and KPIs,

then the Council may by notice to the Service Provider increase the level of its monitoring of the Service Provider and/or (at the Council’s option) increase the level of the Service Provider's monitoring of its own performance of its obligations under this DPS Agreement or any Call Off Agreement in respect of the Services (or any part thereof) which are the subject of such fraudulent or erroneous reporting until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Council that it will perform (and is capable of performing) its obligations under this Dynamic Purchasing System Agreement or any Call Off Agreement.

* 1. For the purposes of paragraph 2.2 of this Schedule 4, the Council acknowledges that if the Service Provider has otherwise failed to have demonstrated to the reasonable satisfaction of the Council as required in paragraph 2.2 of this Schedule 4 but:
     1. the Service Provider has removed the person or persons responsible for the fraudulent or erroneous reporting; or
     2. there have been no further fraudulent or erroneous reports of any kind in the third consecutive Quarter following the Council’s notice served pursuant to paragraph 2.2 of this Schedule 4; or
     3. that for a third consecutive Quarter following the Council’s notice served pursuant to paragraph 2.2 of this Schedule 4 the Council is satisfied that the Service Provider is performing (and is capable of continuing to perform) its obligations under this Dynamic Purchasing System or any Call Off Agreement and is meeting the Performance Standards,

this shall be regarded as sufficient evidence that the Service Provider will perform and is capable of performing its obligations under this DPS Agreement or any Call Off Agreement.

* 1. If the Council issues a notice pursuant to paragraph 2.2 of this Schedule 4, the Service Provider shall bear its own costs and indemnify and keep indemnified the Council at all times from and against all reasonable costs and expenses incurred by or on behalf of the Council in relation to such increased level of monitoring arising due to the circumstances described in paragraph 2.2 of this Schedule 4.
  2. The Council shall also maintain a record of the Service Provider's performance and all the DPS Service Providers' performances in respect of the Key Performance Indicators.
  3. The Council reserves the right, at its absolute discretion, to publish any data in respect of the Key Performance Indicators via the Community Directory.



Caldicott Principles

**Principle 1: Justify the purpose(s)**

Every proposed use or transfer of personally-identifiable information within or from an organisation should be clearly defined and scrutinised with continuing uses regularly reviewed by an appropriate Guardian.

**Principle 2: Don’t use personally identifiable information unless it is absolutely necessary**

Personally identifiable information items should not be used unless there is no alternative.

**Principle 3: Use the minimum necessary personally identifiable information**

Where use of personally identifiable information is considered to be essential each individual item of information should be justified with the aim of reducing identifiability.

**Principle 4: Access to personally–identifiable information should be on a strict need to know basis**

Only those individuals who need access to personally identifiable information should have access to it and they should only have access to the information items that they need to see.

**Principle 5: Everyone should be aware of their responsibilities**

Action should be taken to ensure that those handling personally identifiable information

– both practitioner and non-practitioner staff – are aware of their responsibilities and obligations to respect an individual’s confidentiality.

**Principle 6: Understand and comply with the law**

Every use of personally–identifiable information must be lawful. Someone in each organisation should be responsible for ensuring that the organisation complies with legal requirements.

Method Statements

**Schedule 7**

**Exit Plan**

1. **Interpretation**

In this Schedule 7 (Exit Plan) the following expressions shall have the meanings set out under them:

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| **Draft Exit Plan** | has the meaning given to it in paragraph 3.3 of this Schedule 7 (Exit Plan); |
| **Exit Period** | means the period between: |
|  | * + - 1. the Expiry Trigger Date and the date of expiry of this Dynamic Purchasing System Agreement; or |
|  | * + - 1. the Termination Trigger Date and the date of termination of this Dynamic Purchasing System Agreement; |
| **Exit Plan** | has the meaning given to it in paragraph 3.6 of this Schedule 7 (Exit Plan); |
| **Exit Requirements** | has the meaning given to it in paragraph 2.1 of this Schedule 7 (Exit Plan); |
| **Expiry Trigger Date** | has the meaning given to it in paragraph 4.1 of this Schedule 7 (Exit Plan); |
| **Handover Meeting** | has the meaning given to it in paragraph 4.1 of this Schedule 7 (Exit Plan); |
| **Termination Trigger Date** | has the meaning given to it in paragraph 3.2 of this Schedule 7 (Exit Plan). |

1. **Introduction**
   1. In order to ensure business continuity following the expiry or on earlier termination of the Dynamic Purchasing System Agreement, it is necessary for the Parties to agree a framework that delivers the Council's Exit Requirements (as set out in this Schedule 7 (Exit Plan)) and which provides both Parties with a clear indication of the areas for which they will be responsible (the **"Exit Requirements").**
   2. This Schedule 7 (Exit Plan) provides that framework and sets out the principles required to ensure a smooth transfer of responsibilities, services, staff and any other items or information necessary to enable a Replacement Service Provider to operate the replacement services with effect from the date of expiry or earlier termination of all or any part of the Dynamic Purchasing System Agreement for any reason. It also provides confirmation of the Service Provider's commitment to ensuring service quality throughout the Exit Period through to the completion of handover.
   3. This Schedule 7 (Exit Plan) seeks to provide clarification of the nature and extent of the responsibilities that will need to be discharged by the Service Provider and the Council following the date of expiry or earlier termination of the Dynamic Purchasing System Agreement.
2. **Exit Plan**
   1. On the date falling no later than three (3) Months prior to the expiry of the Dynamic Purchasing System Agreement, the Council will notify the Service Provider that the Dynamic Purchasing System Agreement is due to expire the "**Expiry Trigger Date**".
   2. If either Party serves a Termination Notice on the other Party prior to the Expiry Date, the date of such notice shall constitute the "**Termination Trigger Date**".
   3. The Service Provider, if requested by the Council, shall produce and submit to the Council an outline draft exit plan ("**Draft Exit Plan**") for the Council to review, such Draft Exit Plan being based on the matters set out in paragraphs 4 to 6 of this Schedule 7 (Exit Plan) on the date falling no later than:
      1. twenty (20) Business Days after the Expiry Trigger Date; or
      2. with the exception of termination of the Dynamic Purchasing System Agreement for default by the Service Provider five (5) Business Days after the Termination Trigger Date.
   4. The Council shall provide any comments in respect of the Draft Exit Plan to the Service Provider:
      1. in the case of expiry of the Dynamic Purchasing System Agreement, on the date falling no later than ten (10) Business Days of receipt of the Draft Exit Plan from the Service Provider; or
      2. in the case of termination of the Dynamic Purchasing System Agreement, on the date falling no later than five (5) Business Days of receipt of the Draft Exit Plan from the Service Provider.
   5. The Service Provider and the Council shall meet to discuss and seek to agree the contents of the Draft Exit Plan. In the event or a dispute between the Council and the Service Provider in relation to the contents of the Draft Exit Plan, the matter shall be referred to the Dispute Resolution Procedure.
   6. Once the Council and the Service Provider have agreed the contents of the Draft Exit Plan, or it has been determined pursuant to the Dispute Resolution Procedure, then it shall become the exit plan **("Exit Plan").**
   7. Following agreement or determination of the Exit Plan, the Service Provider will appoint an Exit Manager who will be responsible for its implementation in accordance with Good Industry Practice.
   8. The Exit Plan will be signed off by both the Council and the Service Provider.
3. **Handover Meeting**
   1. The Service Provider shall, in accordance with the Specification, provide within the Exit Plan its arrangements for a handover meeting in respect of each Call Off Agreement between the relevant Service User, a Staff member delivering the Services to the relevant Service User and the Replacement Service Provider **("Handover Meeting").**
   2. The Service Provider shall ensure that all information and data concerning the provision of the Services under each and every Call Off Agreement is provided to the relevant Replacement Service Provider as soon as reasonably practicable, and in any case, no later than two (2) Business Days prior to the commencement of the replacement services.
   3. The Service Provider shall ensure that each Service User is kept fully informed and involved with the handover process at all times.

**5 TUPE Assistance**

5.1 The Service Provider will provide the Council with such information relating to all Staff connected with delivery of the Services whose contract of employment may transfer to the Replacement Service Provider as the Council or the Replacement Service Provider may reasonably require pursuant to Clause 17.3 of this Dynamic Purchasing System Agreement.

5.2 The Service Provider will collaborate with and support the Council and the Replacement Service Provider through any statutory or other consultation process as may be required by the Council in relation to all Staff whose contract of employment may transfer to the Replacement Service Provider following the date of expiry or earlier termination as the case may be. The Service Provider shall abide by the terms of Clause 17.3 of this Dynamic Purchasing System Agreement.

**6 Exit Period Assistance**

6.1 The Exit Plan shall include (but not be limited to) the Service Provider:

6.1.1 notifying the Sub-Contractors of procedures to be followed during the Exit Period and providing management to ensure these procedures are followed;

6.1.2 providing assistance and expertise as necessary to identify all material operational and business processes (including all supporting documentation) in place;

6.1.3 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services;

6.1.4 novating or assigning any agreements with Sub-Contractors in place to provide the Services, as may be requested by the Council or the Replacement Service Provider to facilitate the provision of replacement services;

6.1.5 providing access to the Replacement Service Provider and the Council during the Exit Period and for up to twelve (12) months thereafter to:

(a) such information relating to the Services as is in the power, possession or control of the Service Provider or any Service Provider Related Party (and the Service Provider agrees and shall procure that its Service Provider Related Parties do not destroy, erase, delete or dispose of such information within such period); and

(b) such members of the Service Provider's or the Service Provider Related Parties personnel as have been involved in the delivery or management of the Services and who are still employed or engaged by the Service Provider or the appropriate Service Provider Related Party, provided that the Replacement Service Provider or the Council shall pay the reasonable and proven costs of the Service Provider incurred in responding to requests;

6.1.6 explaining the procedures and operations used to provide the Services to the Replacement Service Provider and the Council and providing such information, records and documents required to clarify such explanation; and

6.1.7 answering all reasonable questions from the Council or its Replacement Service Provider regarding the general nature of the Services.

**Schedule 8**

**Call Off Terms**

Signature page between Cornwall Council and the Service Provider.

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| --- | --- |
| Signed by [●] ) for and on behalf of [●] ) |  |

**Signed** by **[●]** )  
for and on behalf of **[●]** )

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