**DATED**

**THE CORNWALL COUNCIL**

**-AND-**

**[PROVIDER]**

**DYNAMIC PURCHASING SYSTEM IN RELATION TO THE PROVISION OF EMERGENCY ACCOMMODATION**

**Prepared by**

**Cornwall Legal Services**

**Cornwall Council**

**File Ref: AO/058418**

**TABLE OF CONTENT**

**A. PRELIMINARIES**

**1. DEFINITIONS AND INTERPRETATION**

**2. DUE DILIGENCE**

**3. PROVIDER'S ADMITTANCE**

**4. SCOPE OF DYNAMIC PURCHASING SYSTEM**

**5. CALL FOR COMPETITION PROCEDURE**

**6. REPRESENTATIONS AND WARRANTIES**

**7. GUARANTEE**

**B. DURATION OF DPS**

**8. DYNAMIC PURCHASING SYSTEM PERIOD**

**C. PERFORMANCE**

**9. OBLIGATIONS**

**10. KEY PERFORMANCE INDICATORS**

**11. STANDARDS**

**12. CONTINUOUS IMPROVEMENT**

**13. CONTRACT PERFORMANCE UNDER DYNAMIC PURCHASING SYSTEM AGREEMENT**

**D. GOVERNANCE**

**14. DYNAMIC PURCHASING SYSTEM AGREEMENT MANAGEMENT**

**15. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA**

**16. CHANGE**

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

**17. SUPPLY CHAIN RIGHTS AND PROTECTION**

**F. INTELLECTUAL PROPERTY AND INFORMATION**

**18. INTELLECTUAL PROPERTY RIGHTS**

**19. INFORMATION AND DATA PROTECTION**

**20. PUBLICITY AND BRANDING**

**21. MARKETING**

**G. LIABILITY AND INSURANCE**

**22. LIABILITY**

**23. INSURANCE**

**H. TERMINATION AND SUSPENSION**

**24. AUTHORITY TERMINATION RIGHTS**

**25. SUSPENSION OF PROVIDER'S APPOINTMENT**

**26. CONSEQUENCES OF EXPIRY OR TERMINATION**

**I. MISCELLANEOUS AND GOVERNING LAW**

**27. COMPLIANCE**

**28. ASSIGNMENT AND NOVATION**

**29. WAIVER AND CUMULATIVE REMEDIES**

**30. RELATIONSHIP OF THE PARTIES**

**31. PREVENTION OF FRAUD AND BRIBERY**

**32. CONFLICTS OF INTEREST**

**33. SEVERANCE**

**34. FURTHER ASSURANCES**

**35. ENTIRE AGREEMENT**

**36. THIRD PARTY RIGHTS**

**37. NOTICES**

**38. COMPLAINTS HANDLING**

**39. DISPUTE RESOLUTION**

**40. LIVING WAGE FOUNDATION**

**41. GOVERNING LAW AND JURISDICTION**

**SCHEDULE 1: DEFINITIONS**

**SCHEDULE 2: SERVICES AND KEY PERFORMANCE INDICATORS**

**SCHEDULE 3: CHARGES**

**SCHEDULE 4: CONTRACT DOCUMENTS**

**ANNEX 1: TEMPLATE CONTRACT ORDER FORM**

**ANNEX 2: TEMPLATE CONTRACT CALL OFF TERMS**

**SCHEDULE 5: CALL FOR COMPETITION PROCEDURE**

**SCHEDULE 6: AWARD CRITERIA**

**SCHEDULE 7: DPS MANAGEMENT**

**SCHEDULE 8: MANAGEMENT INFORMATION**

**SCHEDULE 9: INSURANCE REQUIREMENTS**

**ANNEX 1: REQUIRED INSURANCES**

**SCHEDULE 10: DISPUTE RESOLUTION PROCEDURE**

**SCHEDULE 11: COMMERCIALLY SENSITIVE INFORMATION**

This Agreement is made

**BETWEEN:**

(1) **THE CORNWALL COUNCIL** of County Hall, Treyew Road, Truro, Cornwall, TR1 3AY (the "**Authority**"); and

(2) [ ] a company incorporated in England and wales with company number [ ], and whose registered office is situated at [ ] (the "**Provider**").

Each a Party and together the Parties.

**BACKGROUND:**

[A] The Authority placed a contract notice ***[Insert the OJEU reference number]*** on [date to be inserted] (the **"OJEU Notice"**) in the Official Journal of the European Union inviting providers of [ ] for the provision of Services to the Authority.

[B] The Provider made a request to participate by submitting its response to the Authority’s selection questionnaire (**“SQ”**) in response to the OJEU Notice (the **"SQ Response"**).

[C] Through the SQ Response, the Provider represented to the Authority that it is capable of providing Services and, in particular, the Provider made representations to the Authority in the SQ Response in relation to suitability, economic and financial standing and technical and professional ability.

[D] On the basis of the Provider’s responses in the SQ Response, the Provider was admitted to the Dynamic Purchasing System Agreement to provide the Services to the Authority from time to time on a competition basis in accordance with this Dynamic Purchasing System Agreement.

[E] This Dynamic Purchasing System Agreement sets out the award and calling-off ordering procedure for procuring the Services which may be required by the Authority, the template terms and conditions for any Contract which the Authority may enter into and the obligations of the Provider during and after the Dynamic Purchasing System Period.

[F] It is the Parties' intention that there will be no obligation on the Authority to award any Contracts under this Dynamic Purchasing System Agreement during the Dynamic Purchasing System Period.

**A. PRELIMINARIES**

**1. DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

1.1.1 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.

1.1.2 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.

1.2 **Interpretation**

1.2.1 In this Dynamic Purchasing System Agreement, unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

(b) reference to a gender includes the other gender and the neuter;

(c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;

(d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

(e) 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";

(f) 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;

(g) 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;

(h) 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;

(i) any reference to this Dynamic Purchasing System Agreement includes DPS Schedule 1 (Definitions) and the DPS Schedules; and

(j) 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.

1.2.2 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:

(a) the Clauses and DPS Schedule 1 (Definitions); and

(b) DPS Schedules 2 to 20 and 22 inclusive.

1.2.3 If there is any conflict between the provisions of this Dynamic Purchasing System Agreement and provisions of any Contract, the provisions of this Dynamic Purchasing System Agreement shall prevail over those of the Contract save that any refinement to the Template Contract Order Form, Template Contract Terms and Template Rental Terms permitted for the purposes of a Contract under Clause 4 and DPS Schedule 5 (Call for Competition Procedure) shall prevail over DPS Schedule 4 (Template Contract Order Form and Template Contract Terms).

**2. DUE DILIGENCE**

2.1 The Provider acknowledges that:

2.1.1 the Authority has delivered or made available to the Provider all of the information and documents that the Provider considers necessary or relevant for the performance or its obligations under this Dynamic Purchasing System Agreement;

2.1.2 it has made its own enquiries to satisfy itself as to the accuracy of the Due Diligence Information;

2.1.3 it has raised all relevant due diligence questions with the Authority before the DPS Commencement Date, has undertaken all necessary due diligence and has entered into this Dynamic Purchasing System Agreement in reliance on its own due diligence alone;

2.1.4 it shall not be excused from the performance of any of its obligations under this Dynamic Purchasing System Agreement on the grounds of, nor shall the Provider be entitled to recover any additional costs or charges, arising as a result of any:

(a) misrepresentation of the requirements of the Provider in the SQ or elsewhere;

(b) failure by the Provider to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or

(c) failure by the Provider to undertake its own due diligence.

**3. PROVIDER'S ADMITTANCE**

3.1 The Authority hereby admits the Provider to the Dynamic Purchasing System as a potential provider of the Services and the Provider shall be eligible to be considered for the award of Contracts by the Authority during the Dynamic Purchasing System Period.

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

**4. SCOPE OF DYNAMIC PURCHASING SYSTEM AGREEMENT**

4.1 Without prejudice to Clause 36 (Third Party Rights), this Dynamic Purchasing System Agreement governs the relationship between the Authority and the Provider in respect of the provision of the Services by the Provider.

4.2 The Provider acknowledges and agrees that:

4.2.1 there is no obligation whatsoever on the Authority to invite or select the Provider to provide the Services under this Dynamic Purchasing System Agreement; and

4.2.2 in entering into this Dynamic Purchasing System Agreement no form of exclusivity has been conferred on the Provider nor volume or value guarantee granted by the Authority in relation to the provision of the Services by the Provider and that the Authority is at all times entitled to enter into other contracts and agreements with other Providers for the provision of any services which are the same as or similar to the Services.

**5. CALL FOR COMPETITION PROCEDURE**

5.1 If the Authority 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 Dynamic Purchasing System Period to award Contracts for the Services from the Provider by following DPS Schedule 5 (Call for Competition Procedure).

5.2 The Provider shall comply with the relevant provisions in DPS Schedule 5 (Call for Competition Procedure).

**6. REPRESENTATIONS AND WARRANTIES**

6.1 Each Party represents and warrants that:

6.1.1 it has full capacity and authority to enter into, and to perform its obligations under, this Dynamic Purchasing System Agreement;

6.1.2 this Dynamic Purchasing System Agreement is executed by its duly authorised representative;

6.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or, to its knowledge, threatened against it (or, in the case of the Provider, any of its Affiliates) that might affect its ability to perform its obligations under this Dynamic Purchasing System Agreement; and

6.1.4 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).

6.2 The Provider represents and warrants that:

6.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

6.2.2 it has obtained and will maintain all licences, authorisations, permits, necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into and perform its obligations under this Dynamic Purchasing System Agreement;

6.2.3 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 Authority before the DPS Commencement Date;

6.2.4 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;

6.2.5 as at the DPS Commencement Date, all written statements and representations in any written submissions made by the Provider as part of the procurement process, its SQ 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;

6.2.6 it has and shall continue to have all necessary Intellectual Property Rights including in and to any materials made available by the Provider (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Provider’s obligations under this Dynamic Purchasing System Agreement;

6.2.7 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Dynamic Purchasing System Agreement;

6.2.8 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider’s assets or revenue;

6.2.9 for the duration of this Dynamic Purchasing System Agreement and any Contracts and for a period of twelve (12) Months after the termination or expiry of this Dynamic Purchasing System Agreement or, if later, any Contracts, the Provider shall not employ or offer employment to any staff of the Authority who has been associated with the procurement and/or provision of the Services without Approval or the prior written consent of the Authority which shall not be unreasonably withheld; and

6.2.10 in performing its obligations under this Dynamic Purchasing System Agreement and any Contract, the Provider shall not (to the extent possible in the circumstances) discriminate between Contracting Authorities on the basis of their respective sizes.

6.3 Each of the representations and warranties set out in Clauses 6.1 and 6.2 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.

6.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 6.1 and 6.2 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.

6.5 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 Authority may have in respect of the breach of that provision by the Provider which constitutes a material Default of this Dynamic Purchasing System Agreement.

6.6 Each time that a Contract is entered into, the warranties and representations in Clauses 6.1 and 6.2 shall be deemed to be repeated by the Provider with reference to the circumstances existing at the time.

**7. GUARANTEE**

7.1 Where the Authority has notified the Provider that their admittance to this DPS is conditional upon receipt of a valid DPS Guarantee, then on or prior to their admittance to this DPS, as a condition for admittance to this DPS, the Provider must have delivered to the Authority:

7.1.1 an executed DPS Guarantee from a DPS Guarantor; and

7.1.2 a certified copy extract of the board minutes and/or resolution of the DPS Guarantor approving the execution of the DPS Guarantee.

**B. DURATION**

**8. DYNAMIC PURCHASING SYSTEM PERIOD**

8.1 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, either;

8.1.1 at the end of the Initial DPS Period; or

8.1.2 where the Authority elects to extend the Initial DPS Period in accordance with Clause 8.2 below;

8.2 The Authority may extend the duration of this Dynamic Purchasing System Agreement for any period or periods up to a maximum of 2 (two) years in total from the expiry of the Initial Dynamic Purchasing System Period by giving the Provider no less than three (3) Months' written notice.

8.3 The Authority acknowledges that the DPS will not be terminated within the initial first six (6) months from the DPS commencement date.

**C. PERFORMANCE**

**9. OBLIGATIONS**

9.1 The Provider shall perform its obligations under this Dynamic Purchasing System Agreement in accordance with:

9.1.1 the requirements of this Dynamic Purchasing System Agreement, including DPS Schedule 7 (DPS Management);

9.1.2 the terms and conditions of the respective Contracts;

9.1.3 Good Industry Practice;

9.1.4 all applicable Standards; and

9.1.5 in compliance with all applicable Law.

9.2 The Provider shall bring to the attention of the Authority any conflict between any of the requirements of Clause 9.1 and shall comply with the Authority's decision on the resolution of any such conflict.

**10. KEY PERFORMANCE INDICATORS**

10.1 The Provider shall at all times during the Dynamic Purchasing System Period comply with the Key Performance Indicators and achieve the KPI Targets set out in Part B of DPS Schedule 2 (Services and Key Performance Indicators).

**11. STANDARDS**

11.1 The Provider shall comply with the Standards at all times during the performance by the Provider of the Dynamic Purchasing System Agreement and any Contract, including any Standards set out in Part A of DPS Schedule 2 (Services and Key Performance Indicators).

11.2 Throughout the Dynamic Purchasing System Period, the Parties shall notify each other of any new or emergent standards which could affect the Provider’s provision of the Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with clause 16.

11.3 Where a new or emergent standard is to be developed or introduced by the Authority, the Provider shall be responsible for ensuring that the potential impact on the Provider’s provision of the Services is explained to the Authority (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.

11.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the DPS Commencement Date, then the later Standard or best practice shall be adopted by the Provider. Any such alteration to any Standard(s) shall require Approval and shall be implemented within an agreed timescale.

11.5 Where a standard, policy or document is referred to in DPS Schedule 2 (Services and Key Performance Indicators) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Provider shall notify the Authority and the Parties shall agree the impact of such change.

**12. CONTINUOUS IMPROVEMENT**

12.1 The Provider shall at all times during the Dynamic Purchasing System period comply with its obligations to continually improve the Services and the manner in which it provides the Services.

**13. CONTRACT PERFORMANCE UNDER DYNAMIC PURCHASING SYSTEM AGREEMENT**

13.1 The Provider shall perform all its obligations under all Contracts:

13.1.1 in accordance with the requirements of this Dynamic Purchasing System Agreement;

13.1.2 in accordance with the terms and conditions of the respective Contracts.

13.2 The Provider shall draw any conflict in the application of any of the requirements of Clauses 13.1.1 and 13.1.2 to the attention of the Authority and shall comply with the Authority's decision on the resolution of any such conflict.

**D. GOVERNANCE**

**14. DYNAMIC PURCHASING SYSTEM AGREEMENT MANAGEMENT**

14.1 The Parties shall manage this Dynamic Purchasing System Agreement in accordance with DPS Schedule 7 (DPS Management).

**15. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA**

15.1 The Provider shall keep and maintain, until the later of:

15.1.1 seven (7) years after the date of termination or expiry of this Dynamic Purchasing System Agreement; or

15.1.2 seven (7) years after the date of termination or expiry of the last Contract to expire or terminate; or

15.1.3 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.

15.2 The Provider shall keep the records and accounts referred to in Clause 15.1 in accordance with Good Industry Practice and Law.

15.3 The Provider shall afford any Auditor access to the records and accounts referred to in this Clause 15, 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 Provider of it’s obligations under this Dynamic Purchasing System Agreement, including in order to:

15.3.1 verify the accuracy of the Charges and any other amounts payable by the Authority under a Contract;

15.3.2 verify the costs of the Provider in connection with the provision of the Services;

15.3.3 verify the Open Book Data;

15.3.4 verify the Provider’s and each Sub-Contractor’s compliance with the applicable Law;

15.3.5 identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Provider of the purpose or objective of its investigations;

15.3.6 identify or investigate any circumstances which may impact upon the financial stability of the Provider the DPS Guarantor, Contract Guarantor and/or any Sub-Contractors or their ability to perform the Services;

15.3.7 obtain such information as is necessary to fulfil the Authority’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;

15.3.8 review any books of account and the internal contract management accounts kept by the Provider in connection with this Dynamic Purchasing System Agreement;

15.3.9 carry out the Authority’s internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;

15.3.10 enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

15.3.11 verify the accuracy and completeness of any Management Information delivered or required by this Dynamic Purchasing System Agreement;

15.3.12 review any MI Reports and/or other records relating to the Provider’s performance of the Services and to verify that these reflect the Provider’s own internal reports and records;

15.3.13 review the integrity, confidentiality and security of the Authority Personal Data; and/or

15.3.14 received from the Provider on request summaries of all central government public sector expenditure placed with the Provider including through routes outside the DPS in order to verify that the Provider’s practice is consistent with the Government’s transparency agenda which requires all public sector bodies to publish details of expenditure on common goods and services.

15.4 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Services pursuant to the Contracts, save insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of the Authority.

15.5 Subject to the Authority's obligations of confidentiality, the Provider shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:

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

15.5.2 reasonable access to any sites controlled by the Provider and to equipment used in the provision of the Services; and

15.5.3 access to the Provider Personnel.

**16. CHANGE**

16.1 **Variation Procedure**

16.1.1 Subject to the provisions of this Clause 16 the Authority may, at its own instance or where in its sole and absolute discretion it decides to having been requested to do so by the Provider, request a variation to this Dynamic Purchasing System Agreement provided always 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**".

16.1.2 The Authority may request a Variation by completing, signing and sending the Variation Form in a form and manner as may be determined by the Authority,(Variation Form) to the Provider giving sufficient information for the Provider to assess the extent of the proposed Variation and any additional cost that may be incurred.

16.1.3 The Provider shall respond to the Authority’s request pursuant to Clause 16.1.2 within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the proposed Variation.

16.1.4 In the event that the Provider is unable to agree to or provide the Variation the Authority may:

(a) agree to continue to perform its obligations under this Dynamic Purchasing System Agreement without the Variation; or

(b) terminate this Dynamic Purchasing System Agreement with immediate effect.

16.2 **Legislative Change**

16.2.1 The Provider shall not be relieved of its obligations under this Dynamic Purchasing System Agreement as the result of:

(a) a General Change in Law; or

(b) 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.

16.2.2 If a Specific Change in Law occurs or will occur during the DPS Period (other than as referred to in Clause (b)), the Provider shall notify the Authority as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the Services of this Dynamic Purchasing System Agreement.

16.2.3 Any relief from the Provider's obligations resulting from a Specific Change in Law (other than as referred to in Clause (b) shall be implemented in accordance with Clause 16.1(Variation Procedure).

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

**17. SUPPLY CHAIN RIGHTS AND PROTECTION**

17.1 **Appointment of Sub-Contractors**

17.1.1 Where during the Dynamic Purchasing System Period the Provider wishes to enter into a Sub-Contract, it must obtain the prior written consent of the Authority and shall at the time of requesting such consent, provide the Authority with the information detailed in Clause 17.1.2. The decision of the Authority to consent or not will not be unreasonably withheld or delayed. The Authority may reasonably withhold their consent to the appointment of a Sub-Contractor if it considers that:

(a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to its interests;

(b) the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or

(c) the proposed Sub-Contractor employs unfit persons.

17.1.2 The Provider shall provide the Authority with the following information in respect of the proposed Sub-Contractor:

(a) the proposed Sub-Contractor’s name, registered office and company registration number;

(b) the scope/description of the Services to be provided by the proposed Sub-Contractor;

(c) where the proposed Sub-Contractor is an Affiliate of the Provider, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-Contract has been agreed on "arm’s-length" terms;

17.1.3 If requested by the Authority, within ten (10) Working Days of receipt of the information provided by the Provider pursuant to Clause 17.1.2, the Provider shall also provide:

(a) a copy of the proposed Sub-Contract; and

(b) any further information reasonably requested by the Authority.

17.1.4 The Provider shall ensure that each Sub-Contract shall include:

(a) provisions which will enable the Provider to discharge its obligations under this Dynamic Purchasing System Agreement;

(b) a right under CRTPA for the Authority to enforce any provisions under the Sub-Contract which confer a benefit upon the Authority;

(c) a provision enabling the Authority to enforce the Sub-Contract as if it were the Provider;

(d) a provision enabling the Provider to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Authority;

(e) obligations no less onerous on the Sub-Contractor than those imposed on the Provider under this Dynamic Purchasing System Agreement in respect of:

(i) the data protection requirements set out in Clause 19.4 (Protection of Personal Data);

(ii) the FOIA requirements set out in Clause 19.3 (Transparency and Freedom of Information);

(iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 20 (Publicity and Branding);

(iv) the keeping of records in respect of the goods and/or services being provided under the Sub-Contract, including the maintenance of Open Book Data; and

(v) the conduct of audits set out in Clause 15 (Records, Audit Access and Open Book Data);

(vi) provisions enabling the Provider to terminate the Sub-Contract on notice on terms no more onerous on the Provider than those imposed on the Authority under Clauses 24 (Authority Termination Rights) and 26 (Consequences of Expiry or Termination) of this Dynamic Purchasing System Agreement;

(vii) a provision restricting the ability of the Sub-Contractor to Sub-Contract all or any part of the provision of the Goods and/or Services provided to the Provider under the Sub-Contract without first seeking the written consent of the Authority;

17.2 **Supply Chain Protection**

17.2.1 The Provider shall ensure that all Sub-Contracts contain a provision:

(a) requiring the Provider to pay any undisputed sums which are due from the Provider to the Sub-Contractor within a specified period not exceeding thirty (22) days from the receipt of a valid invoice;

(b) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the 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;

(c) conferring a right to the Authority to publish the Provider’s compliance with its obligation to pay undisputed invoices within the specified payment period.

(d) giving the Provider a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and

(e) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 17.2.1.

17.2.2 The Provider shall pay any undisputed sums which are due from the Provider to a Sub-Contractor within thirty (22) days from the receipt of a valid invoice.

17.2.3 Any invoices submitted by a Sub-Contractor to the Provider shall be considered and verified by the Provider in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Provider failing to regard an invoice as valid and undisputed.

17.2.4 Notwithstanding any provision of Clauses 19.2 (Confidentiality) and 20 (Publicity and Branding) if the Provider notifies the Authority that the Provider has failed to pay an undisputed Sub-Contractor’s invoice within thirty (22) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).

17.3 **Termination of Sub-Contracts**

17.3.1 The Authority may require the Provider to terminate a Sub-Contract where:

(a the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in Clause 24 (Authority Termination Rights) except Clause 24.7 (Termination Without Cause); and/or

(b) the relevant Sub-Contractor or its Affiliates embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor’s obligations in relation to the Services or otherwise; and/or

(c) there is a Change of Control of the relevant Sub-Contractor, unless:

(i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or

(ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

17.3.2 Where the Authority requires the Provider to terminate a Sub-Contract or a Sub-Contract pursuant to Clause 17.3.1 above, the Provider shall remain responsible for fulfilling all its obligations under this Dynamic Purchasing System Agreement including the provision of the Services.

17.4 **Competitive Terms**

17.4.1 If the Authority is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Provider or the Provider Personnel in the provision of Services, then the Authority may:

(a) require the Provider to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or

(b) subject to Clause 17.3 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

17.5 **Retention of Legal Obligations**

17.5.1 Notwithstanding the Provider's right to sub-contract pursuant to this Clause 17, the 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**

**18. INTELLECTUAL PROPERTY RIGHTS**

18.1 **Allocation of title to IPR**

18.1.1 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.

18.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 18.1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

18.1.3 Subject to Clause 18.1.4, neither Party shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.

18.1.4 Subject to full compliance with the branding guidance, the Provider shall be entitled to use the Authority’s logo exclusively in connection with the provision of the Services during the Dynamic Purchasing System Period and for no other purpose.

18.2 **IPR Indemnity**

18.2.1 The Provider shall ensure and procure that the availability, and provision Services and the performance of the Provider's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.

18.2.2 The Provider shall, during and after the Dynamic Purchasing System Period, on written demand, indemnify the Authority against all Losses incurred by, awarded against, or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

**19. INFORMATION AND DATA PROTECTION**

19.1 **Provision of Management Information**

19.1.1 The Provider shall, at no charge to the Authority, submit to the Authority complete and accurate Management Information in accordance with the provisions of DPS Schedule 8 (Management Information).

19.1.2 The Provider grants the Authority a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted), any Management Information supplied to the Authority for the Authority's normal operational activities including but not limited to administering this Dynamic Purchasing System Agreement and/or all Contracts, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.

19.1.3 The Authority shall in its absolute and sole discretion determine whether any Management Information is exempt from disclosure in accordance with the provisions of the FOIA.

19.1.4 The Authority may consult with the Provider to help with its decision regarding any exemptions under Clause 19.1.3 but, for the purpose of this Dynamic Purchasing System Agreement, the Authority shall have the final decision in its absolute and sole discretion.

19.2 **Confidentiality**

19.2.1 For the purposes of this Clause 19.2, 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.

19.2.2 Except to the extent set out in this Clause 19.2 or where disclosure is expressly permitted elsewhere in this Dynamic Purchasing System Agreement, the Recipient shall:

(a) 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

(b) 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;

(c) 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

(d) 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.

19.2.3 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 19.3 (Transparency and 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:

(c) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Dynamic Purchasing System Agreement;

(d) the examination and certification of the Authority'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 Authority is making use of its resources; or

(e) the conduct of a Central Government Body review in respect of this Dynamic Purchasing System Agreement; or

(f) 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;

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

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

(i) 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

(j) the information is independently developed without access to the Disclosing Party's Confidential Information.

19.2.4 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.

19.2.5 Subject to Clauses 19.2.2 and 19.2.3, the Provider may only disclose the Confidential Information of the Authority on a confidential basis to:

(a) Provider Personnel who are directly involved in the provision of the Goods and/or Services and need to know the Confidential Information to enable the performance of the Provider’s obligations under this Dynamic Purchasing System Agreement; and

(b) its professional advisers for the purposes of obtaining advice in relation to this Dynamic Purchasing System Agreement.

19.2.6 Where the Provider discloses the Confidential Information of the Authority pursuant to Clause 19.2.5, 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.

19.2.7 The Authority may disclose the Confidential Information of the Provider:

(a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies ;

(b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;

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

(d) on a confidential basis to a professional adviser, consultant, Provider or other person engaged by any of the entities described in Clause 1)a)i)(1)(a)(i)1.a(a) (including any benchmarking organisation) for any purpose relating to or connected with this Dynamic Purchasing System Agreement;

(e) on a confidential basis for the purpose of the exercise of its rights under this Dynamic Purchasing System Agreement; or

(f) to a proposed transferee, assignee or novatee of, or successor in title to the Authority,

(g) and 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 Authority under this Clause 19.2.7.

19.2.8 For the avoidance of doubt, the Confidential Information that the Authority may disclose under Clause 19.2.7 shall include information relating to Contracts, including service levels, pricing information (which includes information on prices tendered in a Call for Competition Procedure, even where such a Call for Competition Procedure does not result in the award of a Contract) and the terms of any Contract may be shared with any Central Government Body from time to time.

19.2.9 Nothing in this Clause 19.2 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.

19.2.10 In the event that the Provider fails to comply with Clauses 19.2.2 to 19.2.5, the Authority reserves the right to terminate this Dynamic Purchasing System Agreement for material Default.

19.3 **Transparency and Freedom of Information**

19.3.1 The Parties acknowledge that

(a) the transparency reports; and

(b) the content of this Dynamic Purchasing System Agreement, including any changes to this Dynamic Purchasing System Agreement agreed from time to time, except for –

(i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority;

(together the “Transparency Information”) are not Confidential Information.

19.3.2 Notwithstanding any other provision of this Dynamic Purchasing System Agreement, the Provider hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

19.3.3 The Provider shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports.

19.3.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Provider.

19.3.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Dynamic Purchasing System Agreement is being performed, having regard to the context of the wider commercial relationship with the Provider.

19.3.6 The Provider agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause (c)) and Open Book Data) publish such Information. The Provider shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

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

(a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;

(b) transfer to the Authority all Requests for Information relating to this Dynamic Purchasing System Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

(c) provide the Authority with a copy of all Information held on behalf of the Authority requested in the Request for Information which is in the Provider’s possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

(d) not respond directly to a Request for Information addressed to the Authority unless authorised in writing to do so by the Authority.

19.3.8 The Provider acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Provider. The Authority shall take reasonable steps to notify the Provider of a Request for Information (in accordance with the Secretary of State’s Section 36 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Dynamic Purchasing System Agreement) for the purpose of this Dynamic Purchasing System Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

19.4 **Protection of Personal Data**

19.4.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Provider is the Processor. The only processing that the Provider is authorised to do shall be those approved by the Authority and may not be determined by the Provider.

19.4.2 The Provider shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

19.4.3 The Provider shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

(a) a systematic description of the envisaged processing operations and the purpose of the processing;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

19.4.4. The Provider shall, in relation to any Personal Data processed in connection with its obligations under this DPS Agreement:

(a) process that Personal Data only in accordance with the requirements of the Authority, unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:

(i) nature of the data to be protected;

(ii) harm that might result from a Data Loss Event;

(iii) state of technological development; and

(iv) cost of implementing any measures;

(c) ensure that :

(i) the Provider Personnel do not process Personal Data except in accordance with this DPS Agreement;

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Provider’s duties under this Clause;

(B) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;

(C) 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 Authority or as otherwise permitted by this DPS Agreement; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data;

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

(i) the Authority or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 37 or LED Article 28) as determined by the Authority;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

(iv) the Provider complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

(e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the DPS Agreement unless the Provider is required by Law to retain the Personal Data.

19.4.5 Subject to Clause 19.4.7, the Provider shall notify the Authority immediately if it:

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

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

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this DPS Agreement;

(e) 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

(f) becomes aware of a Data Loss Event.

19.4.6 The Provider’s obligation to notify under Clause 19.4.5 shall include the provision of further information to the Authority in phases, as details become available.

19.4.7 Taking into account the nature of the processing, the Provider shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 19.4.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

(a) the Authority with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

(c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the Authority following any Data Loss Event;

(e) assistance as requested by the Authority with respect to any request from the Information Commissioner’s Office, or any consultation by the Authority with the Information Commissioner's Office.

19.4.8 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:

(a) the Authority determines that the processing is not occasional;

(b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

(c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

19.4.9 The Provider shall allow for audits of its Data Processing activity by the Authority or the Authority’s designated auditor.

19.4.10 The Provider shall designate a Data Protection Officer if required by the Data Protection Legislation.

19.4.11 Before allowing any Sub-processor to process any Personal Data related to this DPS Agreement, the Provider must:

(a) notify the Authority in writing of the intended Sub-processor and processing;

(b) obtain the written consent of the Authority;

(c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 19.4.11 such that they apply to the Sub-processor; and

(d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

19.4.12. The Provider shall remain fully liable for all acts or omissions of any Sub-processor.

19.4.13 The Provider may, at any time on not less than 22 Working Days’ notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this DPS Agreement).

19.4.14 The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Authority may on not less than 22 Working Days’ notice to the Provider amend this DPS Agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

**20. PUBLICITY AND BRANDING**

20.1 Subject to Clause 21 (Marketing), the Provider shall not:

20.1.1 make any press announcements or publicise this Dynamic Purchasing System Agreement in any way; or

20.1.2 use the Authority's name or brand in any promotion or marketing or announcement of Orders, without Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed).

20.2 Each Party acknowledges to the other that nothing in this Dynamic Purchasing System Agreement either expressly or by implication constitutes an approval and/or endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval and/or endorsement.

20.3 The Authority shall be entitled to publicise this Dynamic Purchasing System Agreement in accordance with any legal obligation upon the Authority, including any examination of this Dynamic Purchasing System Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

**21. MARKETING**

21.1 The Provider shall obtain the Authority's Approval prior to publishing any content in relation to this Dynamic Purchasing System Agreement using any media, including on any electronic medium, and the Provider will ensure that such content is regularly maintained and updated. In the event that the Provider fails to maintain or update the content, the Authority may give the Provider notice to rectify the failure and if the failure is not rectified to the reasonable satisfaction of the Authority within one (1) Month of receipt of such notice, the Authority shall have the right to remove such content itself or require that the Provider immediately arranges the removal of such content.

**G. LIABILITY AND INSURANCE**

**22. LIABILITY**

22.1 Neither Party excludes or limits its liability for:

22.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);

22.1.2 bribery or Fraud by it or its employees; or

22.1.3 any liability to the extent it cannot be excluded or limited by Law.

22.2 The Provider does not exclude or limit its liability in respect of the indemnity in Clause 18.2 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.

22.3 Subject to Clauses 22.1 and 22.2, each Party's total aggregate liability in respect of all Losses incurred under or in connection with this Dynamic Purchasing System Agreement as a result of Defaults or Authority Cause (as the case may be) shall in no event exceed:

22.3.1 in relation to any Default or Authority Cause (as the case may be) occurring from the DPS Commencement Date to the end of the first Contract Year, the sum equal to one hundred thousand pounds (£100,000);

22.3.2 in relation to any Default or Authority Cause (as the case may be) occurring in each subsequent Contract Year following the end of the first Contract Year, that commences during the remainder of the Dynamic Purchasing System Period, the sum equal to one hundred thousand pounds (£100,000); and

22.3.3 in relation to any Default or Authority Cause occurring in each Contract Year that commences after the end of the Dynamic Purchasing System Period, the sum equal to one hundred thousand pounds (£100,000) in such contract year.

22.4 Subject to Clause 22.1, neither Party shall be liable to the other Party for any:

22.4.1 indirect, special or consequential Loss;

22.4.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

22.5 Subject to Clause 22.3, and notwithstanding Clause 22.4, the Provider acknowledges that the Authority may, amongst other things, recover from the Provider the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Provider:

22.5.1 any operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

22.5.2 any wasted expenditure or charges;

22.5.3 the additional cost of procuring Replacement Services for the remainder of the Dynamic Purchasing System Period, which shall include any incremental costs associated with such Replacement Goods and/or Services above those which would have been payable under this Dynamic Purchasing System Agreement;

22.5.4 any compensation or interest paid to a third party by the Authority;

22.5.6 any fine, penalty or costs incurred by the Authority pursuant to Law.

22.6 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.

**23. INSURANCE**

23.1 The Provider shall effect and maintain insurances in relation to the performance of its obligations under this Dynamic Purchasing System Agreement and any Contract, and shall procure that Subcontractors shall effect and maintain insurances in relation to the performance of their obligations under any Sub-Contract, in accordance with Schedule 9 (Insurance Requirements).

23.2 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities arising under this Dynamic Purchasing System Agreement or any Contracts.

**H. TERMINATION AND SUSPENSION**

**24. AUTHORITY TERMINATION RIGHTS**

24.1 **Termination on Material Default**

24.1.1 The Authority may terminate this Dynamic Purchasing System Agreement for material Default by issuing a Termination Notice to the Provider where:

(a) the Provider fails to accept a Contract pursuant to paragraph 6.2 of DPS Schedule 5 (Call for Competition Procedure);

(b) the Authority conducts an assessment and concludes that the Provider has not demonstrated that it meets the Minimum Standards ;

(c) the Provider refuses or fails to comply with its obligations as set out in clause 12;

24.2 **Termination in Relation to Financial Standing**

24.2.1 The Authority may terminate this Dynamic Purchasing System Agreement by issuing a Termination Notice to the Provider where in the reasonable opinion of the Authority there is a material detrimental change in the financial standing and/or the credit rating of the Provider which:

(a) adversely impacts on the Provider's ability to supply the Goods and/or Services under this Dynamic Purchasing System Agreement; or

(b) could reasonably be expected to have an adverse impact on the Providers ability to supply the Services under this Dynamic Purchasing System Agreement;

24.3 **Termination on Insolvency**

24.3.1 The Authority may terminate this Dynamic Purchasing System Agreement by issuing a Termination Notice to the Provider where an Insolvency Event affecting the Provider occurs.

24.4 **Termination on Change of Control**

24.4.1 The Provider shall notify the Authority immediately in writing and as soon as the 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.

24.4.2 The Provider shall ensure that any notification made pursuant to Clause 24.4.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

24.4.3 The Authority may terminate this Dynamic Purchasing System Agreement under Clause 24.4 by issuing a Termination Notice to the Provider within six (6) Months of:

(a) being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or

(b) where no notification has been made, the date that the Authority becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

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

24.5 **Termination for breach of Regulations**

24.5.1 The Authority may terminate this Dynamic Purchasing System Agreement by issuing a Termination Notice to the Provider on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).

24.6 **Termination Without Cause**

24.6.1 The Authority shall have the right to terminate this Dynamic Purchasing System Agreement with effect from at any time following six (6) Months after the DPS Commencement Date by giving at least three (3) Months' written notice to the Provider.

24.7 **Partial Termination**

24.7.1 Where the Authority has the right to terminate this Dynamic Purchasing System Agreement, the Authority is entitled to terminate all or part of this Dynamic Purchasing System Agreement pursuant to this Clause 24.7 provided always that, if the Authority elects to terminate this Dynamic Purchasing System Agreement in part, the parts of this Dynamic Purchasing System Agreement not terminated or suspended can, in the Authority’s reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Dynamic Purchasing System Agreement.

24.7.2 The Parties shall endeavour to agree the effect of any Variation necessitated by a partial termination in accordance with Clause 16.1 (Variation Procedure) including the effect that the partial termination may have on the on the provision of any other Services and the Provider shall not be entitled to reject the Variation.

**25. SUSPENSION OF PROVIDER'S APPOINTMENT**

25.1 If the Authority is entitled to terminate this Dynamic Purchasing System Agreement pursuant to Clause 24 (Authority Termination Rights), the Authority may instead elect in its sole discretion to suspend the Provider's ability to accept Orders under this Dynamic Purchasing System Agreement by giving notice in writing to the Provider, and the Provider agrees that it shall not be entitled to enter into any new Contract during the period specified in the Authority’s notice.

25.2 Any suspension under Clause 25.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.

25.3 The Parties acknowledge that suspension shall not affect the Provider's obligation to perform any existing Contracts concluded prior to the suspension notice.

25.4 If the Authority provides notice to the Provider in accordance with this Clause 25.1, the 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 Provider by the Authority in writing from time to time.

25.5 For the avoidance of doubt, no period of suspension under this Clause 25 shall result in an extension of the Dynamic Purchasing System Period.

**26. CONSEQUENCES OF EXPIRY OR TERMINATION**

26.1 Notwithstanding the service of a notice to terminate this Dynamic Purchasing System Agreement, the 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 26.

26.2 Termination or expiry of this Dynamic Purchasing System Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with the provisions of the Contract.

26.3 If the Authority terminates this Dynamic Purchasing System Agreement under Clause 24.1 (Termination on Material Default) and then makes other arrangements for the supply of Services, the Provider shall indemnify the Authority in full upon demand for the cost of procuring, implementing and operating any alternative or replacement services to the Services and no further payments shall be payable by the Authority until the Authority has established and recovered from the Provider the full amount of such cost.

26.4 Within ten (10) Working Days of the date of termination or expiry of this Dynamic Purchasing System Agreement, the Provider shall return to the Authority any and all of the Authority’s Confidential Information in the Provider's possession, power or control, either in its then current format or in a format nominated by the Authority, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information 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 Authority and is reasonably necessary for such compliance).

26.5 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.

26.6 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:

26.6.1 Clauses 1 (Definitions and Interpretation), 6 (Representations and Warranties), 9 (Dynamic Purchasing System Agreement Performance), 15 (Records, Audit Access and Open Book Data), 18 (Intellectual Property Rights), 19.1 (Provision of Management Information), 19.2 (Confidentiality), 19.3 (Transparency), 27.3 (Transparency and Freedom of Information), 19.4 (Protection of Personal Data), 22 (Liability), 23 (Insurance), 26 (Consequences of Expiry or Termination), 27 (Compliance), 29 (Waiver and Cumulative Remedies), 31 (Prevention of Fraud and Bribery), 33 (Severance), 35 (Entire Agreement), 36 (Third Party Rights), 37 (Notices), 38 (Complaints Handling), 39 (Dispute Resolution) and 40 (Governing Law and Jurisdiction); and

26.6.2 DPS Schedules 2 (Services and Key Performance Indicators), 7 (DPS Management), 8 (Management Information), 9 (Insurance Requirements).

**I. MISCELLANEOUS AND GOVERNING LAW**

**27. COMPLIANCE**

27.1 **Compliance with Law**

27.1.1 The Provider shall comply with all applicable Law in connection with the performance of this Dynamic Purchasing System Agreement.

27.1.2 In the event that the Provider or the Provider Personnel fails to comply with Clause 27.1.1, this shall be deemed to be a material Default and the Authority reserves the right to terminate this Dynamic Purchasing System Agreement by giving notice in writing to the Provider.

27.2 **Equality and Diversity**

27.2.1 The Provider shall:

(a) perform its obligations under this Dynamic Purchasing System Agreement (including those in relation to the provision of the Services) in accordance with:

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

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

(d) take all necessary steps, and inform the Authority 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).

**28. ASSIGNMENT AND NOVATION**

28.1 The 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.

28.2 The Authority 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:

28.2.1 any Central Government Body or other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or

28.2.2 any private sector body which substantially performs the functions of the Authority, and the Provider shall, at the Authority’s request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 28.2.

28.3 A change in the legal status of the Authority such that it ceases to be a contracting authority shall not; subject to Clause 28.4 affect the validity of this Dynamic Purchasing System Agreement and this Dynamic Purchasing System Agreement shall be binding on any successor body to the Authority.

28. If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Dynamic Purchasing System Agreement to a body which is not a contracting authority or if a body which is not a contracting authority succeeds the Authority (both “**Transferee**” in the rest of this Clause) the right of termination of the Authority in Clause 24.3 (Termination on Insolvency) shall be available to the Provider in the event of the insolvency of the Transferee (as if the references to Provider in Clause 24.4 (Termination on Insolvency)) and to Provider, Dynamic Purchasing System Guarantor or Contract Guarantor in the definition of Insolvency Event were references to the Transferee.

**29. WAIVER AND CUMULATIVE REMEDIES**

29.1 The rights and remedies under this Dynamic Purchasing System Agreement may be waived only by notice in accordance with Clause 37 (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.

29.2 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.

**30. RELATIONSHIP OF THE PARTIES**

30.1 Except as expressly provided otherwise in this Dynamic Purchasing System Agreement, nothing in 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 Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

**31. PREVENTION OF FRAUD AND BRIBERY**

31.1 The Provider represents and warrants that neither it, nor to the best of its knowledge any Provider Personnel, have at any time prior to the DPS Commencement Date:

(a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

(b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

31.2 The Provider shall not during the Dynamic Purchasing System Period:

(a) commit a Prohibited Act; and/or

(b) do or suffer anything to be done which would cause the Authority or any of the Authority’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.

31.3 The Provider shall during the Dynamic Purchasing System Period:

(a) 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;

(b) require that its Sub-Contractors establish, maintain and enforce the policies and procedures referred to in Clause 31.3 (a);

(c) keep appropriate records of its compliance with its obligations under Clause 31.3(a) and make such records available to the Authority on request;

(d) if so required by the Authority, within twenty (20) Working Days of the DPS Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause 31.3 of all persons associated with the Provider or its Sub-Contractors who are responsible for supplying the Services in connection with this Dynamic Purchasing System Agreement. The Provider shall provide such supporting evidence of compliance as the Authority may reasonably request; and

(e) have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Provider Personnel or any person acting on the Provider's behalf from committing a Prohibited Act.

31.4 The Provider shall immediately notify the Authority in writing if it becomes aware of any breach of Clauses 31.1(a), 31.2 and 31.3(b), or has reason to believe that it has or any of the Provider Personnel has:

(a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

(b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

(c) 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.

31.5 If the Provider makes a notification to the Authority pursuant to Clause 31.4, the Provider shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 15 (Records, Audit Access and Open Book Data).

31.6 If the Provider breaches Clause 31,the Authority may by notice:

(a) require the Provider to remove from the performance of this Dynamic Purchasing System Agreement any Provider Personnel whose acts or omissions have caused the Provider’s breach; or

(b) immediately terminate this Dynamic Purchasing System Agreement for material Default.

31.7 Any notice served by the Authority under Clause 31.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Dynamic Purchasing System Agreement shall terminate).

**32. CONFLICTS OF INTEREST**

32.1 The Provider shall take appropriate steps to ensure that neither the Provider nor the Provider Personnel are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or the Provider Personnel and the duties owed to the Authority under the provisions of this Dynamic Purchasing System Agreement or any Contract.

32.2 The Provider shall promptly notify and provide full particulars to the Authority if such conflict referred to in Clause 32.1 arises or may reasonably been foreseen as arising.

32.3 The Authority reserves the right to terminate this Dynamic Purchasing System Agreement immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Authority under the provisions of this Dynamic Purchasing System Agreement or any Contract. The action of the Authority pursuant to this Clause 32.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

**33. SEVERANCE**

33.1 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.

33.2 In the event that any deemed deletion under Clause 33.1 is so fundamental as to prevent the accomplishment of the purpose of this Dynamic Purchasing System Agreement or materially alters the balance of risks and rewards in this Dynamic Purchasing System Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Dynamic Purchasing System Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Dynamic Purchasing System Agreement and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

33.3 If the Parties are unable to resolve any Dispute arising under this Clause 33 within twenty (20) Working Days of the date of the notice given pursuant to Clause 33.2, this Dynamic Purchasing System Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Dynamic Purchasing System Agreement is terminated pursuant to this Clause 33.3.

**34. FURTHER ASSURANCES**

34.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Dynamic Purchasing System Agreement.

**35. ENTIRE AGREEMENT**

35.1 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.

35.2 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.

35.3 Nothing in this Clause 35 shall exclude any liability in respect of misrepresentations made fraudulently.

**36. THIRD PARTY RIGHTS**

36.1 The provisions of:

36.1.1 Clauses: 4 (Scope of Dynamic Purchasing System Agreement), 5 (Call for Competition Procedure), 6 (Representations and Warranties), 13 (Contract Performance Under Dynamic Purchasing System Agreement Performance), 15 (Records, Audit Access and Open Book Data), 19 (Protection of Personal Data), 23 (Insurance), and 36 (Third Party Rights); and

36.1.2 DPS Schedules 5 (Call Off Procedure), 9 (Insurance Requirements)

(together “**Third Party Provisions**”) confer benefits on persons named in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

36.2 Subject to Clause 36.1, 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 CRTPA but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA.

36.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without Approval, which may, if given, be given on and subject to such terms as the Authority may determine.

36.4 Any amendments or modifications to this Dynamic Purchasing System Agreement may be made, and any rights created under Clause 36.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

36.5 The Authority may act as agent and trustee for each Third Party Beneficiary and/or enforce on behalf of that Third Party Beneficiary any Third Party Provision and/or recover any Loss suffered by that Third Party Beneficiary in connection with a breach of any Third Party Provision.

**37. NOTICES**

37.1 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 37, an e-mail is accepted as being "in writing".

37.2 Subject to Clause 37.3, 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 37.3) | 9.00am 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 |
| Personal delivery | On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day | Properly addressed and delivered as evidenced by signature of a delivery receipt |
| Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery | At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm) | Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt |

37.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 37.2 within twenty four (24) hours of transmission of the email:

37.3.1 any Termination Notice under Clause 24 (Authority Termination Rights), including in respect of partial termination;

37.3.2 any notice in respect of:

(a) Suspension of Supplier’s appointment (Clause 25)

(b) Waiver (Clause 29);

(c) Default or Authority Cause; and

37.3.3 any Dispute Notice.

37.4 Failure to send any original notice in accordance with Clause 37.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 37.2) or, if earlier, the time of response or acknowledgement by the receiving Party to the email attaching the notice.

37.5 This Clause 37 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, or other method of dispute resolution (other than the service of a Dispute Notice under DPS Schedule 10 (Dispute Resolution Procedure).

37.6 For the purposes of this Clause 37, the address of each Party shall be:

37.6.1 For the Authority:

**Cornwall Council, County Hall, Treyew Road, Truro, Cornwall, TR1 3AY**

For the attention of: [ ]

37.6.2 For the Provider:

[ ]

37.7 Either Party may change its address for service by serving a notice in accordance with this Clause 37.

37.8 This Clause 37 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure)

**38. COMPLAINTS HANDLING**

38.1 Either Party shall notify the other Party of any Complaints made by the other, which are not resolved by operation of the Supplier's usual complaints handling procedure within five (5) Working Days of becoming aware of that Complaint and, if the Provider is the Party providing the notice, such notice shall contain full details of the Provider’s plans to resolve such Complaint.

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

38.3 Within two (2) Working Days of a request by the Authority, the Provider shall provide full details of a Complaint to the Authority, including details of steps taken to achieve its resolution.

**39. DISPUTE RESOLUTION**

39.1 The Parties shall resolve Disputes arising out of or in connection with this Dynamic Purchasing System Agreement in accordance with the Dispute Resolution Procedure as set out in Schedule 10.

39.2 The Provider shall continue to provide the Services in accordance with the terms of this Dynamic Purchasing System Agreement until a Dispute has been resolved.

40 LIVING WAGE FOUNDATION

40.1 It is a condition of this Agreement that, for the duration of this DPS Agreement:

(a) the Provider shall pay all employees who are employed by the Provider to perform the Services pursuant to this DPS Agreement not less than the l Living Wage, as set annually by the Living Wage Foundation; and

(b ) notwithstanding 68.1 (a), the Provider shall have up to 12 months from the date on which any increase in Living Wage is adjusted by Living Wage Foundation, to increase any or all wages such that the contracted employees continue to be paid not less than the Living Wage as set by the Living Wage Foundation.

40.2 If the Provider sub-contracts all or part of the provision of the Services to a sub-contractor, the Provider shall ensure that any subcontractor adheres to clause 40.1 as though it were the Provider.

40.3 A breach by the Provider of its obligations pursuant to clauses 40.1 and 40.2 shall constitute a material breach by the Provider of this Agreement which shall entitle the Authority to terminate this DPS Agreement.

**41. GOVERNING LAW AND JURISDICTION**

41.1 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.

41.2 Subject to Clause 39 (Dispute Resolution) and DPS Schedule 10 (Dispute Resolution Procedure),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.

**SCHEDULES**

**SCHEDULE 1: DEFINITIONS**

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

|  |  |
| --- | --- |
|  |  |
| **"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 Authority and "**Approve**" and "**Approved**" shall be construed accordingly; |
| **"Audit"** | means an audit carried out pursuant to Clause 18 (Records, Audit Access and Open Book Data); |
| **"Auditor"** | means the Authority, and/or the National Audit Office and/or any auditor appointed by the Audit Commission, and /or the representatives of any of them; |
| **"Authority"** | means the Cornwall Council; |
| **“Authority Cause”** | means any breach of the obligations of the Authority (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 Authority 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 Authority is liable to the Provider; |
| **"Authority Personal Data"** | means any Personal Data supplied for the purposes of or in connection with this Dynamic Purchasing System Agreement by the Authority to the Provider; |
| **"Authority Representative"** | means the representative appointed by the Authority from time to time in relation to this Dynamic Purchasing System Agreement; |
| **"Authority's Confidential Information"** | means all Authority Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, personnel, and Providers of the Authority, 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; |
|  |
| **"Contract"** | means a legally binding agreement (entered into pursuant to the provisions of this Dynamic Purchasing System Agreement) for the provision of Services made between the Authority and the Provider pursuant to DPS Schedule 5 (Call for Competition Procedure); |
| **"Call for Competition Procedure"** | means the process for awarding a Contract pursuant to Clause 5 (Call for Competition Procedure) and DPS Schedule 5 (Call for Competition Procedure); |
| **"CEDR"** | means the Centre for Effective Dispute Resolution; |
|  |  |
| **"Change in Law"** | means any change in Law which impacts on the supply of the Goods and/or Services and performance of the Template Contract Terms which comes into force after the DPS Commencement Date; |
| **"Change of Control"** | means a change of control within the meaning of Section 360 of the Corporation Tax Act 2010; |
| **"Charges"** | means the charges raised under or in connection with a Contract from time to time; |
| **"Commercially Sensitive Information"** | means the Confidential Information listed in DPS Schedule 11 (Commercially Sensitive Information) (if any) comprising of commercially sensitive information relating to: -  (a) the pricing of the Services;  (b) details of the Provider’s IPR;  (c) the Provider’s business and investment plans; and/or  (d) the Provider’s trade secrets;  (e) which the Provider has indicated to the Authority that, if disclosed by the Authority, would cause the Provider significant commercial disadvantage or material financial loss; |
| **"Comparable Supply"** | means the supply of Services to another customer of the Provider that are the same or similar to the Services; |
| **"Complaint"** | means any formal written complaint raised by the Authority in relation to the performance of this Dynamic Purchasing System Agreement or any Contract in accordance with Clause 38 (Complaints Handling); |
| **"Confidential Information"** | means the Authority's Confidential Information and/or the Provider's Confidential Information, as the context requires; |
| **"Continuous Improvement Plan"** | means a plan for improving the provision of the Goods and/or Services and/or reducing the Charges produced by the Provider pursuant to DPS Schedule 12 (Continuous Improvement); |
| **"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 360 and 1124 of the Corporation Tax Act 2010 and "**Controlled**" shall be construed accordingly; |
| **“Controller”** | has the meaning given in the GDPR; |
|  |  |
| **"Crown"** | means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf; |
| **"Crown Body"** | means any department, office or executive agency of the Crown; |
| **"CRTPA"** | means the Contracts (Rights of Third Parties) Act 1999; |
|  |  |
| **"Data Controller"** | has the meaning given to it in the Data Protection Act 1998, as amended from time to time; |
| **"Data Processor"** | has the meaning given to it in the Data Protection Act 1998, as amended from time to time; |
| **"Data Protection Legislation"** | Means  i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time;  ii) the DPA to the extent that it relates to processing of personal data and privacy;  iii) all applicable Law about the processing of personal data and privacy; |
| **“Data Protection Officer”** | has the meaning given in the GDPR; |
| **"Data Subject"** | has the meaning given in the GDPR; |
| **"Data Subject Access Request"** | means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data; |
| **"Default"** | means any breach of the obligations of the 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 Provider or the Provider Personnel 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 Provider is liable to the Authority; |
|  |  |
| **“Disclosing Party”** | means a Party which discloses or makes available directly or indirectly its Confidential Information to the Recipient; |
| **"Direct Award Criteria"** | means the award criteria to be applied for the direct award of Contracts for Goods and/or Services set out in Part A of DPS Schedule 6 (Award Criteria); |
| **"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 Goods and/or Services, failure to agree in accordance with the procedure for variations in Clause 16.1(Variation Procedure) 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 DPS Schedule 10 (Dispute Resolution); |
|  |  |
| **"DPA"** | means the Data Protection Act 2018 as amended from time to time; |
| **"Due Diligence Information"** | means any information supplied to the Provider by or on behalf of the Authority prior to the DPS Commencement Date; |
| **"Dynamic Purchasing System” or “DPS"** | means the arrangements established by the Authority for the provision of the Services to the Authority by Providers (including the Provider) pursuant to the OJEU Notice; |
| **"Dynamic Purchasing System Agreement"** | means this agreement consisting of the Clauses together with the DPS Schedules and any appendices and annexes to the same; |
| **"DPS Commencement Date"** | means [insert date dd/mm/yyyy]; |
|  |  |
|  |  |
| **"Dynamic Purchasing System Period"** | means the period from the DPS Commencement Date until the expiry (as set out in Clause 10) or earlier termination of this Dynamic Purchasing System Agreement; |
| **"DPS Schedules"** | means the schedules to this Dynamic Purchasing System Agreement; |
| **"DPS Providers"** | means theProviders (including the 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; |
| **"Environmental Information Regulations or EIRs"** | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations; |
|  |  |
| **“Extension Dynamic Purchasing System Period”** | means such period or periods up to a maximum of one year in total as may be specified by the Authority pursuant to Clause (Dynamic Purchasing System 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 Commissioner or relevant Government department in relation to such legislation; |
| **"Fraud"** | means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts offorgery; |
| **"Further Competition Award Criteria"** | means the award criteria set out in Part B of DPS Schedule 6 (Award Criteria); |
| **"Further Competition Procedure"** | means the further competition procedure described in paragraph 2 of DPS Schedule 5 (Call for Competition Procedure); |
| **“GDPR”** | means the General Data Protective Regulation (regulation (EU) 2016/679); |
|  |  |
| **"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 Provider) or which affects or relates to a Comparable Supply; |
| **"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; |
|  |  |
| **"Services Requirements"** | means the requirements of the Authority for the Services from time to time; |
| **"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; |
|  |  |
| **"Holding Company"** | has the meaning given to it in section 1159 of the Companies Act 2006; |
| **"Improvement Plan"** | means the plan required by the Authority from the Provider which shall detail how the Provider will improve the provision of the Services pursuant to Clause 32.1.1 (Authority Remedies); |
| **"Improvement Notice"** | means the notice issued by the Authority to the Provider pursuant to Clause 32.1.3 (Authority Remedies) which will detail how the Provider shall improve the provision of the Goods and/or Services; |
| **"Information"** | has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time; |
| **“Initial Dynamic Purchasing System Period”** | means the period of three (3) years on from the Commencement Date of the DPS; |
| **"Insolvency Event"** | means, in respect of the Provider or Dynamic Purchasing System Guarantor or Contract Guarantor (as applicable):  (b) 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  (b) 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  (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working 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  (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or  (e) 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  (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or  (g) being a "small company" within the meaning of section 292(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or  (h) where the Provider or Dynamic Purchasing System 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  (i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction; |
| **"Intellectual Property Rights" or "IPR"** | means:   1. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information; 2. applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and 3. all other rights having equivalent or similar effect in any country or jurisdiction; |
| **"IPR Claim"** | means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided and/or licensed by the Provider (or to which the Provider has provided access) to the Authority in the fulfilment of its obligations under this Dynamic Purchasing System Agreement; |
| **"Key Performance Indicators" or "KPIs"** | means the performance measurements and targets set out in Part B of DPS Schedule 2 (Services and Key Performance Indicators); |
|  |  |
| **"KPI Target"**  **“Management Information”**  **“MI Failure”**  **“MI Reports”** | means the acceptable performance level for a KPI as set out in relation to each KPI;    has the meaning given in Schedule 7;  has the meaning given in Schedule 7;  has the meaning given in Schedule 7; |
| **"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 Provider is bound to comply; |
| **“LED”** | means the Law Enforcement Directive (Directive (EU) 2016/680) |
|  |  |
| **"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; |
|  |  |
| **"OJEU Notice"** | has the meaning given to it in Recital A to this Dynamic Purchasing System Agreement; |
| **"Open Book Data"** | means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the Dynamic Purchasing System Period and term of any Contracts, including details and all assumptions relating to:   1. the Provider’s Costs broken down against each Good and/or Service and/or deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all goods and/or services; 2. operating expenditure relating to the provision of the Goods and/or Services including an analysis showing: 3. the unit costs and quantity of Goods and any other consumables and bought-in goods and services; 4. manpower resources broken down into the number and grade/role of all Provider Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; 5. a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Provider Profit Margin; 6. Overheads; 7. all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services; 8. the Provider Profit achieved over the Dynamic Purchasing System Period and term of any Contracts and on an annual basis; 9. confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Provider; 10. an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and 11. the actual Costs profile for each Service Period under any Contracts; |
| **"Order"** | means an order for the provision of the Goods and/or Services placed by the Authority with the Provider under a Contract; |
| **"Party"** | means the Authority or the Provider and **"Parties"** shall mean both of them; |
| **"Personal Data"** | has the meaning given to it in the GDPR; |
| **“Personal Data Breach”** | has the meaning given in the GDPR; |
| **“Processor”** | has the meaning given in the GDPR; |
| **"Prohibited Act"** | means any of the following:   1. to directly or indirectly offer, promise or give any person working for or engaged by the Authority or any other public body a financial or other advantage to: 2. induce that person to perform improperly a relevant function or activity; or   reward that person for improper performance of a relevant function or activity;  (ii) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; or   1. committing any offence: 2. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or 3. under legislation or common law concerning fraudulent acts; or 4. defrauding, attempting to defraud or conspiring to defraud the Authority or other public body; or 5. any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK; |
| **“Protective Measures”** | appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it; |
| **“Recipient”** | mean the Party which receives or obtains directly or indirectly Confidential Information from the Disclosing Party; |
| **"Regulations"** | means the Public Contracts Regulations 2015 as amended from time to time; |
| **"Relevant Person"** | means any employee, agent, servant, or representative of the Authority, or of any 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 Tax Authority"** | means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Provider is established; |
|  |
| **"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; |
| **"Replacement Provider"** | means any third party provider of Replacement Services appointed by or at the direction of the Authority from time to time; |
| **"Request for Information"** | means a request for information relating to this Dynamic Purchasing System Agreement or the provision of the Services or an apparent request for such information under the FOIA or the EIRs; |
| **"Restricted Countries"** | means a country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/37/EC; |
| **"Self Audit Certificate"** | means the certificate (Annual Self Audit Certificate) to be provided to the Authority in accordance with Clause 18 (Records, Audit Access and Open Book Data); |
| **"Service Period"** | has the meaning given to it in DPS Schedule 4 (Template Order Form and Template Contract Terms) as refined by a Authority in a Contract between that Authority and the Provider; |
| **"Services"** | means the services described in DPS Schedule 2 (Services and Key Performance Indicators) which the Provider shall make available to Contracting Authorities; |
| **"Specific Change in Law"** | means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply; |
| **"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 Provider would reasonably and ordinarily be expected to comply with; 2. any standards detailed in the specification in DPS Schedule 2 (Services and Key Performance Indicators); 3. any Standards detailed by a Authority in a Contract following a Further Competition Procedure; 4. any relevant Government codes of practice and guidance applicable from time to time. |
| **"Statement of Requirements"** | means a statement issued by the Authority detailing Services Requirements issued in accordance with the Call for Competition Procedure; |
| **"Sub-Contract"** | means any contract or agreement (or proposed contract or agreement) to which a third party:  (a) provides the Services (or any part of them);  (b) provides facilities or services necessary for the provision of the Services (or any part of them); and/or  (c) is responsible for the management, direction or control of the provision of the Services (or any part of them); |
| **"Sub-Contractor"** | means any person other than the Provider who is a party to a Sub-Contract and the servants or agents of that person; |
| **“Sub-processor”** | any third party appointed to process Personal Data on behalf of the Provider related to this agreement; |
| **"Provider"** | means the person, firm or company stated in the preamble to this Dynamic Purchasing System Agreement; |
|  |  |
| **"Provider Personnel"** | means all directors, officers, employees, agents, consultants and contractors of the Provider and/or of any Sub-Contractor engaged in the performance of its obligations under this Dynamic Purchasing System Agreement or any Contracts; |
| **"Provider Representative"** | means the representative appointed by the Provider from time to time in relation to this Dynamic Purchasing System Agreement; |
| **"Provider's Confidential Information"** | means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, personnel and Providers of the 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; |
| **"Template Contract Terms"** | means the template terms and conditions in Annex 2 to DPS Schedule 4 (Template Order Form and Template Contract Terms); |
| **"Template Order Form"** | means the template form in Annex 1 to DPS Schedule 4 (Template Order Form and Template Contract Terms); |
| **"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 Agreement on a specified date and setting out the grounds for termination; |
|  |  |
| **“Transparency Reports”** | means the information relating to the Services and performance of this Dynamic Purchasing System Agreement which the Provider is required to provide to the Authority in accordance with the reporting requirements in DPS Schedule 21; |
| **"TUPE"** | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/237) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive; |
| **"Variation"** | has the meaning given to it in Clause 19.1.1 (Variation Procedure); |
| **"Variation Procedure"** | means the procedure for carrying out a Variation as set out in Clause 19.1 (Variation Procedure); |
| **"VAT"** | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; |
| **"Working Days"** | means any day other than a Saturday, Sunday or public holiday in England and Wales. |

**SCHEDULE 2: SERVICES and Key Performance Indicators**

**Part A – Services**

**Part B – Key Performance Indicators**

**SCHEDULE 3: PRICES AND CHARGING**

**SCHEDULE 4: TEMPLATE ORDER FORM AND TEMPLATE CONTRACT TERMS**

**ANNEX 1: TEMPLATE CONTRACT ORDER FORM**

**ANNEX 2: TEMPLATE CONTRACT TERMS**

**(please insert attachment 6)**

**SCHEDULE 5: CALL FOR COMPETITION PROCEDURE**

**1.0 AWARD PROCEDURE**

1.1 If the Authority decides to source the Services through this Dynamic Purchasing System Agreement then it will award its Services Requirements in accordance with the procedure in this DPS Schedule 5 (Call for Competition Procedure) and the requirements of the Regulations and the Guidance. For the purposes of this DPS Schedule 5, “**Guidance**” shall mean any guidance issued or updated by the Authority from time to time in relation to the Regulations.

**2.0 FURTHER COMPETITION PROCEDURE**

**2.1 Authority’s Obligations**

2.1.1 In awarding a Contract under this Dynamic Purchasing System Agreement, the Authority shall do so through the Further Competition Procedure set out below, the Authority shall:

(a) develop a Statement of Requirements;

(b) amend or refine the Template Contract Form and Template Contract Terms to reflect its Statement of Requirements only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;

(c) invite tenders by conducting a Further Competition Procedure for its Statement of Requirements in accordance with the Regulations and Guidance and in particular:

(i) apply the Further Competition Award Criteria to the DPS Providers' compliant tenders submitted through the Further Competition Procedure as the basis of its decision to award a Contract for its Statement of Requirements;

(ii) on the basis set out above, award its Contract to the successful DPS Provider in accordance with paragraph 6 which Contract shall:

* state the Services Requirements;
* state the tender submitted by the successful DPS Provider;
* state the charges payable for the Services Requirements in accordance with the tender submitted by the successful DPS Provider; and
* incorporate the Template Contract Form and Template Contract Terms (as may be amended or refined by the Authority in accordance with paragraph 2.1.1(b) above) applicable to the Services,

(iii) provide unsuccessful DPS Providers with written feedback in relation to the reasons why their tenders were unsuccessful.

**2.2 The Provider's Obligations**

2.2.1 The Provider shall in writing, by the time and date specified by the Authority following an invitation to tender pursuant to paragraph 2.1.3 above, provide the Authority with either:

(a) a statement to the effect that it does not wish to tender in relation to the relevant Statement of Requirements; or

(b) the full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Provider submits such a tender, it should include, as a minimum:

(i) an email response subject line to comprise unique reference number and Provider name, so as to clearly identify the Provider;

(ii) a brief summary, in the email (followed by a confirmation letter), stating that the Provider is bidding for the Statement of Requirements;

(iii) a proposal covering the Services Requirements;

(iv) CVs of key personnel – as a minimum any lead consultant, with others, as considered appropriate along with required staff levels;

2.2.2 The Provider agrees that:

(a) all tenders submitted by the Provider in relation to a Further Competition Procedure held pursuant to this paragraph 2 shall remain open for acceptance by the Authority for ninety (90) Working Days (or such other period specified in the invitation to tender issued by the Authority in accordance with the Call for Competition Procedure); and

(b) all tenders submitted by the Provider are made and will be made in good faith and that the Provider has not fixed or adjusted and will not fix or adjust the price of the tender by or in accordance with any agreement or arrangement with any other person. The Provider certifies that it has not and undertakes that it will not:

* communicate to any person other than the person inviting these tenders the amount or approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and
* enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.

**3.0 NO AWARD**

3.1 Notwithstanding the fact that the Authority has followed a procedure as set out above in paragraph 2, the Authority shall be entitled at all times to decline to make an award for its Services Requirements. Nothing in this Dynamic Purchasing System Agreement shall oblige the Authority to award any Contract.

**4.0 CONTRACT award PROCEDURE**

4.1 Subject to paragraphs 1 to 3 above, the Authority may award a Contract with the Provider by sending (including electronically) a signed order form substantially in the form (as may be amended or refined by the Authority in accordance with paragraph 2.1.1(b) above) of the Template Order Form set out in DPS Schedule 4 (Template Order Form and Template Contract Terms).

4.2 The Parties agree that any document or communication (including any document or communication in the apparent form of a Contract) which is not as described in this paragraph 4 shall not constitute a Contract under this Dynamic Purchasing System Agreement.

(a) On receipt of an order form as described in paragraph 4.1 from the Authority the Provider shall accept the Contract by promptly signing and returning (including by electronic means) a copy of the order form to the Authority.

(b) On receipt of the signed order form from the Provider, the Authority shall send (including by electronic means) a written notice of receipt to the Provider within two (2) Working Days and a Contract shall be formed.

**SCHEDULE 6: AWARD CRITERIA**

**1.0 General**

1.1 A Contract shall be awarded on the basis of most economically advantageous tender ("MEAT") from the point of view of the Authority.

1.2 This DPS Schedule 6 includes details of the evaluation criteria and any weighting that will be applied to that criteria.

* 1. **CALL FOR COMPETITION**

1.2.1 The Authority shall adopt the procedure set out in this Schedule 5 and the criteria detailed in paragraph shall be applied to the Services set out in the Providers' compliant tenders submitted through the Competition Procedure:

**1.2.2** Weightings and sub-weightings for the evaluation criteria will be set by the Authority and shall add up to 100%.

**SCHEDULE 7: DPS MANAGEMENT**

**1.0 INTRODUCTION**

1.1 The following definitions shall apply in addition to the definitions contained in the DPS Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"Provider DPS Manager"** | has the meaning given to it in paragraph 2.1.1 of this DPS Schedule 7; and |
| **"Provider Review Meetings"** | has the meaning given to it in paragraph 2.2.1 of this DPS Schedule 7. |

1.2 The successful delivery of this Dynamic Purchasing System Agreement will depend on the ability of the Provider and the Authority in developing a strategic relationship immediately following the conclusion of this Dynamic Purchasing System Agreement with the Provider and maintaining this relationship throughout the Dynamic Purchasing System Period.

1.3 To achieve this strategic relationship, there will be a requirement to adopt proactive DPS management activities which will be informed by quality Management Information, and the sharing of information between the Provider and the Authority.

1.4 This DPS Schedule 7 outlines the general structures and management activities that the Parties shall follow during the Dynamic Purchasing System Period.

**2.0 DPS MANAGEMENT**

**2.1 DPS Management Structure:**

2.1.1 The Provider shall provide a suitably qualified nominated contact (the “**Provider** **DPS Manager**”) who will take overall responsibility for delivering the Services required within this Dynamic Purchasing System Agreement, as well as a suitably qualified deputy to act in their absence.

2.1.2 The Provider shall put in place a structure to manage the DPS in accordance with DPS Schedule 2 (Services and Key Performance Indicators).

2.1.3 A full governance structure for the DPS will be agreed between the Parties during the Dynamic Purchasing System Agreement implementation stage.

2.1.4 Following discussions between the Parties following the DPS Commencement Date, the Authority shall produce and issue to the Provider a draft Provider Action Plan. The Provider shall not unreasonably withhold its agreement to the draft Provider Action Plan. The Provider Action Plan shall, unless the Authority otherwise Approves, be agreed between the Parties and come into effect within two weeks from receipt by the Provider of the draft Provider Action Plan.

2.1.5 The Provider Action Plan shall be maintained and updated on an ongoing basis by the Authority. Any changes to the Provider Action Plan shall be notified by the Authority to the Provider. The Provider shall not unreasonably withhold its agreement to any changes to the Provider Action Plan. Any such changes shall, unless the Authority otherwise Approves, be agreed between the Parties and come into effect within two weeks from receipt by the Provider of the Authority’s notification.

**2.2 Provider Review Meetings**

2.2.1 Regular performance review meetings will take place at the Authority’s premises throughout the Dynamic Purchasing System Period and thereafter until the DPS Expiry Date **(“Provider Review Meetings”**).

2.2.2 The exact timings and frequencies of such Provider Review Meetings will be determined by the Authority following the conclusion of the Dynamic Purchasing System Agreement. It is anticipated that the frequency of the Provider Review Meetings will be once every month or less. The Parties shall be flexible about the timings of these meetings.

2.2.3 The purpose of the Provider Review Meetings will be to review the Provider’s performance under this Dynamic Purchasing System Agreement and, where applicable, the Provider’s adherence to the Provider Action Plan. The agenda for each Provider Review Meeting shall be set by the Authority and communicated to the Provider in advance of that meeting.

2.2.4 The Provider Review Meetings shall be attended, as a minimum, by the Authority Representative(s) and the Provider DPS Manager.

**3.0 KEY PERFORMANCE INDICATORS**

3.1 The KPIs applicable to this Dynamic Purchasing System Agreement are set out in DPS Schedule 2 (Services and Key Performance Indicators).

3.2 The Provider shall establish processes to monitor its performance against the agreed KPIs. The Provider shall at all times ensure compliance with the standards set by the KPIs.

3.3 The Authority shall review progress against these KPIs to evaluate the effectiveness and efficiency of which the Provider performs its obligations to fulfil this Dynamic Purchasing System Agreement.

3.4 The Provider’s achievement of KPIs shall be reviewed during the Provider Review Meetings, in accordance with paragraph 2.2 above, and the review and ongoing monitoring of KPIs will form a key part of the DPS management process as outlined in this DPS Schedule 7.

3.5 The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Dynamic Purchasing System Period, however any significant changes to KPIs shall be agreed between the Authority and the Provider.

3.6 The Authority reserves the right to use and publish the performance of the Provider against the KPIs without restriction.

**4.0 ESCALATION PROCEDURE**

4.1 In the event that the Authority and the Provider are unable to agree the performance score for any KPI during a Provider Review Meeting, the disputed score shall be recorded and the matter shall be referred to the Authority Representative and the Provider Representative in order to determine the best course of action to resolve the matter (which may involve organising an ad-hoc meeting to discuss the performance issue specifically).

4.2 In cases where the Authority Representative and the Provider Representative fail to reach a solution within a reasonable period of time, the matter shall be dealt with in accordance with the procedure set out in Clause 39 (Dispute Resolution).

**SCHEDULE 8: MANAGEMENT INFORMATION**

**1.0 GENERAL REQUIREMENTS**

1.1 The Provider shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to the Authority in accordance with the provisions of this DPS Schedule 7.

1.2 The Provider shall also supply such Management Information as may be required by the Authority in accordance with the terms of a Contract.

**2.0 MANAGEMENT INFORMATION AND FORMAT**

2.1 The Provider agrees to provide timely, full, accurate and complete MI Reports to the Authority which incorporates the data, in the correct format, required by the MI Reporting Template. The initial MI Reporting Template is set out in the Annex to this DPS Schedule 7.

2.2 The Authority may from time to time make changes to the MI Reporting Template including to the data required or format of the report and issue a replacement version of the MI Reporting Template to the Provider. The Authority shall give notice in writing of any such change to the MI Reporting Template and shall specify the date from which the replacement MI Reporting Template must be used for future MI Reports which date shall be at least thirty (22) calendar days following the date of the notice.

2.3 If the MI Reporting Template is amended by the Authority at any time, then the Provider agrees to provide all future MI Reports in accordance with the most recent MI Reporting Template issued by the Authority.

2.4 The Authority may provide the Provider with supplemental guidance for completing the MI Reporting Template or submitting MI Reports from time to time which may for example indicate which fields are mandatory and which are optional. The Provider agrees to complete the Monthly MI Report in accordance with any such guidance.

2.5 The Provider may not make any amendment to the current MI Reporting Template without the prior Approval of the Authority.

2.6 The Authority shall have the right from time to time (on reasonable written notice) to amend the nature of the Management Information which the Provider is required to supply to the Authority.

**3.0 FREQUENCY AND COVERAGE**

3.1 All MI Reports must be completed by the Provider using the MI Reporting Template and returned to the Authority on or prior to the reporting date every Month during the Dynamic Purchasing System Period and thereafter, until all transactions relating to Contracts have permanently ceased. A reporting date shall be the date determined by the Authority and notified to the Provider.

3.2 The MI Report should be used (among other things) to report Orders received and transactions occurring during the Month to which the MI Report relates, regardless of when the work was actually completed. For example, if an invoice is raised for October but the work was actually completed in September, the Provider must report the invoice in October's MI Report and not September's. Each Order received by the Provider must be reported only once when the Order is received.

3.3 The Provider must return the MI Report for each Month even where there are no transactions to report in the relevant Month (a "**Nil Return**").

3.4 The Provider must inform the Authority of any errors or corrections to the Management Information:

(a) in the next MI Report due immediately following discovery of the error by the Provider; or

(b) as a result of the Authority querying any data contained in an MI Report.

**4.0 SUBMISSION OF THE MONTHLY MI REPORT**

4.1 The completed MI Report shall be completed electronically and returned to the Authority in a form and format prescribed by the Authority.

4.2 The Authority reserves the right (acting reasonably) to specify that the MI Report be submitted by the Provider using an alternative communication to that specified in paragraph 4.1 above such as email. The Provider agrees to comply with any such instructions provided they do not materially increase the burden on the Provider.

**5.0 DEFECTIVE MANAGEMENT INFORMATION**

5.1 The Provider acknowledges that it is essential that the Authority receives timely and accurate Management Information pursuant to this Dynamic Purchasing System Agreement because Management Information is used by the Authority to inform strategic decision making.

5.2 Following an MI Failure the Authority may issue reminders to the Provider or require the Provider to rectify defects in the MI Report provided to the Authority. The Provider shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

5.3 The Provider agrees to attend meetings between the Parties in person to discuss the circumstances of any MI Failure(s) at the request of the Authority (without prejudice to any other rights the Authority may have). If the Authority requests such a meeting the Provider shall propose measures to ensure that the MI Failures are rectified and do not occur in the future. The Parties shall document these measures and continue to monitor the Provider's performance.

**ANNEX 1: MI REPORTING TEMPLATE**

**SCHEDULE 9: INSURANCE REQUIREMENTS**

**1.0 OBLIGATION TO MAINTAIN INSURANCES**

1.1 Without prejudice to its obligations to the Authority under this Dynamic Purchasing System Agreement, including its indemnity obligations, the Provider shall for the periods specified in this Schedule 9 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Provider shall ensure that each of the Insurances is effective no later than the DPS Commencement Date.

1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.

1.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.

1.4 The Provider shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Provider is legally liable.

**2.0 GENERAL OBLIGATIONS**

2.1 Without limiting the other provisions of this Dynamic Purchasing System Agreement, the Provider shall:

(a) take or procure the taking of all reasonable risk management and risk control measures in relation to the Goods and/or Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;

(b) promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Provider is or becomes aware; and

(c) hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

**3.0 FAILURE TO INSURE**

3.1 The Provider shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

3.2 Where the Provider has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Provider to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Provider.

**4.0 EVIDENCE OF POLICIES**

4.1 The Provider shall upon the DPS Commencement Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this DPS Schedule 9. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Provider of any of its liabilities and obligations under this Agreement.

**5.0 AGGREGATE LIMIT OF INDEMNITY**

5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":

(a) if a claim or claims which do not relate to this Dynamic Purchasing System Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Provider shall immediately submit to the Authority:

(i) details of the policy concerned; and

(ii) its proposed solution for maintaining the minimum limit of indemnity specified; and

(b) if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Dynamic Purchasing System Agreement are paid by insurers, the Provider shall:

(i) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Dynamic Purchasing System Agreement; or

(ii) if the Provider is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

**6.0 CANCELLATION**

6.1 The Provider shall notify the Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

**7.0 INSURANCE CLAIMS**

7.1 The Provider shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Dynamic Purchasing System Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services or this Dynamic Purchasing System Agreement, the Provider shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

7.2 Except where the Authority is the claimant party, the Provider shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of one million (£1,000,000.00) poundsrelating to or arising out of the provision of the Services or this Dynamic Purchasing System Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

7.3 Where any Insurance requires payment of a premium, the Provider shall be liable for and shall promptly pay such premium.

7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Provider shall be liable for such excess or deductible. The Provider shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Dynamic Purchasing System Agreement or otherwise.

**ANNEX 1: REQUIRED INSURANCES**

**Part A: Third Party Public & Products Liability Insurance**

**1.0 Insured**

The Provider

**2.0 Interest**

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

(a) death or bodily injury to or sickness, illness or disease contracted by any person;

(b) loss of or damage to property;

happening during the period of insurance (as specified in Paragraph 5 of this Annex 1 to this Schedule 9) and arising out of or in connection with the provision of the Services and in connection with this Dynamic Purchasing System Agreement.

**3.0 Limit of indemnity**

3.1 Not less than £5,000,000.00in respect of any one occurrence, the number of occurrences being unlimited, but £5,000,000.00 any one occurrence and in the aggregate per annum in respect of products and pollution liability.

**4.0 Territorial limits**

United Kingdom

**5.0 Period of insurance**

5.1 From the DPS Commencement Date for the Dynamic Purchasing System Period and renewable on an annual basis unless agreed otherwise by the Authority in writing.

**6.0 Cover features and extensions**

Indemnity to principals clause.

**7.0 Principal exclusions**

(a) War and related perils.

(b) Nuclear and radioactive risks.

(c) Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

(d) Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

(e) Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

(f) Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

(g) Liability arising from the ownership, possession or use of any aircraft or marine vessel.

(i) Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

**Part C: United Kingdom Compulsory Insurances**

**1.0 General**

1.1 The Provider shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and occupier liability insurance.

**DPS SCHEDULE 15: STAFF TRANSFER – NOT USED**

**SCHEDULE 10: DISPUTE RESOLUTION PROCEDURE**

**1.0 DEFINITIONS**

1.1 In this DPS Schedule 10, the following definitions shall apply:

|  |  |
| --- | --- |
| **"CEDR"** | means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU; |
| **"Counter Notice"** | has the meaning given to it in paragraph 6.2; |
| **"Exception"** | means a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Dynamic Purchasing System Agreement or in the supply of the Goods and/or Services; |
| **“Extraordinary Meeting”** | a meeting, attended in person or over a conference call, held by the Parties in an attempt to resolve the Dispute in good faith in accordance with paragraphs 2.5 and 2.6 of this DPS Schedule 10; |
| **"Mediator"** | means the independent third party appointed in accordance with paragraph 4.2 of this DPS Schedule 10; and |
| **“Senior Officers”** | are senior officials of the Authority and Provider that have been instructed by the Authority Representative and Provider Representative respectively to resolve the Dispute by commercial negotiation. |

**2.0 INTRODUCTION**

2.1 The Parties shall seek to resolve a Dispute:

(a) first in good faith (as prescribed in paragraphs 2.4 to 2.8 of this DPS Schedule 10);

(b) where the Dispute has not been resolved by good faith, the Parties shall attempt to resolve the Dispute by commercial negotiation (as prescribed in paragraph 3 of this DPS Schedule 10);

(c) where the Dispute has not been resolved in good faith and commercial negotiation has been unsuccessful in resolving the Dispute, then either Party may serve a Dispute Notice and shall attempt to resolve the Dispute through mediation (as prescribed in paragraph 4 of this DPS Schedule 10); and

2.2 Save in relation to paragraph 4.5, the Parties shall bear their own legal costs in resolving Disputes under this DPS Schedule 10.

2.3 Good faith discussions

(a) Pursuant to paragraph 2.1.(a) of this DPS Schedule 10, if any Dispute arises the Authority Representative and the Provider Representative shall attempt first to resolve the Dispute in good faith, which may include (without limitation) either Party holding an Extraordinary Meeting.

(b) Either Party may hold an Extraordinary Meeting by serving written notice. The written notice must give the receiving party at least five (5) Working Days notice of when the Extraordinary Meeting is to take place.

(c) The Authority Representative and Provider Representative shall attend the Extraordinary Meeting. The key personnel of the Parties may also attend the Extraordinary Meeting.

(d) The representatives of the Parties attending the Extraordinary Meeting shall use their best endeavours to resolve the Dispute.

(e) If the Dispute is not resolved at the Extraordinary Meeting then the Parties may attempt to hold additional Extraordinary Meetings in an attempt to resolve the Dispute.

(f) If:

* the Extraordinary Meetings are unsuccessful in resolving the Dispute; or
* the Parties agree that good faith discussions shall not resolve the dispute; or
* the Dispute has not been resolved through good faith discussions within thirty (22) Working Days from when they first started,

the Parties shall attempt to resolve the Dispute by commercial negotiation.

**3.0 COMMERCIAL NEGOTIATIONS**

3.1 Where the Parties have been unable to resolve the Dispute in good faith under paragraph 2.4 of this DPS Schedule 10, pursuant to paragraph 2.1.(b), the Authority and the Provider shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between Senior Officers.

3.2 Senior Officers shall resolve the Dispute as soon as possible and in any event thirty (22) Working Days from the date Parties agree good faith discussions were deemed unsuccessful.

3.3 If Senior Officers:

(a) are of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution; or

(b) fail to resolve the Dispute in the timelines under paragraph 3.2 of this DPS Schedule 10,

commercial negotiations shall be deemed unsuccessful and either Party may serve a Dispute Notice in accordance with paragraphs 3.4 and 3.5 of this DPS Schedule 10.

3.4 Dispute Notice

(a) The Dispute Notice shall set out:

* the material particulars of the Dispute;
* the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

(b) Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Dynamic Purchasing System Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

**4.0 MEDIATION**

4.1 Pursuant to paragraph 2.1.(c) of this DPS Schedule 10, if a Dispute Notice is served, the Parties shall attempt to resolve the Dispute by way of mediation.

4.2 Where the Parties agree to mediation, the Parties may follow the CEDR's Model Mediation Procedure which is current at the time the Dispute Notice is served (or such other version as the Parties may agree) or a mediation procedure that is agreed between the Parties.

4.3 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (22) Working Days from service of the Dispute Notice then either Party may apply to CEDR to nominate the Mediator.

4.4 If neither Party applies to CEDR to nominate the Mediator or an application to CEDR is unsuccessful under paragraph 4.2 of this DPS Schedule 10, either Party may proceed to:

(a) hold further discussions between Senior Officers; or

(b) (d) litigation in accordance with Clause 40 of this Dynamic Purchasing System Agreement (Governing Law and Jurisdiction).

4.5 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

4.6 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the procedure for variations under Clause 16.1 (Variation Procedure) where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

4.7 The costs of any mediation procedure used to resolve the Dispute under this paragraph 4 of this DPS Schedule 10 shall be shared equally between the Parties.

**SCHEDULE 11: COMMERCIALLY SENSITIVE MATERIAL**