DATED **2018**

CORSERV LIMITED

and

[CONTRACTOR:]

Dynamic Purchasing System Agreement for the provision of
Sub-Contractor Services for Responsive Property Repairs and Maintenance

Contract Reference: DN324733

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Important notice applying to Schedule 1 and Schedule 6; intellectual property rights of these schedules are vested in NHF Hammer South West and/or Rand Associates Consultancy Services Ltd.

THIS AGREEMENT is made on the day of 2017

BETWEEN:

(1) **CORSERV LIMITED** (Company No. 09598549) whose registered address is CORSERV Head Office, Higher Trenant Road, Wadebridge, Cornwall PL27 6TW (the "Employer"); and

(2) **[**FULL COMPANY NAME**:** **]**
incorporated and registered in England and Wales with company number
[NUMBER:] whose registered office is at
[ADDRESS:]
(the "Contractor")

each a "Party" and together "the Parties".

WHEREAS

(A) The Employer is a public authority and requires Sub-Contractor Services for Responsive Property Repairs and Maintenance.

(B) The Employer issued an invitation for qualification onto the Dynamic Purchasing System (DPS) on XX XXXXX XXXX for the required works and services.

(C) The Contractor has represented to the Employer that it is capable of carrying out required works in accordance with the Employer's requirements as set out in the Selection Questionnaire and, in particular, the Contractor made representations to the Employer in its Response in relation to its competence, professionalism, financial standing and ability to carry out the required works in an efficient and cost effective manner.

(D) On the basis of the offer in the Response, the Employer selected the Contractor to enter into this Dynamic Purchasing System Agreement.

(E) The Employer may (without obligation) enter into contracts with the Contractor from time to time on a call-off basis for the provision of the required works in accordance with the terms of this Dynamic Purchasing System Agreement.

(F) This Dynamic Purchasing System Agreement sets out the ordering procedure for the supply of works and services which may be required by the Employer, the main terms and conditions for any Call-Off Contract which the Employer may conclude, and the obligations of the Contractor during and after the term of this Dynamic Purchasing System Agreement.

(G) By virtue of any Access Agreement made between the Employer, Contractor and Organisation, contracts may be entered into between an Organisation and the Contractor for the Contractor to carry out sub-contractor services subject to the terms of this Dynamic Purchasing System Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

'Appendix' means any of the appendices attached hereto;

'Best Value Duty' means the duty imposed by section 3 of the Local Government Act 1999 (the ***LGA 1999***) as amended, and under which the Employer is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to any applicable guidance issued from time to time;

'Business Day' means a day (other than a Saturday or a Sunday) on which commercial banks are open for general business in London;

'CEDR' means the Centre for Effective Dispute Resolution;

'Call-Off Contract' means the underlying contract to be entered into between the Employer and Contractor in the form of National Housing Federation (NHF) specifications and schedule of works (M3NHF Schedule of rates, formed in 2004 with Rands Associates and the National Housing Maintenance Forum (from the HAMMAR group), as amended by the relevant default amendments to the conditions of contract, incorporated by reference under the Form of Agreement executed by the Parties, as set out at **Schedule 1**;

'Competent Body' means anybody that has authority to issue standards or recommendations with which either Party shall comply;

'Confidential Information' means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data and Sensitive Personal Data within the meaning of the DPA. Confidential Information shall not include information which:

(i) was public knowledge at the time of disclosure (otherwise than by breach of clause 28 (Confidential Information; Disclosure of Information and Freedom of Information);

(ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

(iv) is independently developed without access to the Confidential Information;

'Consents' means

(i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by law for or in connection with the performance of the Works; and/or

(ii) any necessary consent or agreement from any third party needed either for the performance of the Contractor's obligations under this Dynamic Purchasing System Agreement or for the provision by the Contractor of the Works in accordance with this Dynamic Purchasing System Agreement;

'Consequential Loss' means any indirect, consequential or special loss or damage or liability for the same including, but not limited to, loss of profit, loss of turnover or loss of opportunity howsoever arising;

'Contract Administrator' means the person appointed to represent the Contractor pursuant to clause 10;

'Contract Documents' means the ITT Document, the Dynamic Purchasing System Agreement, the conditions of contract (set out at Appendix 1 of Schedule 1), the contract data part 1 and 2 (set out at Schedule 2), the Contractor's Tender and the Task Order(s);

'Control' means the ability to direct the affairs of another, whether by virtue of the ownership of shares, contract or otherwise;

'CORSERV means CORSERV Limited of Head Office, Higher Trenant Road, Wadebridge, Cornwall PL27 6TW;

'Data Processor' has the meaning set out in the DPA;

'Data Subject' has the meaning set out in the DPA;

'DBS' means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012;

'Disclosing Party' means the Party disclosing Confidential Information;

'DPA' means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

'DPS' Dynamic Purchasing System;

'Dynamic Purchasing System Agreement' means this Dynamic Purchasing System Agreement including all schedules and appendices;

'Dynamic Purchasing System End Date' means 31 July 2028;

'Dynamic Purchasing System Manager' means **Tim Hack** or such other person as shall be notified to the Contractor from time to time by the Employer;

'Dynamic Purchasing System Start Date' means 01 August 2018;

'Dynamic Purchasing System Term' means the period from the Dynamic Purchasing System Start Date to the Dynamic Purchasing System End Date and any extension thereof in accordance with clause 2.1;

'Environmental Information Regulations' means the Environmental Information Regulations 2004 and any re-enactments, amendments and relevant regulations.

'Event of Default' means one of the grounds of default set out in clause 24;

'Form of Agreement' means the form of agreement, incorporating the conditions of the Call-Off Contract and any amendments thereto, to be executed by the Parties, following the issuing of a Job Order by the Employer to the Contractor, as set out at **Schedule 1**;

'Form of Enquiry' means a request for a quotation for the provision of the Works in the form set out at **Schedule 3**, together with all documentation referenced therein or attached thereto, issued by the Dynamic Purchasing System Manager;

'FOIA' means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Council or relevant government department in relation to such legislation and the Environmental Information Regulations;

'Fraud' means any offence under the laws of the United Kingdom creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts or defrauding or attempting to defraud or conspiring to defraud the Employer;

'Good Industry Practice' means using standards, practices, methods and procedures conforming to the Law and using that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced contractor, or a person providing works the same as or similar to the Works, at the time the Works are provided, as applicable;

'Guidance' means any applicable guidance, code of practice or directions issued by the Relevant Authority or a Regulatory Body which the Contractor is bound to comply pursuant to the requirements of any Law;

'Insolvency Event'

i) any arrangement or composition with or for the benefit of creditors which does not involve a continuation of the Contractor's business in the same or substantially the same form (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into by or in relation to the person in question;

ii) a supervisor, receiver, administrator, administrative receiver or other encumbrances taking possession or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within five (5) Business Days) upon, the whole or part of the assets of the Contractor;

iii) the Contractor ceasing to carry on business;

iv) a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of the Contractor; or

v) the Contractor suffering any event analogous to any of the foregoing in any jurisdiction in which it is incorporated, established or resident;

'Intellectual Property Rights' means all vested and contingent and future intellectual property rights including but not limited to copyright, trademarks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications for the protection or registration of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created to which the Employer may be entitled;

'Law' means:

(i) any applicable Act of Parliament which has been issued, declared, passed or given effect;

(ii) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;

(iii) any applicable judgement of a relevant court of law which is a binding precedent in England and Wales;

(iv) any regulatory policy, binding guidance or binding industry code or directives;

'Losses' means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Consequential Losses;

'Necessary Consents' means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Works;

'OJEU Notice' means the contract notice dated XX XXXXX XXXX Reference; XXXX/S XXX-XXXXXX

'Order' means the form of order set out at **Schedule 5** which shall be issued to the Contractor when calling-off Works following a mini-competition in accordance with clause 6.4 of the Dynamic Purchasing System Agreement;

'Organisation' means any person, company or authority named in the OJEU Notice who wishes to procure works under the terms of this Dynamic Purchasing System Agreement;

'Parties' means the Employer and the Contractor and 'Party' shall be construed accordingly;

'Performance Indicators (KPI's)' means the key performance indicators set out at **Schedule 4** with such adjustments as shall be agreed between the Parties from time to time.

'Personal Data' means data which relates to a living individual who can be identified from that data, or from that data and other information which are in the possession of or are likely to come into the possession of either Party. They include, without limitation, expressions of opinion or intentions in respect of such a living individual;

'Pricing Document' means the document set out at **Schedule 6** (Responsive V7 Data);

'Prohibited Act' as defined in clause 29 of this Dynamic Purchasing System Agreement;

'Relevant Employee(s)' means all the employees employed by the Contractor who would transfer by operation of TUPE to a new service provider if the Works ceased to be carried out by the Contractor and were provided by a new provider;

'Regulatory Body' means those government departments and regulatory, statutory and other entities, communities and bodies which, whether under statute, rules, regulations, codes of practice or otherwise are entitled to regulate, investigate or influence the matters dealt with in this Dynamic Purchasing System Agreement;

'Schedules' means any of the schedules attached hereto;

'Sensitive Personal Data' means Personal Data consisting of information as to the racial or ethnic origin, the political beliefs, religious or similar beliefs, trade union membership, details of physical or mental health, sexual life and alleged commissions of crimes or criminal record of the data subject;

'Staff' means all persons employed by the Contractor to perform its obligations under this Dynamic Purchasing System Agreement together with the Contractor's servants, agents, suppliers, Sub-contractors and volunteers used in the performance of its obligations under this Dynamic Purchasing System Agreement;

'Task Order' has the meaning given to it in the Call-Off Contract;

'Tender' means the tender submitted by the Contractor in response to the Employer's invitation to tender document set out **in the ITT Document**;

'TUPE' means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

'VAT' means value added tax in accordance with the provisions of the Value Added Tax Act 1994;

'Variation' means a variation to a provision or part of a provision of this Dynamic Purchasing System Agreement made in accordance with clause 18;

'Works'	any works and/or services to be provided by the Contractor for the Employer in accordance with the terms of this Dynamic Purchasing System Agreement.

1.2 The headings in this Dynamic Purchasing System Agreement shall not affect its interpretation.

1.3 References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.

1.4 References to a statutory provision shall include any subordinate legislation made from time to time under that provision.

1.5 References to sections, clauses and Appendices are to the sections, clauses and Appendices of this Dynamic Purchasing System Agreement, unless expressly stated otherwise.

1.6 A reference to a person shall include a reference to any individual, CORSERV or other legal entity

1.7 References to anybody, organisation or office shall include reference to its applicable successor from time to time.

1.8 Any references to this Dynamic Purchasing System Agreement or any other documents includes reference to this Dynamic Purchasing System Agreement or such other documents as varied, amended, supplemented, extended, restated and/or replaced from time to time.

1.9 Use of the singular includes the plural and vice versa.

1.10 The provisions of this Dynamic Purchasing System Agreement supplement and compliment the provisions of the Call-Off Contract and other documents referenced and incorporated into the Form of Agreement. Where there is a conflict or discrepancy between any contractual documentation, the Service Manager shall seek to resolve that conflict or discrepancy. However, in the event of a conflict or discrepancy which cannot be resolved by the Service Manager, unless otherwise stated in this Dynamic Purchasing System Agreement, the following order of precedence shall be applied:

- the Form of Agreement;
- the Task Order;
- the terms of this Dynamic Purchasing System Agreement (not including Schedules);
- the default provisions of the Call-Off Contract;
- the Schedules to this Dynamic Purchasing System Agreement;
- the original printed conditions of the Call-Off Contract;
- the Contractor's Response.

2. DYNAMIC PURCHASING SYSTEM DURATION

2.1 This Dynamic Purchasing System Agreement will commence on the Dynamic Purchasing System Agreement Start Date and shall remain in force for a period of up to ten (10) years expiring on the Dynamic Purchasing System Agreement End Date unless it is terminated earlier in accordance with the provisions set out below.

3. SCOPE OF DYNAMIC PURCHASING SYSTEM AGREEMENT

3.1 The Employer hereby appoints the Contractor as the potential provider of the Works with effect from the Dynamic Purchasing System Start Date, and, in consideration of the Contractor agreeing to enter into this Dynamic Purchasing System Agreement and to perform its obligations under it.

3.2 This Dynamic Purchasing System Agreement governs the overall relationship between the Employer and the Contractor in respect of the provision of the Works by the Contractor.

3.3 It is acknowledged that the Employer may, at its absolute discretion and at any time during the term of this Dynamic Purchasing System Agreement, enter into Call-Off Contracts with the Contractor for the provision of the Works to the extent that the relevant requirements in clause 6 (Calling Off Works) have been satisfied.

3.4 No undertaking nor any form of statement, promise, representation or obligation shall be deemed to have been made by the Employer in respect of the total quantities or values of the Works to be commissioned, ordered or procured pursuant to this Dynamic Purchasing System Agreement and the Contractor acknowledges and agrees that it has not entered into this Dynamic Purchasing System Agreement on the basis of any such undertaking, statement, promise or representation.

4. NON-EXCLUSIVITY

4.1 The Contractor acknowledges that in entering into this Dynamic Purchasing System Agreement no form of exclusivity has been conferred on, or volume guarantee granted by the Employer in relation to the provision of the Works by the Contractor. The Employer makes no representation or guarantee that it will call-off any Works to be carried out by the Contractor and the Employer retains the absolute right to engage such other contractors as it so wishes to provide any or all works which are the same as or similar to the Works. There is no obligation on the Employer to use this Dynamic Purchasing System Agreement to procure works and services. The Contractor acknowledges and agrees that it shall have no claim for any costs, loss or expenses against the Employer in the event that it is unsuccessful in any Call-off or price submission pursuant to this Dynamic Purchasing System Agreement.

5. USE OF THE DYNAMIC PURCHASING SYSTEM BY OTHER ORGANISATIONS

5.1 The Employer may at any time request that the Contractor enters into an Access Agreement with an Organisation and the Contractor shall execute the Access Agreement with the notified Organisation. Upon execution of the Access Agreement the Contractor acknowledges that the Organisation is entitled to the same reliefs and benefits of the Employer under this Dynamic Purchasing System Agreement. For the avoidance of doubt, the Contractor shall note the applicable rates and prices at **Schedule 6** in respect of the provision of Works by the Contractor on behalf of any Organisation.

6. CALLING OFF WORKS

6.1 If the Employer decides to source any of the Goods and/or 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 Goods, Works and/or Services from the Contractor by following Schedule 2 (Call for Competition Procedure).

6.2 The Contractor shall comply with the relevant provisions in Schedule 2 (Call for Competition Procedure).

7. PROPERTY AND EQUIPMENT

7.1 The Contractor shall ensure that neither the Contractor nor its employees, agents, sub-contractors or other persons for whose action it is responsible, shall do any act or thing at any premises owned or occupied or controlled by the Employer, CORSERV or any third party that is not done in the course of the proper performance of the Works and in accordance with the terms of this Dynamic Purchasing System Agreement and the relevant Call-Off Contract.

7.2 Except as otherwise specified in this Dynamic Purchasing System Agreement or the relevant Call-Off Contract, the Contractor shall provide all equipment and materials reasonably necessary for the provision of the Works. Any equipment used in the provision of the Works and belonging to the Employer or CORSERV, which is damaged, lost or unduly worn due to negligence, misuse, or wilful action by the Contractor or its employees, agents, sub-contractors or other persons for whose action it is responsible, must be replaced at the Contractor's own expense.

8. THE WORKS

8.1 The Contractor shall:

8.1.1 provide or procure all resources required in connection with and for the purpose of carrying out the Works, whether of a temporary or permanent nature, so far as such requirement for the provision of the same is specified in or reasonably implied by this Dynamic Purchasing System Agreement; and

8.1.2 ensure that all activities, operations and other things done, all equipment used, and all methods adopted in connection with and for the purposes of carrying out the Works are sufficient, safe and fit for purpose.

8.2 The Contractor shall ensure that the Works:

8.2.1 comply in all respects with the **Schedule 1** (M3NHF SCHEDULE OF RATES – RESPONSIVE MAINTENANCE AND VOID PROPERTY WORKS – VERSION 7 - SPECIFICATION

8.2.2 are delivered in accordance with the terms of this Dynamic Purchasing System Agreement and any Call-Off Contract.

8.3 Without prejudice to clause 8.2 the Contractor shall perform its obligations under this Dynamic Purchasing System Agreement, including those in relation to the Works, in accordance with:

8.3.1 the Law;

8.3.2 Good Industry Practice; and

8.3.3 all Consents.

8.4 The Contractor shall inform the Dynamic Purchasing System Manager promptly and confirm in writing if the Contractor is unable to or fails to provide any part of the Works in accordance with the terms of this Dynamic Purchasing System Agreement. The provision of information under this Clause 8.4 shall not in any way release or excuse the Contractor from any of its obligations under this Dynamic Purchasing System Agreement.

8.5 The Contractor shall co-operate, liaise with and co-ordinate its activities under the Dynamic Purchasing System Agreement and any Call-Off Contract with those of the Employer and any other contractors engaged by the Employer in connection with the Works and shall provide the Works in harmony with and at no detriment to other similar works provided by or on behalf of the Employer.

9. STAFF

9.1 At all times, the Contractor shall ensure that:

9.1.1 each of the Staff is suitably qualified and experienced, adequately trained and capable of providing the applicable Works in respect of which they are engaged;

9.1.2 there is an adequate number of Staff to provide the Works properly in accordance with the Employer's requirements;

9.1.3 where applicable, Staff are registered with the appropriate professional regulatory body;

9.1.4 it can provide a clear check undertaken through the DBS for each of the Staff engaged in the Works;

9.2 If requested by the Employer, the Contractor shall as soon as practicable and by no later than 20 Business Days following receipt of that request, provide the Employer with evidence of the Contractor's compliance with clause 9.1.

9.3 The Contractor must ensure that every member of Staff involved in the provision of the Works receives:

9.3.1 proper and sufficient continuous professional and personal development, training and instruction; and

9.3.2 full and detailed appraisal (in terms of performance and on-going education and training);

9.3.3 acts in accordance with Good Industry Practice and the standards of any applicable relevant professional body.

9.4 The Contractor shall replace any of the Contractor's Staff who the Employer reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor's Staff for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Works.

9.5 The Employer shall under no circumstances be liable either to the Contractor or to such Staff in respect of any cost, expense, liability loss, or damage occasioned by such removal and the Contractor shall fully indemnify the Employer in respect of any claim made by such Staff.

9.6 The Contractor shall maintain up-to-date personal records on the Contractor's Staff engaged in the provision of the Works, and on request, provide reasonable information to the Employer on the Contractor's Staff. The Contractor shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

9.7 The Contractor shall use its best endeavours to ensure continuity of Staff and to ensure that the turnover rate of its Staff engaged in the provision or management of the Works is at least as good as the prevailing industry norm for similar services, locations and environments.

9.8 The Contractor shall provide and shall ensure that its personnel at all times when engaged in the provision of the Works wear such identification (including photographic identification) as agreed by the Parties, and shall ensure that when requested to do so any personnel of the Contractor shall disclose his identity and status as personnel of the Contractor and shall not attempt to avoid so doing.

9.9 Where Employer rules and regulations or the nature or the location of any duties upon which the Contractor's personnel shall be engaged in the provision of the Works make the Contractor shall provide and shall require its personnel to wear such clothing. Such special or protective clothing shall be maintained and replaced as necessary by the Contractor.

9.10 The Contractor shall notify the Employer immediately upon becoming aware of any possible conflict of interest which may arise between the interests of the Employer and any other customer of the Contractor and the Contractor shall take all reasonable steps to remove or avoid the cause of any such conflict of interest to the satisfaction of the Employer.

10. CONTRACT ADMINISTRATOR

10.1 The Contractor shall appoint a suitably qualified and experienced Contract Administrator who shall be empowered to act on behalf of the Contractor for all purposes connected with this Agreement. Any notice, information, instruction or other communication given to the Contract Administrator or any duly appointed deputy shall be deemed to have been given to the Contractor.

10.2 The Contractor shall forthwith give notice in writing to the Dynamic Purchasing System Manager of the identity, address and telephone numbers of any person appointed as the Contract Administrator and of any subsequent appointment.

10.3 The Contractor shall ensure that the Contract Administrator or his deputy is available to meet the Dynamic Purchasing System Manager at all reasonable times.

11. SAFEGUARDING

11.1 The Contractor shall put or have in place a safeguarding policy which reflects and complements:

11.1.1 the relevant statutory provisions relating to safeguarding children and / or vulnerable adults; and

11.1.2 the Employer's safeguarding policies and procedures (including those set out at **Schedule 9** (Safeguarding); and

11.1.3 the Cornwall and Isles of Scilly Safeguarding Adults Board policies and procedures including but not limited to the Multi-Agency Safeguarding Adults Policy; and

11.1.4 the Cornwall and the Isles of Scilly Local Safeguarding Children Board's safeguarding policies and procedures including the South West Safeguarding and Child Protection Procedures and the Local Safeguarding Children Board Guidelines for Providers

as applicable, and amended from time to time to ensure that all allegations, suspicions and incidents of abuse, harm or the risk of harm to children and / or vulnerable adults or where there is a concern about the behaviour of an individual are reported immediately to the Employer's Representative and the Multi Agency Referral Unit (MARU) 0300 123 1116. The Contractor's safeguarding policies and procedures should include active encouragement to staff in whistle blowing if aware of suspected abuse.

11.2 The Contractor shall submit its safeguarding policy to the Employer for approval upon request. The Contractor must incorporate any amendments to the policy which may be recommended by the Employer.

11.3 The Contractor shall comply with all statutory obligations in respect of safeguarding as amended from time to time.

11.4 If appropriate, the Contractor shall ensure that vulnerable children and adults are safeguarded from any form of abuse or exploitation including physical, financial, psychological and sexual abuse, neglect, discriminatory abuse or self harm or inhuman or degrading treatment through deliberate intent, negligent acts or omissions.

11.5 The Contractor shall ensure that all allegations, suspicions and incidents of abuse are reported immediately to the Employer and shall promptly take appropriate disciplinary action against any member of staff who is engaged in any of the improper conduct and thoroughly investigate any allegations of such improper conduct. The Contractor shall promptly inform the Employer's Representative of the initiation, nature and outcome of any disciplinary action taken against any member of staff or investigation and shall immediately suspend the member of staff from providing the Works pending investigation and completion of appropriate disciplinary action. The Employer may require the Contractor to provide specific further training and support to the member of staff concerned and may request in writing that the Contractor monitors that member of staff's performance and submits a report to the Employer. The Contractor shall ensure that the provisions of relevant contracts of employment of its staff provide for relevant staff consent to the sharing of the information / data described in this clause.

11.6 If deemed appropriate by the Employer, the Contractor shall procure that all personnel engaged in the delivery of the Works regularly receive appropriate safeguarding vulnerable adults training according to their job role or discussed and agreed at subsequent contract review meetings.

11.7 If deemed appropriate by the Employer, the Contractor shall appoint an individual of sufficient seniority for the safeguarding of vulnerable adults. This individual shall be responsible for the implementation and monitoring of the Contractor's safeguarding policies and procedures in accordance with the terms of this Dynamic Purchasing System Agreement.

11.8 The Contractor shall:

11.8.1 have in place a process whereby its employees may report in confidence any alleged malpractice on the part of the Contractor as regards any part of the provision of the Works;

11.8.2 not take any action against any employee pursuant to its contractual rights in respect of that employee where such employee has in accordance with the process provided pursuant to clause 11.10.1 and in good faith reported alleged malpractice on the part of the Contractor.

11.9 The obligations in this clause 11 shall be separate from and in addition to any obligations required by the Employer pursuant to a Call-Off Contract.

12. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION

12.1 The Contractor shall not discriminate between or against Carers, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the law.

12.2 The Contractor shall provide appropriate assistance and make reasonable adjustments for Carers, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).

12.3 In performing its obligations under this Agreement the Contractor shall comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:

12.3.1 eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;

12.3.2 advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and

12.3.3 foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it,

and for the avoidance of doubt this obligation shall apply whether or not the Contractor is a public authority for the purposes of section 149 of the Equality Act 2010.

12.4 As soon as reasonably practicable following any reasonable request from CORSERV, the Service Provider shall provide CORSERV with a plan detailing how it will comply with its obligations under Clause 12.3 which shall include the completion of an equality questionnaire and the provision of relevant equality data where required.

12.5 The Service Provider shall provide to CORSERV as soon as reasonably practicable, any information that CORSERV reasonably requires to:

12.5.1 monitor the equity of access to the Services; and

12.5.2 fulfil their obligations under the law.

MODERN SLAVERY AND HUMAN TRAFFICKING

12.6 In performing its obligations under this Dynamic Purchasing System Agreement and any Call-Off Contract, the Contractor shall:

12.6.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and

12.6.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and

12.6.3 include in its contracts with its subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 12.6.1 and 12.6.2.

13. SERVICE IMPROVEMENTS AND BEST VALUE DUTY

13.1 The Contractor shall to the utmost extent reasonably practicable co-operate with and assist the Employer in fulfilling its Best Value Duty.

13.2 In addition to the Contractor's obligations under Clause 13.1, where reasonably requested by the Employer, the Contractor at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Employer and shall assist the Employer with the preparation of any Best Value performance plans.

13.3 During the term of this Dynamic Purchasing System Agreement at the reasonable request of the Employer, the Contractor shall:

13.3.1 demonstrate how it is going to secure continuous improvement in the way in which the Works are delivered having regard to a combination of economy, efficiency and effectiveness and the Parties may agree a continuous improvement plan for this purpose;

13.3.2 implement such improvements; and

13.3.3 where practicable following implementation of such improvements decrease the price to be paid by the Employer for the Works.

13.4 If requested by the Employer, the Contractor shall identify the improvements that have taken place in accordance with Clause 13.3, by reference to any reasonable measurable criteria notified to the Contractor by the Employer.

14. INTELLECTUAL PROPERTY

14.1 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

14.2 The Contractor shall at all times during the Dynamic Purchasing System Term on written demand indemnify the Employer and keep the Employer fully indemnified against all Losses, incurred by, awarded against or agreed to be paid by the Employer arising out of any claim or infringement or alleged infringement (including the defence of such infringement or alleged infringement) resulting from the Contractor's unauthorised use of the Employer's names, logos or trade marks.

14.3 The Contractor shall at all times, during and after the Dynamic Purchasing System Term, on written demand indemnify the Employer and keep the Employer indemnified against all Losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Employer arising from an IPR Claim.

15. HEALTH AND SAFETY

15.1 The Contractor shall be responsible for the observance by all Contractor parties of all legislation relating to health and safety for all aspects of the service provision and shall take on all precautions necessary for the protection of all Contractor parties invited on to or visiting the sites or properties.

15.2 Without in any way detracting from or affecting either Party's statutory and/or regulatory duties and responsibilities, the parties will endeavour to establish and maintain in respect of all Services a culture and working environment in which health and safety is of paramount concern to everybody involved with the Woks and health and safety takes precedence over all other considerations.

15.3 As a first step towards raising health and safety standards in respect of the Works the Contractor undertakes to:

15.3.1 supply a copy of its general statement of safety policy, to the Employer for approval, and shall review its policy and safe working procedures whenever necessary in the light of changing legislation, working practices, accidents or similar events and shall inform the Employer of any consequent revisions;

15.3.2 as soon as reasonably practical report to the Employer any accidents to any Contractor Party which ordinarily require reporting in accordance with the Health and Safety at Work etc. Act 1974;

15.3.3 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive;

15.3.4 ensure that all personnel engaged by the Contractor have received health and safety training in accordance with the Law;

15.3.5 ensure that there is full and proper health and safety consultation with all personnel engaged by the Contractor in accordance with the Health and Safety (Consultation with Employees) Regulations 1996;

15.3.6 comply with its obligations under the The Construction Design and Management Regulations as they apply to the works to be carried out under the Call-Off Contracts; and

15.3.7 without prejudice to the generality of the above sub-clauses, provide and shall require its personnel to wear any special or protective clothing, headwear or footwear where the applicable rules and regulations or the nature or location of any duties upon which the Contractor's personnel shall be engaged in the provision of the Services make the wearing of necessary or appropriate. Such special or protective clothing, headwear or footwear shall be maintained and replaced as necessary by the Contractor.

15.4 Without prejudice to clause 15.3 and clause 15.5, as soon as reasonably practicable on the anniversary of the Task Order Start Date and annually from that date thereafter the Employer shall carry out a review of the health and safety record of the Contractor. For the purposes of the review of its health and safety record, the Contractor shall provide all reasonable assistance and details of:

15.4.1 any prosecution for a breach of health and safety legislation; and

15.4.2 any prohibition notices or any improvement notices issued by either the Health and Safety Executive or any other public or statutory body.

15.5 At any time the Employer shall have the right to undertake its own health and safety inspections or verify the Contractor’s records and any information provided to it relating to health and safety by any means it deems reasonably necessary.

15.6 Without prejudice to any other right or remedy of the Employer, if at any time the Employer becomes aware of any breach of this clause 15 or breach of any health and safety related statutory or regulatory duty or and responsibility or that the Contractor has either been prosecuted for breach of health and safety legislation or has been

issued with a prohibition notice or an improvement notice, then the Employer may immediately suspend the Contractor by giving written notice of the same and the provisions of clause 22 (Performance) shall apply.

16. OPEN BOOK

16.1 The Contractor shall (and shall procure that each Sub-Contractor shall) at all times:

16.1.1 maintain a full and accurate record of particulars of the costs of performing the Works pursuant to each Call-Off Contract;

16.1.2 upon request by the Employer, provide a written summary of any of the costs referred to in clause 16.1.1, including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Employer may reasonably require to enable the Employer to monitor the performance by the Contractor of its obligations under this Dynamic Purchasing System Agreement and any Call-Off Contract; and

16.1.3 provide such reasonable assistance as the Employer may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause.

16.2 Compliance with this clause 16 shall require the Contractor to keep (and to procure that each Sub-Contractor shall keep) books of account in accordance with best accountancy practice with respect to this Dynamic Purchasing System Agreement showing in detail:

16.2.1 the constituent elements of the prices and rates at **Schedule 6** (Responsive V7 Data);

16.2.2 administrative overheads;

16.2.3 payments to Sub-Contractors;

16.2.4 capital and revenue expenditure; and

16.2.5 such other items as the Employer may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Dynamic Purchasing System Agreement or the terms of any Call-Off Contract,

and the Contractor shall have (and procure that its Sub-Contractors shall have) the books of account evidencing the items listed in clauses 16.2.1 to 16.2.5 inclusive, available for inspection by the Employer (and those authorised by the Employer) upon reasonable notice, and shall promptly present a written report of these to the Employer as and when requested from time to time.

16.3 For the avoidance of doubt, the Contractor shall permit (and shall procure that the Sub-Contractors shall permit) all records referred to in clauses 16.1 to 16.4 (inclusive) to be examined and copied from time to time by the Employer's auditor and their representatives.

17. WARRANTIES AND REPRESENTATIONS

17.1 The Contractor warrants and represents that:

17.1.1 it has full capacity and authority to enter into and perform its obligations under this Dynamic Purchasing System Agreement and that this Dynamic Purchasing System Agreement is executed by a duly authorised representative of the Contractor;

17.1.2 it has all of the Consents in place to carry out the Works and the Employer shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

17.1.3 its execution of this Dynamic Purchasing System Agreement does not and will not contravene or conflict with its constitution, any law, or any agreement to which it is party or which is binding on it or any of its assets;

17.1.4 in entering into this Dynamic Purchasing System Agreement it has not committed any Fraud;

17.1.5 all material information supplied by it to the Employer is, to its reasonable knowledge and belief, true and accurate and it is not aware of any material facts or circumstances which have not been disclosed to the Employer which would, if disclosed, be likely to have an adverse effect on a reasonable public sector entity's decision whether or not to contract with the Contractor substantially on the terms of this Dynamic Purchasing System Agreement;

17.1.6 to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Dynamic Purchasing System Agreement.

18. VARIATIONS

18.1 This Dynamic Purchasing System Agreement may not be amended or varied other than in accordance with this Clause 18.

18.2 Either Party may from time to time during the term of this Dynamic Purchasing System Agreement, by written notice to the other Party, request a variation to this Dynamic Purchasing System Agreement. A notice of Variation shall set out in as much detail as is reasonably practicable the proposed amendment(s).

18.3 Where a notice of Variation is issued, the Employer and the Contractor shall enter into good faith negotiations for a period of not more than 30 Business Days from the date of that notice (unless such period is extended by the Parties in writing) with a view to reaching agreement on the proposed Variation in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation. If the Parties are unable to agree a proposed Variation within such time period (or extended time period), the proposed Variation shall be deemed withdrawn and the Parties shall continue to perform their obligations under this Dynamic Purchasing System Agreement.

18.4 No Variation to this Dynamic Purchasing System Agreement will be valid or of any effect unless agreed in writing by the Dynamic Purchasing System Manager (or his nominee) and the Contractor in accordance with Clause 18.

19. ASSIGNMENT AND SUB-CONTRACTING

19.1 The Contractor shall not assign, delegate, transfer, sub-contract, charge or otherwise dispose of all or any of its rights or obligations under this Dynamic Purchasing System Agreement or any Call-Off Contract without the prior written consent of the Employer.

19.2 The Employer's consent to sub-contracting under Clause 19.1 will not relieve the Contractor of its liability to the Employer for the proper performance of any of its obligations under this Dynamic Purchasing System Agreement or any Call-Off Contract and the Contractor shall be responsible for the acts, defaults or neglect of any Sub-contractor, or its employees or agents in all respects as if they were the acts, defaults or neglect of the Contractor.

19.3 The Employer may assign, transfer, novate or otherwise dispose of any or all of its rights and obligations under this Dynamic Purchasing System Agreement or any Call-Off Contract without the consent of the Contractor.

20. AUDIT AND INSPECTION

20.1 Within 10 Business Days of the Employer's reasonable request, the Contractor shall send the Employer a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Works, to which the Contractor has access and which it can disclose in accordance with the law.

20.2 The Employer shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Contractor or delay the provision of the Works.

20.3 During any audit undertaken under clause 20.1, the Contractor shall provide the Employer with all reasonable co-operation and assistance in relation to that audit, including:

20.3.1 all reasonable information requested within the scope of the audit;

20.3.2 reasonable access to the Contractor's Premises; and

20.3.3 access to the Staff.

21. INSURANCE

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

21.2 The Contractor shall procure within its submitted prices that the insurances below or as stated in any Call-Off Contract are taken out upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom or the European Union on the basis and for the duration of this Dynamic Purchasing System Agreement or as otherwise pursuant to the individual Call-Off Contracts:

21.2.1 public liability insurance to cover all risks in the performance of this Dynamic Purchasing System Agreement from time to time with a minimum limit of indemnity of £5,000,000 (five million pounds)

21.2.2 employers' liability insurance with a minimum limit of £5,000,000 (five million pounds) indemnity as required by law from time to time.

21.3 The Contractor shall immediately inform the Employer if it considers that any insurance policy it is required to procure under this Dynamic Purchasing System Agreement or any Call-Off Contract ceases to be available at commercially reasonable rates.

21.4 The Contractor shall not take any action, or fail to take any reasonable action, or (in

so far as it is reasonably within its power) permit or allow others to take or fail to take any action (including failure to disclose any fact), as a result of which any of the insurances it is required to procure may be rendered void, voidable, unenforceable or suspended or impaired in whole or in part or which may otherwise render any sum paid out under any relevant policy repayable in whole or in part.

21.5 The Contractor shall supply, within 5 Business Days of request, to the Employer:

21.5.1 evidence of all insurance policies (including all documents evidencing any amendments, extensions or variations to all such policies) which may be in the form of a letter from the Contractor's insurance broker confirming that such insurances are in place; and

21.5.2 evidence that the premiums payable under the insurances have been paid and that the insurances required under this Dynamic Purchasing System Agreement and as required in any Call-Off Contract are in full force and effect.

21.6 Neither failure to comply nor full compliance with the insurance provisions of this Dynamic Purchasing System Agreement shall relieve the Contractor of its liabilities and obligations under this Dynamic Purchasing System Agreement.

21.7 The Contractor shall take all reasonable steps to mitigate the effects of any risks or claims covered by this clause 21 (including without limitation minimising the amount of any costs and expenses which might result).

22. PERFORMANCE

22.1 If at the date of review of the KPI's, the Contractor fails to meet any one of the KPI targets, or the aggregate KPI score falls below the threshold set by the Employer on an annual basis the Employer shall be entitled to suspend the Contractor from tendering for any Works in connection under the Dynamic Purchasing System Agreement and shall be immediately excluded from any current tender process.

22.2 During any period of suspension pursuant to clause 22.1:

22.2.1 the Parties shall meet to consider the reasons for such failure and shall negotiate in good faith to agree a plan **("Rectification Action Plan")** which sets out actions that the Contractor needs to take with a view to the targets in the Performance Indicators being achieved within a revised timeframe (as applicable) ("**Rectification Process**"). Such Rectification Action Plan will become effective once it is agreed between the Parties and, in the Employer's absolute discretion, any suspension from tendering will be lifted upon such agreement in writing. The Rectification Action Plan must be implemented by the Contractor as soon as reasonably practicable following agreement.

22.2.2 Works which are already subject to a Call-Off Contract shall be unaffected and the Contractor shall continue to perform such Works in accordance with the terms of the Call-Off Contract but the Contractor shall not be able to accept any Enquiries (and none shall be issued by Dynamic Purchasing System Manager) or enter into any new Call-Off Contract until the Employer has lifted such suspension; and

22.2.3 the Contractor's other obligations under the Dynamic Purchasing System Agreement shall remain in full force and effect.

22.3 If, the targets set out in the Rectification Action Plan continue not to be achieved by the time of the next review of Performance Indicators and the continuing failure is a result of the material non-performance by the Contractor of actions accepted by it

under a Rectification Action Plan, then the Employer may, in its absolute discretion:

22.3.1 by written notice suspend the Contractor from the Dynamic Purchasing System Agreement again and the provisions of clause 22.2 shall apply again; or

22.3.2 terminate the Dynamic Purchasing System Agreement by notice to the Contractor in accordance with clause 25.

22.4 The Employer shall be entitled to terminate the Dynamic Purchasing System Agreement by notice to the Contractor in accordance with clause 25 if:

22.4.1 at any time during the suspension period under clause 22.2, the Employer decides (in its absolute discretion) that no agreement can be reached on remedial action;

22.4.2 the Contractor is required to carry out the Rectification Process three (3) or more times any twelve (12) month calendar period;

22.4.3 the Contractor is required to carry out the Rectification Process in two (2) or more consecutive Quarters;

22.4.4 the Employer is unable to agree the Rectification Action Plan with the Contractor within fourteen (14) Business Days from the commencement of suspension, or such longer period with the consent of the Employer in writing; or

22.4.5 If the recommendations of a Rectification Action Plan are not carried out to the satisfaction of the Employer within three (3) months of acceptance.

22.5 Termination of this Dynamic Purchasing System Agreement will have no effect on any Works which are already subject to A Call-Off Contract and such contracts shall not terminate (unless terminated in accordance with their terms).

23. DISPUTE RESOLUTION

23.1 Any disputes or differences arising between the Parties which arise under and/or relate to the Works shall be resolved in accordance with the dispute resolution provisions of the relevant Call-Off Contract.

23.2 Any disputes or differences arising between the Parties in respect of the construction or effect of this Dynamic Purchasing System Agreement, shall be resolved by the Parties negotiating in good faith.

23.3 In the absence of resolution in accordance with Clause 23.2 above the dispute may be referred by agreement of both Parties to a single mediator to be appointed in accordance with the mediation procedures of the Centre for Effective Dispute Resolution (CEDR) Model Mediation procedure 2001 or such later edition as may be in force from time to time or such other organisation which provides mediation services. The mediator shall be agreed upon by the Parties.

23.4 All costs of mediation shall be borne equally by the Parties unless otherwise directed by the mediator.

23.5 Nothing in this Dynamic Purchasing System Agreement shall prevent the Parties from referring a dispute to adjudication at any time.

23.6 The submission of either Party to clauses 23.3 to 23.5 above shall not limit their right to commence any proceedings in any court of competent jurisdiction in England and

Wales.

24. EVENT OF DEFAULT

24.1 For the purposes of this Dynamic Purchasing System Agreement, an Event of Default means any of the following events or circumstances:

24.1.1 the Contractor commits a material breach of any of its obligations under this Dynamic Purchasing System Agreement and the Contractor has failed to remedy that breach within 10 Business Days following receipt of notice from the Employer identifying the breach or such other period of time as the Employer may direct;

24.1.2 the Contractor fails to obtain any Consent, loses any Consent, or has any Consent varied or restricted, the effect of which might reasonably be considered by the Employer to have a material adverse effect on the provision of the Works;

24.1.3 the events set out in clause 22 (Performance) of this Dynamic Purchasing System Agreement;

24.1.4 the Contractor fails to maintain insurance in accordance with the requirements of this Dynamic Purchasing System Agreement (including as required under any Call-Off Contract);

24.1.5 the Contractor experiences, in the opinion of the Employer, an irreconcilable conflict of interest between the interests of the Employer and any other customer of the Contractor;

24.1.6 an Insolvency Event occurs in relation to the Contractor; or

24.1.7 there is a change in Control of the Contractor.

25. TERMINATION

25.1 On the occurrence of an Event of Default the Employer may act or require action as follows:

25.1.1 seek a meeting within five (5) Business Days with the Contractor to try to agree a satisfactory plan to remedy such default where it is capable of remedy in the opinion of the Employer; or

25.1.2 if the default is not capable of remedy or no agreement to rectify the fault is provided to the satisfaction of the Employer or if the Contractor fails to execute any plan agreed under clause 25.1.1 within the agreed period of time the Employer may terminate this Dynamic Purchasing System Agreement immediately by notice to the Contractor.

25.2 If the Contractor is found to have offered, or given, or agreed to give to any person any gift, or consideration of any kind as an inducement or reward for doing, or forbearing to do, or having done or forborne to do any action in relation to the obtaining of this Dynamic Purchasing System Agreement, or any other agreement with the Employer, or for showing or forbearing to show favour, or disfavour, to any person in relation to this Dynamic Purchasing System Agreement, or any other agreement with the Employer, or if the like acts shall have been done by any person employed by the Contractor, or acting on the Contractor's behalf (whether with or

without the knowledge of the Contractor), or if in relation to this Dynamic Purchasing System Agreement, or any other agreement with the Employer, the Contractor or any other person employed by the Contractor, or acting on the Contractor's behalf, shall have committed any Prohibited Act or any offence under the Bribery Act 2010 or shall have given any fee or reward to any member or officer of the Employer, the receipt of which is an offence under section 117 (2) Local Government Act, 1972, then any such act shall constitute a breach of this Dynamic Purchasing System Agreement which entitles the Employer to treat itself as discharged from further liability under this Dynamic Purchasing System Agreement and to recover from the Contractor the full amount of any loss resulting thereto.

25.3 The Employer shall have the right to terminate this Dynamic Purchasing System Agreement, or to terminate the provision of any part of the Dynamic Purchasing System Agreement at any time by giving three (3) months' written notice to the Contractor.

26. CONSEQUENCE OF EXPIRY OR TERMINATION

26.1 Expiry or termination of this Dynamic Purchasing System Agreement will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.

26.2 Notwithstanding the service of a notice to terminate this Dynamic Purchasing System Agreement, the Contractor shall continue to fulfil its obligations under this Dynamic Purchasing System Agreement until the date of expiry or termination.

26.3 In the event of termination or expiry of this Dynamic Purchasing System Agreement, the Contractor shall cease to use the Employer's Confidential Information and on the earlier of the receipt of the Employer's written instructions or 10 Business Days after the date of expiry or termination, return all copies of the Confidential Information to the Employer in a format and at a place and time to be determined by the Employer.

26.4 Termination or expiry of the Dynamic Purchasing System Agreement shall not cause any Call-Off Contracts or Task Orders to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

26.5 If, as a result of termination of this Dynamic Purchasing System Agreement the Employer procures the Works from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable to the Contractor for providing the same Works, then the Employer, acting reasonably, will be entitled to recover from the Contractor (in addition to any other sums payable by the Contractor to the Employer in respect of that termination) the excess cost and all reasonable related professional and administration costs it incurs (in each case) for a period of 6 months following termination.

26.6 The provisions of clauses 20, 21, 28 and 29 shall survive the termination or expiry of the Dynamic Purchasing System Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

27. COUNTER-FRAUD AND SECURITY MANAGEMENT

27.1 The Contractor must put in place and maintain appropriate counter fraud and security management arrangements.

27.2 The Contractor must take all reasonable steps, in accordance with good industry practice, to prevent Fraud by Staff and the Contractor in connection with the receipt of monies from the Employer.

27.3 The Contractor must notify the Employer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

27.4 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Employer, the Employer may terminate this Dynamic Purchasing System Agreement by written notice to the Contractor with immediate effect (and terminate any other contract the Contractor has with the Employer) and recover from the Contractor the amount of any Loss suffered by the Employer resulting from the termination, including the cost reasonably incurred by the Employer of making other arrangements for the provision of the Works for the remainder of the term of this Dynamic Purchasing System Agreement had it not been terminated.

28. CONFIDENTIALITY; DATA PROTECTION AND FREEDOM OF INFORMATION

CONFIDENTIALITY

28.1 Except where otherwise provided for in this Dynamic Purchasing System Agreement, Confidential Information is owned by the Party that discloses it (the "Disclosing Party") and the Party that receives it (the "Receiving Party") has no right to use it.

28.2 Subject to Clauses 28.3 and 28.4, the Receiving Party agrees:

28.2.1 to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Agreement;
28.2.2 not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
28.2.3 to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.

28.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:

28.3.1 in connection with any dispute resolution under clause 30 (Dispute Resolution);
28.3.2 in connection with any litigation between the Parties;
28.3.3 to comply with the law;
28.3.4 to its Staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause 28.2;
28.3.5 to other provider's on the Dynamic Purchasing System Agreement ;
28.3.6 to comply with a regulatory bodies request.

28.4 The obligations in clause 28.1 and clause 28.2 will not apply to any Confidential Information which:

28.4.1 is in or comes into the public domain other than by breach of this Agreement;
28.4.2 the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
28.4.3 the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.

28.5 The obligations in clause 28.1 and clause 28.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of Employer or is related to an executive decision of the Employer and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Employer shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Contractor and where reasonably practicable shall consider any representations made by the Contractor.

DATA PROTECTION

28.6 The Parties acknowledge their respective duties under the DPA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

28.7 To the extent that the Contractor is acting as a Data Processor on behalf of the Employer, the Contractor shall, in particular, but without limitation:

28.7.1 only process such Personal Data and/or Sensitive Personal Data as is necessary to perform its obligations under this Agreement, and only in accordance with any instruction given by the Employer under this Dynamic Purchasing System Agreement;

28.7.2 put in place appropriate technical and organisational measures against any unauthorised or unlawful processing of such Personal Data and/or Sensitive Personal Data, and against the accidental loss or destruction of or damage to such Personal Data and/or Sensitive Personal Data having regard to the specific requirements in this Agreement, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data and/or Sensitive Personal Data is affected by such unauthorised or unlawful processing or by its loss, damage or destruction;

28.7.3 take reasonable steps to ensure the reliability of Staff who will have access to such Personal Data and/or Sensitive Personal Data, and ensure that such Staff are properly trained in protecting Personal Data and Sensitive Data;

28.7.4 provide the Employer with such information as the Employer may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;

28.7.5 promptly notify the Employer of any requests for disclosure of or access to the Personal Data and/or Sensitive Personal Data;

28.7.6 promptly notify the Employer of any breach of the security measures required to be put in place pursuant to this clause 28.7.6;

28.7.7 ensure it does not knowingly or negligently do or omit to do anything which places the Employer in breach of the Employer's obligations under the DPA.

28.7.8 to the extent that any Employer data is held and/or processed by the Contactor, the Contractor shall supply that Employer data to the Employer as requested by the Employer.

28.7.9 ensure that it is registered under the DPA and the registration covers any processing required under this Dynamic Purchasing System Agreement.

28.8 The Contractor and the Employer shall ensure that Personal Data and Sensitive Personal Data is safeguarded at all times in accordance with the law.

FREEDOM OF INFORMATION AND TRANSPARENCY

28.9 The Parties acknowledge their respective duties under the FOIA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

28.10 If the Contractor is not a public body, the Contractor acknowledges that the Employer is subject to the requirements of the FOIA and will assist and co-operate with the Employer to enable the Employer to comply with its disclosure obligations under the FOIA. Accordingly the Contractor agrees:

28.10.1 that this Dynamic Purchasing System Agreement and any other recorded information held by the Contractor on the Employer's behalf for the purposes of this Dynamic Purchasing System Agreement are subject to the obligations and commitments of the Employer under the FOIA;

28.10.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Employer;

28.10.3 that if the Contractor receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Employer) and will promptly (and in any event within 2 working days) transfer the request to the Employer;

28.10.4 that the Employer, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations, may disclose information concerning the Contractor and this Dynamic Purchasing System Agreement either without consulting with the Contractor, or following consultation with the Contractor and having taken its views into account; and

28.10.5 to assist the Employer in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by an Employer within 5 working days of such request and without charge.

28.11 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Dynamic Purchasing System Agreement is not Confidential Information.

28.12 Notwithstanding any other provision of this Dynamic Purchasing System Agreement, the Contractor hereby consents to the publication of this Dynamic Purchasing System Agreement in its entirety including from time to time agreed changes to this Dynamic Purchasing System Agreement subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.

28.13 In preparing a copy of this Dynamic Purchasing System Agreement for publication pursuant to clause 28.12 the Employer may consult with the Contractor to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Employer's absolute discretion.

28.14 The Contractor shall assist and co-operate with the Employer to enable the Employer to publish this Agreement.

28.15 In order to comply with the Government's policy on transparency in the areas of Agreements and procurement the Employer will be disclosing information on its website in relation to expenditure over £500 (five hundred pounds) in relation to this Dynamic Purchasing System Agreement. The information will include the Contractor's name and the charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.

28.16 The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Consequential Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause 28.

28.17 The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause 28 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause 28.

This clause 28 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

28.18 The Contractor shall be responsible for any costs associated with compliance with the provisions of this clause 28.

28.19 The Contractor shall comply with any requirements (including compliance with any appropriate information assurance scheme and the Computer Misuse Act 1990) detailed in the Specification(s) in relation to its security policies, procedures and control of Confidential Information, Personal Data and Sensitive Personal Data.

ENVIRONMENTAL AND SUSTAINABILITY REQUIREMENTS

28.20 The Contractor will assist the Employer and the other Service Participants (as applicable) in exploring ways in which the environmental performance and sustainability of the Works might be improved and environmental impact reduced. The Contractor shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Works. Without prejudice to the generality of the foregoing and to the extent required within the scope of the Works being provided by the Contractor, the Contractor shall promptly provide all such information regarding the environmental impact of the Works as may reasonably be requested by the Employer. Where required to design or select materials for use in the Works, the Contractor shall use reasonable endeavours to select products and materials and/or adopt construction/engineering techniques and processes which result in or involve:

28.20.1 reductions in waste;
28.20.2 reductions in energy consumption;
28.20.3 reductions in mains water consumption;
28.20.4 reductions in CO2 emissions;
28.20.5 reductions in materials from non-renewable sources;
28.20.6 reductions in commercial vehicle movements;
28.20.7 maintenance or optimisation of biodiversity;
28.20.8 maintenance or optimisation of ecologically valuable habitat;
28.20.9 improvements in whole life performance; and
28.20.10 minimising adverse environmental impacts of operations and prevent pollution.

29. PROHIBITED ACTS

29.1 The Contractor shall not do any of the following:

29.1.1 offer, give, or agree to give the Employer (or any of its officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Dynamic Purchasing System Agreement or any other contract with the Employer, or for showing or not showing favour or disfavour to any person in relation to this Dynamic Purchasing System Agreement or any other contract with the Employer; and

29.1.2 in connection with this Dynamic Purchasing System Agreement, pay or agree to pay any commission, other than a payment, particulars of which (including the terms and conditions of the Dynamic Purchasing System Agreement for its payment) have been disclosed in writing to the Employer,

(together "Prohibited Acts").

29.2 If the Contractor or its employees or agents (or anyone acting on its behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the Employer in relation to this Dynamic Purchasing System Agreement, the Employer shall be entitled:

29.2.1 to exercise its right to terminate under clause 25.2 (Termination) and to recover from the Contractor the amount of any loss resulting from the termination; and

29.2.2 to recover from the Contractor the amount or value of any gift, consideration or commission concerned; and

29.2.3 to recover from the Contractor any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

29.3 Each Party must provide the other Party upon written request with all reasonable assistance to enable that Party to perform any activity required for the purposes of complying with the Bribery Act 2010. Should either Party request such assistance the Party requesting assistance must pay the reasonable expenses of the other Party arising as a result of such request.

29.4 The Contractor must have in place an anti-bribery policy for the purposes of preventing any of its Staff from committing a prohibited act under the Bribery Act 2010. Such policy must be disclosed to the Employer within five (5) Business Days of the Employer requesting it and enforced by the Contractor where applicable.

29.5 Should the Contractor become aware of or suspect any breach of this clause 29, it will notify the Employer immediately. Following such notification, the Contractor must respond promptly and fully to any enquiries of the Employer, co-operate with any investigation undertaken by the Employer and allow the Employer to audit any books, records and other relevant documentation.

30. TUPE

30.1 The Contractor acknowledges that the Employer has made no assurance about the effect of TUPE and has formed its own view on whether TUPE applies before executing this Dynamic Purchasing System Agreement. The Contractor agrees that its tendered price shall not be varied on the grounds that TUPE does or does not apply, irrespective of the belief of the Employer or the Contractor prior to the execution of this Dynamic Purchasing System Agreement.

30.2 No compensation or remuneration shall be payable by the Employer where the nature, extent, effect or character of any obligations acquired by the Contractor under this

Dynamic Purchasing System Agreement as a result of the effects of TUPE may be different from that envisaged.

30.3 The Employer does not accept any responsibility for and gives no warranty in respect of the TUPE information which has been supplied to the Contractor by the Employer.

30.4 The Contractor shall indemnify the Employer and keep the Employer indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Employer as a result of or in connection with any failure on the part of the Contractor or Sub-Contractor to comply with TUPE.

30.5 Where the Employer has notified the Contractor that it intends to tender or retender any of the Works, the Contractor shall on written request of the Employer and in any event within 20 Business Days of that request (unless otherwise agreed in writing), provide the Employer with all reasonably requested information on the Staff engaged in the provision of the relevant Works to be tendered or retendered that may be subject to TUPE.

30.6 The Contractor shall warrant the accuracy of all the information provided to the Employer pursuant to clause 30.5 and authorises the Employer to use any and all the information as it may consider necessary for the purposes of its business or for informing any new service provider or prospective new service provider provided this disclosure does not contravene any applicable law.

30.7 The Contractor shall not in anticipation of the termination of this Dynamic Purchasing System Agreement change the identity of any of the employees engaged in providing the Works, increase or decrease the number of employees or vary any of the terms and conditions on which they are employed unless otherwise agreed in writing by the Employer and shall indemnify and hold harmless the Employer from and against any breach of this Clause 30.6.

30.8 During the twelve (12) months preceding the expiry of this Dynamic Purchasing System Agreement or after notice to terminate this Dynamic Purchasing System Agreement has been given (whichever is the earlier), the Contractor shall not without the prior written consent of the Employer (which shall not be unreasonably withheld or delayed):

30.8.1 vary or purport or promise to vary the terms and conditions of employment of Relevant Employees;

30.8.2 increase remuneration levels of any Relevant Employees;

30.8.3 increase or decrease the number of Relevant Employees; or

30.8.4 assign or redeploy any Relevant Employee to other duties in connection with the Works.

30.9 The Contractor shall indemnify and keep indemnified the Employer against any losses incurred by the Employer arising from any act or omission by the Contractor in connection with any claim or demand by any transferring employee under TUPE.

31. RECOVERY OF SUMS DUE TO THE EMPLOYER

31.1 Whenever under this Dynamic Purchasing System Agreement any sum of money shall be recoverable from or payable by the Contractor to the Employer the same may be deducted from any sum then due or which at any time thereafter may become due to

the Contractor under this Dynamic Purchasing System Agreement or any Call-Off Contract.

32. NOTICES

32.1 All notices under this Dynamic Purchasing System Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Dynamic Purchasing System Agreement shall be served by sending the same by first class post, facsimile or by hand, to:

If to the Contractor: [please enter name]

If to the Employer: Tim Hack, Group Procurement Manager

32.2 Any Party to this Agreement may change its nominated address or facsimile number by prior notice to the other Party.

32.3 Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

32.3.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or

32.3.2 by 11am on the next following Business Day, if sent after 4pm, on a Business Day but before 9am on that next following Business Day.

33. FORCE MAJEURE

33.1 Where a Party is (or claims to be) affected by an event of Force Majeure, it must take all reasonable steps to mitigate the consequences of it, resume performance of its obligations under this Dynamic Purchasing System Agreement as soon as practicable and use its reasonable efforts to remedy its failure to perform its obligations under this Dynamic Purchasing System Agreement.

33.2 Subject to clause 33.1, the Party claiming relief as a result of an event of Force Majeure will be relieved from liability under this Dynamic Purchasing System Agreement to the extent that because of the event of Force Majeure it is not able to perform its obligations under this Dynamic Purchasing System Agreement.

33.3 The Party claiming relief as a result of an event of Force Majeure must serve an initial written notice on the other Party immediately it becomes aware of the event of Force Majeure. This initial notice shall give sufficient details to identify the particular event. The Party claiming relief must then serve a detailed written notice within a further 15 Business Days. This detailed notice shall contain all relevant available information relating to the failure to perform the relevant obligations under this Dynamic Purchasing System Agreement as is available, including the effect of the event of Force Majeure, the mitigating action being taken and an estimate of the period of time required to overcome it and resume full delivery of Works.

33.4 A Party cannot claim relief as a result of an event of Force Majeure, if the event of Force Majeure is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant event of Force Majeure.

33.5 The Employer shall not be entitled to exercise its rights to withholdings and/or deduction of payments under this Dynamic Purchasing System Agreement, to the extent that the circumstances giving rise to such rights arise as a result of an event of Force Majeure.

34. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

34.1 Any rights of any person who is not a party to this Agreement to enforce the terms of this Agreement pursuant to the Agreements (Rights of Third Parties) Act 1999 are excluded.

35. WAIVER

35.1 Any relaxation or delay by either Party in exercising any right under this Dynamic Purchasing System Agreement will not be taken as a waiver of that right and will not affect the ability of that Party subsequently to exercise that right.

36. EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY

36.1 Nothing in this Dynamic Purchasing System Agreement creates a partnership or joint venture or relationship of employer and employee or principal and agent between the Employer and the Contractor.

37. ENTIRE AGREEMENT

37.1 This Dynamic Purchasing System Agreement constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties relating to the subject matter of this Dynamic Purchasing System Agreement, except for any agreement entered into between the Employer and the Contractor which relates to the same or similar works to the Works and is designed to remain effective until the Dynamic Purchasing System Start Date.

38. GOVERNING LAW AND JURISDICTION

38.1 This Agreement will be governed by and interpreted in accordance with English law and will be subject to the exclusive jurisdiction of the Courts of England and Wales.

38.2 Subject to the provisions of clause 23, the Parties agree that the courts of England have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement.

39. LEGAL PROCEEDINGS

39.1 The Contractor immediately upon becoming aware of any accident, physical damage or breach of any statutory provision relating in any way to or connected with the Works shall notify the Employer of the same.

39.2 If requested to do so by the Employer the Contractor shall provide the Employer with any relevant information in the Contractor's possession in connection with any legal inquiry, arbitration or court proceedings in which the Employer may become involved and shall give evidence in such inquiries or proceedings or hearings, arising out of the provision of the Works.

IN WITNESS (via DocuSign) whereof this document has been duly executed as a Deed the day and year first above written.

EXECUTED as a Deed by
CORSERV LIMITED
acting through
two of its Directors or a Director
and Company Secretary:

……. ……
Director (Signature) Print name

……. ……
Director/Company Secretary Print name
(Signature)

EXECUTED as a Deed by
[COMPANY:]
acting through
two of its Directors or a Director
and Company Secretary
or Representatives with delegated authority
or a Sole Trader:

……. ……
Director (Signature) Print name

……. ……
Director/Company Secretary Print name
(Signature)