

## **ACCENT HOUSING LIMITED**

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### **DYNAMIC PURCHASING SYSTEM**

Encompass DPS

for the provision of various social housing related works and services

### **TERMS AND CONDITIONS**

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## 1. BACKGROUND

- 1.1 Following an advertisement in the UK Find a Tender Service dated 4<sup>th</sup> January 2022, reference 2022/S 000-00123 (the “**Contract Notice**”) and a competitive procurement process undertaken in accordance with the Public Contracts Regulations 2015, Accent Housing Limited (“**Accent**”) has established a Dynamic Purchasing System for the provision of various workstreams – Asbestos, Electrical, Cyclical Decorations, Heating, Roofing, Kitchens, Doors Window Guttering Fascia Soffits and Rainwater Goods, Bathrooms, Sustainability & Recruitment (the “**DPS**”).
- 1.2 Accent has established the DPS to enable Accent and its Group Members to enter into Contracts with the DPS Contractors for the provision of a range of social housing related works and services as and when required during the DPS Term. The DPS comprises of a total of 156 Lots – this is based on 10 workstreams split into geographical lots.
- 1.3 These DPS Terms and Conditions set out the terms on which the DPS will operate.
- 1.4 Accent does not guarantee that the DPS Contractors will be awarded Contracts for any particular value or type of works or services under the DPS.

## 2. DEFINITIONS AND INTERPRETATION

### Definitions

- 2.1 In these DPS Terms and Conditions, the following expressions shall have the following meanings:

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| “ <b>Admittance Criteria</b> ”         | means the criteria that contractors were required to satisfy in order to be appointed to the various Lots of the DPS, as more particularly set out in the procurement documents issued by Accent for the DPS;   |
| “ <b>Contract</b> ”                    | means a contract between Accent (or the relevant Group Member) and a DPS Contractor for the carrying out of works and services by the DPS Contractor, and in such form as may be prescribed by Accent (or the relevant Group Member) in the invitation to take part in the Competition for the contract;                                  |
| “ <b>Competition</b> ”                 | means the procedure outlined in Clauses 5.2 to 5.6;   |
| “ <b>Contract Notice</b> ”             | has the meaning given to it in Clause 1.1;  |
| “ <b>Data Protection Legislation</b> ” | means the Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, the General Data Protection Regulation (EU) 2016/679 (as varied by the Data Protection Act 2018), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI |

2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner and any additions, updates thereof;

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| <b>“DPS”</b>                      | has the meaning given to it in Clause 1.1;   |
| <b>“DPS Contractors”</b>          | means the contractors appointed to the DPS from time to time, and <b>“DPS Contractor”</b> shall mean any one of them;  |
| <b>“DPS Manager”</b>              | has the meaning given in Clause 4.4;   |
| <b>“DPS Objectives”</b>           | has the meaning given in Clause 4.1;   |
| <b>“DPS Representative”</b>       | has the meaning given in Clause 4.2;   |
| <b>“DPS Term”</b>                 | means the term of the DPS which shall expire on 03 January 2032;   |
| <b>“DPS Terms and Conditions”</b> | means these terms and conditions;  |
| <b>“EIR”</b>                      | means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations;   |
| <b>“FOIA”</b>                     | means the Freedom of Information Act 2000 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 in relation to such legislation; |
| <b>“Group Member”</b>             | means any entity within the same group of companies as Accent from time to time;   |
| <b>“Information”</b>              | has the meaning given under section 84 of the FOIA;  |
| <b>“KPIs”</b>                     | means any key performance indicators incorporated in the Contracts;  |
| <b>“Lots”</b>                     | means the lots of the DPS set out in the Contract Notice;  |
| <b>“Notice of Suspension”</b>     | has the meaning given in Clause 26.3.2;  |

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| <b>“Parties”</b>                 | means Accent and the DPS Contractor and <b>“Party”</b> shall be construed accordingly;   |
| <b>“Relevant Authority”</b>      | means any court with competent jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union; |
| <b>“Request for Information”</b> | means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR;  |
| <b>“Supply Chain”</b>            | means any and all persons engaged by the DPS Contractor, Accent or a Group Member (as appropriate) in connection with a Contract with which the DPS Contractor, Accent or Group Member (as appropriate) is involved;                     |
| <b>“Working Days”</b>            | means any day on which banks are generally open for business (other than Saturdays, Sundays or public holidays);   |
| <b>“Works and Services”</b>      | means the works and services to be carried out by the DPS Contractor pursuant to a Contract as more particularly described in the relevant Contract;   |

- 2.2 References to Clauses and schedules are references to Clauses of and schedules to these DPS Terms and Conditions.
- 2.3 The provisions of the schedules are incorporated in these DPS Terms and Conditions.
- 2.4 Reference to the singular includes the plural and vice versa and references to any gender includes both genders.
- 2.5 References to a person includes any individual, firm, unincorporated association or body corporate.
- 2.6 The headings in these DPS Terms and Conditions are included for ease of reference only and shall not affect the interpretation or construction of these DPS Terms and Conditions.
- 2.7 Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consolidation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.
- 2.8 A reference to specific standards, codes of practice, guidelines, rules and/or schemes shall be construed as including all amendments, modifications, supplements, re-drafts

and/or substitutes.

### **3. COMMENCEMENT, APPOINTMENT AND DURATION**

- 3.1 The DPS Contractor's appointment shall be governed by these DPS Terms and Conditions and any relevant Contract. The DPS Contractor shall when requested by Accent or a Group Member following the selection process set out in Clause 5 enter into a Contract for the carrying out of the relevant Works and Services.
- 3.2 Subject to earlier termination in accordance with these DPS Terms and Conditions, the DPS shall continue for the duration of the DPS Term.
- 3.3 Notwithstanding any other provision of these DPS Terms and Conditions to the contrary, neither Accent nor any Group Member is obliged to enter into any Contracts with the DPS Contractor under the DPS during the DPS Term and, for the avoidance of doubt, neither Accent nor any Group Member shall be liable for any loss of profits, loss of contracts or other costs or losses suffered or incurred by the DPS Contractor as a result of the DPS Contractor not being awarded one or more Contracts under the DPS during the DPS Term.

### **4. DPS OBJECTIVES**

- 4.1 The DPS Objectives are as follows: <sup>1</sup>
  - 4.1.1 team-working and consideration for others, including quality and diversity considerations where appropriate;
  - 4.1.2 improvements in environmental performance, sustainability and reductions in environmental impact;
  - 4.1.3 high levels of customer satisfaction;
  - 4.1.4 the development and implementation of training programmes and apprenticeships;
  - 4.1.5 supporting local sustainability and community initiatives;
  - 4.1.6 the avoidance of disputes;
  - 4.1.7 the timely and fair payment of all suppliers and sub-contractors by the DPS Contractors;
  - 4.1.8 Accent's and the Group Members' satisfaction with the performance of the DPS Contractors;
  - 4.1.9 to work in a spirit of continuous improvement to continually improve value for money, quality and best value; and
  - 4.1.10 to consider and adopt any efficiency initiatives Accent or any Group Members may bring to the attention of DPS Contractors.
- 4.2 On or before its appointment to the DPS the DPS Contractor shall appoint a representative to act as its representative in connection with the DPS ("DPS

**Representative**") and shall provide Accent with the name and contact details of this individual.

- 4.3 The DPS Contractor shall keep Accent informed of any change in the identity of its DPS Representative from time to time.
- 4.4 On or before the appointment of the DPS Contractor to the DPS Accent shall provide the DPS Contractor with the name and contact details of the individual who will manage the DPS on Accent's behalf (the "**DPS Manager**").
- 4.5 Accent shall keep the DPS Contractor informed of any change in the identity of the DPS Manager from time to time.

## **5. COMPETITIONS AND AWARD OF CALL OFF CONTRACTS**

- 5.1 The Parties acknowledge that where Accent or a Group Member wishes to award a Contract under the DPS the selection of a DPS Contractor from a Lot and or multiple Lots in combination shall be made by Accent or a Group Member by way of a Competition conducted in accordance with the provisions of this Clause 5.
- 5.2 Accent or the Group Member shall identify the Lot or combination of Lots it wishes to award a Contract under and shall, without prejudice to Clause 26.3.2, invite all DPS Contractors appointed to that Lot or combination of Lots to take part in the Competition for the Contract. Contractors who have been successfully appointed to all relevant workstreams and geographical Lots by midnight five (5) working days before the opportunity is published, shall be invited to participate in the competition.
- 5.3 The invitation to take part in the Competition shall:
  - 5.3.1 be issued in writing electronically;
  - 5.3.2 specify a deadline for responding to the invitation to take part in the Competition, such deadline to be no less than ten (10) days from the date of issue of the invitation (unless Accent or the Group Member agree a shorter time frame with all of the DPS Contractors that have been invited to take part in the Competition);
  - 5.3.3 set out the evaluation criteria on which tenders submitted pursuant to the Competition will be assessed (which shall be determined by Accent or the Group Member issuing the invitation having regard to the requirements of the Contract in question, and which may be a combination of price and qualitative criteria, or price criteria only); and
  - 5.3.4 contain a copy of the form of Contract to be entered into with the successful DPS Contractor.
- 5.4 When invited by Accent or the Group Member to take part in a Competition, the DPS Contractor may either submit a written proposal or decline the invitation to take part.
- 5.5 The DPS Contractor shall be responsible for any costs it incurs in participating in a Competition and acknowledges and agrees that neither Accent nor any Group Member shall have any liability for such costs under any circumstances.
- 5.6 Accent or the Group Member shall evaluate all proposals received on the basis of the evaluation criteria set out in the invitation and will inform all DPS Contractors invited to take part in the Competition of the outcome of that evaluation.

- 5.7 If the DPS Contractor is selected to carry out a Contract following a Competition Accent or the Group Member may issue a Contract to the DPS Contractor for acceptance. If the DPS Contractor does not confirm its acceptance of the Contract within three (3) Working Days of receipt of the same (or within such longer period as Accent or the Group Member may specify) the DPS Contractor shall be deemed to have declined the offer to enter into the Contract and Accent or the Group Member may (in its absolute discretion):

5.7.1 offer the Contract to the next highest scoring DPS Contractor in the Competition;

5.7.2 recommence the Competition for the Contract; or

5.7.3 abandon the award of the Contract altogether.

- 5.8 Once appointed to carry out Works and Services under a Contract, the DPS Contractor shall provide those Works and Services in accordance with the terms of the Contract.

**Inconsistency between terms of a Contract and these DPS Terms and Conditions**

- 5.9 The terms of these DPS Terms and Conditions will supplement and complement the terms of any Contract. However, in the event of any conflict or discrepancy between the terms of a Contract and the terms of these DPS Terms and Conditions the terms of the relevant Contract will prevail.

**6. KPI PERFORMANCE REVIEW<sup>2</sup>**

- 6.1 The DPS Contractor shall meet with Accent on a [quarterly] basis throughout the DPS Term to review the DPS Contractor's performance of Call Off Contracts against the KPIs.
- 6.2 In advance of each quarterly meeting referred to in Clause 6.1 the DPS Contractor shall provide Accent with details of the DPS Contractor's performance of Call Off Contracts against the KPIs during the preceding quarter (together with such information as Accent may reasonably require in connection with the same) for review and discussion at the quarterly meeting.

**7. PRICING**

- 7.1 The price payable to the DPS Contractor for the carrying out of Works and Services pursuant to Contracts will be as set out in the Contract in question (having been established as part of the Competition for the Contract).

## **8. CONTINUOUS IMPROVEMENT AND CO-OPERATION**

### **Commitment to seek Continuous Improvement**

- 8.1 Throughout the DPS Term the DPS Contractor shall seek to achieve continuous improvement in the quality of the Works and Services that it is required to carry out under Contracts awarded to it.
- 8.2 The Parties shall consider and seek to agree such incentives, additional to those described in these DPS Terms and Conditions, as may be appropriate to encourage the DPS Contractor to maximise its efforts pursuant to these DPS Terms and Conditions and any Contract awarded to it.

### **Meetings and Annual Review Forum<sup>3</sup>**

- 8.3 The DPS Contractor shall attend all meetings as may be necessary for the proper carrying out of the Contracts.
- 8.4 Without prejudice to the generality of Clause 8.3, on annual basis Accent may convene a meeting with such Group Members and DPS Contractors as Accent may specify by giving such persons not less than five (5) Working Days' notice in writing to:
  - 8.4.1 share experience and lessons learnt from completed Contracts;
  - 8.4.2 review any KPIs collated and analysed;
  - 8.4.3 identify areas of success or areas for improvement in the successful carrying out of the Works and Services and the achievement of the DPS Objectives;
  - 8.4.4 share knowledge and experience in the pursuit of continuous improvement of the Works and Services;
  - 8.4.5 discuss comments on the forms of Contract to identify any problem areas and, if non substantial, proposals to address such issues; and
  - 8.4.6 publish details of the workload of each DPS Contractor to ensure transparency of information.

### **No Delay**

- 8.5 In all matters relating to the Works and Services, including without limitation any required notice, request, submission, decision, consent, approval, comment, valuation, agreement, opinion, instruction and other communication and activity the DPS Contractor shall act reasonably and without delay.

## **9. INFORMATION SHARING**

- 9.1 Subject to Clause 9.3, the DPS Contractor shall at all times keep Accent and the Group Members fully and promptly informed in relation to the carrying out of the Works and Services and shall provide Accent and the Group Members from time to time with all such information in this connection as they may require.
- 9.2 Subject to Clause 9.3, if the DPS Contractor has in its possession any knowledge or



information that is or would be of assistance to Accent or a Group Member in connection with a Contract, then the DPS Contractor shall promptly volunteer and share such knowledge or information with Accent or the Group Member without the need to be asked for such knowledge or information and irrespective of whether the DPS Contractor is contractually obliged to share such knowledge or information under any Contract that may have been entered into under the DPS.

- 9.3 The DPS Contractor shall not be required to volunteer or share knowledge or information pursuant to Clause 9.1 or 9.2 which the DPS Contractor is legally and/or contractually prohibited from disclosing.

## **10. SUPPLY CHAIN MANAGEMENT**

- 10.1 The DPS Contractor shall in carrying out its obligations under these DPS Terms and Conditions and any Contract:

10.1.1 adhere to and co operate in achieving the DPS Objectives;

10.1.2 use its reasonable endeavours to ensure that all members of its Supply Chain adhere to and co operate in achieving the DPS Objectives; and

10.1.3 work co operatively with the members of Accent's and the Group Members' Supply Chains with a view to achieving the DPS Objectives.

- 10.2 The DPS Contractor shall procure that the payment terms of any of its contracts with third party contractors and suppliers (where such third party contractors and suppliers are delivering any part of the Works and Services to be delivered by the DPS Contractor pursuant to a Contract) require payment to be made by the DPS Contractor to such third parties within thirty (30) calendar days.

## **11. HEALTH AND SAFETY**

The Parties shall work together and individually within their agreed roles, responsibilities and expertise and in accordance with these DPS Terms and Conditions to achieve the highest possible standards of health and safety in all activities forming part of the Works and Services.

## **12. TRAINING**

The DPS Contractor shall implement such employment, training and social value initiatives as may be agreed with Accent from time to time during the DPS Term, and in doing so shall take into account the recommendations of relevant current best practice guidance in developing appropriate action plans for the benefit of Accent's staff as a means to achieve transfer of skills.

## **13. ASSIGNMENT AND SUBCONTRACTING**

- 13.1 The DPS Contractor shall not assign, transfer or subcontract any rights and/or obligations under these DPS Terms and Conditions to any party without the prior written consent of Accent (such consent not to be unreasonably withheld or delayed). If Accent gives its consent under this Clause, the Parties shall enter into all necessary documentation to give effect to such assignment or transfer.

- 13.2 Accent and the Group Members may at any time assign, novate, charge or transfer their interest in these DPS Terms and Conditions and/or any rights arising under it to any

party on written notice to the DPS Contractor without the consent of the DPS Contractor being required and the DPS Contractor shall enter into all necessary documentation to give effect to such assignment, novation, charge or transfer.

## **14. TERMINATION**

### **Accent's Right to Terminate**

#### **14.1 If the DPS Contractor:**

14.1.1 commits a material breach of the terms of these DPS Terms and Conditions or any Contract; or

14.1.2 ceases to carry on its business, becomes insolvent, or has a liquidator, trustee in bankruptcy, receiver, manager, administrator or administrative receiver appointed in respect of its assets or (where the DPS Contractor is a partnership) those of any partner of the firm, or suffers any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident,

Accent may terminate the appointment of the DPS Contractor under one or more Lots by notice in writing having immediate effect.

#### **14.2 Without affecting any other right or remedy available to it, Accent may terminate the DPS Contractor's appointment under one or more Lots at any time, by giving written notice of termination to the DPS Contractor, that termination taking effect on the date of receipt of notice by the DPS Contractor or any later date as may be specified in the notice, if:**

14.2.1 the DPS and/or these DPS Terms and Conditions has been subject to a substantial modification for the purposes of regulation 72 of the Public Contracts Regulations 2015 (the "**PCR 2015**") which would have required a new procurement procedure in accordance with regulation 72(9) of the PCR 2015; or

14.2.2 the DPS Contractor has, at the date of its appointment to the DPS, been in one of the situations referred to in regulation 57(1) of the PCR 2015, including as a result of the application of regulation 57(2) of the PCR 2015, and should therefore have been excluded from the procurement procedure for the DPS.

### **DPS Contractor's Right to Terminate**

#### **14.3 The DPS Contractor may terminate its appointment under one more Lots following any material breach of these DPS Terms and Conditions by Accent which is notified in writing to Accent by the DPS Contractor and is not remedied by Accent within fifteen (15) Working Days of such notice, or in the event of Accent ceasing to carry on its business.**

### **General**

#### **14.4 The termination of the DPS Contractor's appointment under one or more Lots shall not automatically terminate any Contract entered into at or before the date of termination.**

#### **14.5 Termination of the appointment of the DPS Contractor under one more Lots shall not affect the mutual rights and obligations of the Parties accrued at the date of termination and the ongoing rights and obligations of the Parties as stated in these DPS Terms and Conditions.**

#### **14.6 Any Contract entered into during the DPS Term shall continue in full force and effect**

until its respective termination date, notwithstanding the termination or expiry of the DPS.

### **Obligations on Termination or Expiry**

- 14.7 Within thirty (30) Working Days of the end of the DPS Term or its earlier termination in accordance with this Clause 14, the DPS Contractor shall return or destroy at the request of Accent any data, personal information relating to Accent or its personnel or confidential information belonging to Accent in the DPS Contractor's possession, power or control, either in its then current format or in a format nominated by Accent (in which event Accent will reimburse the DPS Contractor's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by Accent, save that the DPS Contractor may keep one copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under the DPS Terms and Conditions, or such period as is necessary for such compliance.

## **15. PROBLEM SOLVING, DISPUTE AVOIDANCE AND RESOLUTION**

- 15.1 As soon as the DPS Contractor, Accent or a Group Member becomes aware of any difference or dispute with another arising under these DPS Terms and Conditions which does not fall to be dealt with under a Contract, they shall give notice to the other relevant party.
- 15.2 The relevant parties will endeavour to resolve any difference or dispute by direct negotiation in good faith and each such party will give serious consideration to a request by the other to refer a difference or dispute to mediation.
- 15.3 If any difference or dispute is not resolved in accordance with Clause 15.2 and provided that neither party has by reason of that difference or dispute exercised a right of termination under Clause 14, then such dispute may be referred to conciliation or to mediation or to any other form of alternative dispute resolution as the parties may agree.
- 15.4 The procedures under Clause 15.1, 15.2 and 15.3 are without prejudice to a party's right to refer any difference or dispute to adjudication.
- 15.5 Any difference or dispute may be referred by a party to the courts of England and Wales.
- 15.6 For the avoidance of doubt, any dispute between Accent, the DPS Contractor or a Group Member arising under a Contract shall be dealt with in accordance with the dispute resolution provisions of such Contract.

## **16. NOTICES**

Any notice, request, instruction or other documentation to be given under these DPS Terms and Conditions shall be delivered or sent by first class post or by electronic mail to the registered address of the recipient party (or to such other address as that party may have notified the other relevant party for this purpose) and any such notice or other document shall be deemed to have been served, (if delivered) at the time of delivery or (if sent by post) upon the expiration of 48 hours after posting and (if sent by electronic mail) upon transmission unless a notice of non-delivery is received within 2 hours after transmission.

## **17. CONFIDENTIALITY**

- 17.1 Subject to Clauses 9 and 18, the Parties shall keep secret and not disclose and shall procure that their employees and any subcontractors keep secret and do not disclose any information of a confidential nature obtained by them by reason of the DPS or these DPS Terms and Conditions. This obligation shall not apply to information:
- 17.1.1 which is in the public domain or is trivial or cannot reasonably be considered to be confidential; or
- 17.1.2 which Accent is required to disclose as a matter of law or in discharge of its obligations of public accountability and freedom of information.
- 17.2 The DPS Contractor agrees that Accent may supply information to the Group Members who wish, or may wish to enter into a Contract with the DPS Contractor.
- 17.3 The DPS Contractor undertakes to make no reference in any advertising or other promotional material to the DPS or these DPS Terms and Conditions without the prior written consent of Accent.

## **18. FREEDOM OF INFORMATION**

- 18.1 The DPS Contractor acknowledges that Accent and the Group Members may be (or, during the DPS Term, may become) subject to the requirements of the FOIA and the EIR and shall assist and co-operate with Accent or the Group Member concerned to enable it to comply with its information disclosure obligations.
- 18.2 The DPS Contractor shall and shall procure that its sub-contractors shall:
- 18.2.1 transfer to Accent or the Group Member all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- 18.2.2 provide Accent or the Group Member with a copy of all Information in its possession, or power in the form that Accent or the Group Member requires within five (5) Working Days (or such other period as Accent or the Group Member may specify) of Accent's or the Group Member's request; and
- 18.2.3 provide all necessary assistance as is reasonably requested by Accent or the Group Member to enable Accent or the Group Member to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 18.3 Accent or the Group Member concerned shall be responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
- 18.4 In no event shall the DPS Contractor respond directly to a Request for Information unless expressly authorised to do so by Accent or the relevant Group Member.
- 18.5 The DPS Contractor acknowledges that Accent and the Group Members may, acting in accordance with the applicable code of practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the DPS Contractor or despite having taken the DPS Contractor's views into account.
- 18.6 The DPS Contractor shall ensure that all Information is retained for disclosure and shall

permit Accent and the Group Members to inspect such records as requested from time to time.

## **19. NO AGENCY, PARTNERSHIP OR JOINT VENTURE**

Nothing contained in these DPS Terms and Conditions shall be construed as creating an agency, partnership or joint venture relationship between Accent, the DPS Contractor and the Group Members.

## **20. APPLICABLE LAW**

These DPS Terms and Conditions shall be governed by the laws of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

## **21. RIGHTS-OF THIRD PARTIES**

Save for any right conferred by these DPS Terms and Conditions on a Group Member, the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to these DPS Terms and Conditions and accordingly the Parties do not intend any third party (other than a Group Member) to have any right in respect of these DPS Terms and Conditions by virtue of that Act. For the avoidance of doubt, the Parties may vary the terms of these DPS Terms and Conditions by written agreement without the consent of the Group Members.

## **22. SEVERANCE**

22.1 Any Clause or provision of these DPS Terms and Conditions which is held to be illegal or unenforceable (in whole or in part) under any enactment or rule of law shall no longer form part of these DPS Terms and Conditions.

22.2 In the event that a Clause or provision (or part of a Clause or part of a provision) is excluded under Clause 22.1 above the validity and enforceability of the remainder of these DPS Terms and Conditions shall not be affected.

## **23. SURVIVAL OF CERTAIN CLAUSES**

The provisions of Clauses 2, 17, 18, 20, 22 and 24 (and without limitation to the foregoing, any other provision of these DPS Terms and Conditions which by its terms is to be performed or observed notwithstanding termination or expiry or which is either expressed to, or by implication is intended to survive termination or expiry) shall survive the termination or expiry of these DPS Terms and Conditions.

## **24. DATA PROTECTION**

To the extent that compliance with these DPS Terms and Conditions involves the DPS Contractor processing personal data (such terms having the meanings given in the relevant Data Protection Legislation) the DPS Contractor shall comply with the relevant Data Protection Legislation in relation to that personal data. Without prejudice to the generality of this Clause 24, the DPS Contractor shall, in relation to such personal data comply with Schedule 1 (Data Protection).

## **25. GENERAL OBLIGATIONS & WARRANTIES**

25.1 The DPS Contractor warrants (and where relevant undertakes) to Accent that:

- 25.1.1 it has full power and authority and all necessary consents to enter into and to perform its obligations under these DPS Terms and Conditions and any other agreements to which it is a party and which are to be entered into under or in connection with the DPS or these DPS Terms and Conditions;
- 25.1.2 no litigation, arbitration, adjudication, dispute or administrative proceeding has been commenced, is pending or to its knowledge is threatened against the DPS Contractor, and no judgment or award has been given or made or is pending against it, which:
- (i) in any way questions its power or authority to enter into or perform its obligations under these DPS Terms and Conditions or any other agreements to which it is a party and which are to be entered into under or in connection with the DPS or these DPS Terms and Conditions; or
  - (ii) may have a material adverse effect on its ability to perform its obligations under these DPS Terms and Conditions or any other agreements to which it is a party and which are to be entered into under or in connection with the DPS or these DPS Terms and Conditions;
- 25.1.3 all information, representations and other matters of fact communicated in writing to Accent or to its agents, advisers or employees, by or on behalf of the DPS Contractor, in its selection questionnaire, or otherwise in respect of the DPS, were when given and remain, as at the date of the DPS Contractor's appointment to the DPS, true, complete and accurate in all material respects (save to the extent that they have been superseded by subsequent communications in writing to Accent or the relevant agents, advisers or employees); and
- 25.1.4 every consent, authorisation, certificate, licence, or approval of, or registration with, or declaration to, any Relevant Authority required to authorise, or required in connection with the execution, delivery, validity, enforceability or admissibility in evidence of, these DPS Terms and Conditions or the performance by the DPS Contractor of its obligations under these DPS Terms and Conditions has been or will within any applicable period be obtained or made and is, or will when obtained be, in full force and effect, and there has been no material default in the observance of the conditions or restrictions (if any) imposed in, or in connection with, any of them.
- 25.2 The rights and remedies of Accent in relation to any misrepresentation or breach of warranty (or other provision of these DPS Terms and Conditions) on the part of the DPS Contractor shall not be prejudiced by any investigation by or on behalf of Accent into the affairs of the DPS Contractor, by the performance of these DPS Terms and Conditions or by any other act or thing which may be done or omitted to be done by Accent under these DPS Terms and Conditions and which would or might, but for this Clause 25.2, prejudice such rights and remedies.

## **26. CONFIRMATION OF ADMITTANCE CRITERIA**

- 26.1 In accordance with Regulation 34(25) of the Public Contracts Regulations 2015 Accent may, at any time during the DPS Term, request the DPS Contractor to re-confirm that it continues to satisfy the Admittance Criteria for the Lot(s) of the DPS to which it is appointed.
- 26.2 The DPS Contractor shall provide Accent with a written response to any request made by Accent under Clause 26.1 within ten (10) Working Days of the date of the request.

- 26.3 If the DPS Contractor fails to provide Accent with written confirmation that it continues to satisfy the Admittance Criteria for one or more of the Lots of the DPS to which it is appointed within the ten (10) Working Day timescale referred to in Clause 26.2 Accent may either, at its absolute discretion:
- 26.3.1 terminate the DPS Contractor's appointment to the Lot(s) in question by notice in writing having immediate effect; or
  - 26.3.2 issue the DPS Contractor with a **"Notice of Suspension"** specifying that the DPS Contractor shall be suspended from participating in any Competitions under the Lot(s) in question until such time as the DPS Contractor has provided Accent with confirmation that it satisfies the Admittance Criteria for such Lot(s), and the DPS Contractor shall be so suspended.

## **SCHEDULE 1**

### **DATA PROTECTION**

#### **1. DPS CONTRACTOR'S OBLIGATIONS**

- 1.1 The DPS Contractor shall, in relation to any Personal Data processed in connection with the performance by the DPS Contractor of its obligations under these DPS Terms and Conditions:
- (a) process that Personal Data only on the documented written instructions of Accent which are set out in Part 3 of this Schedule;
  - (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);
  - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - (d) not transfer any Personal Data outside of the United Kingdom unless the prior written consent of Accent has been obtained and the following conditions are fulfilled:
    - (i) Accent or the DPS Contractor has provided appropriate safeguards in relation to the transfer;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the DPS Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - (iv) the DPS Contractor complies with reasonable instructions notified to it in advance by Accent with respect to the processing of the Personal Data;
  - (e) assist Accent in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (f) notify Accent without undue delay (and in any event within 24 hours) of becoming aware of a Personal Data Breach;
  - (g) at the written direction of Accent, delete or return Personal Data and copies thereof to Accent on termination of its appointment to the DPS



unless required by the Data Protection Legislation to store the Personal Data; and

- (h) maintain complete and accurate records and information to demonstrate its compliance with this paragraph 1.1 and allow for audits by Accent or Accent's designated auditor and immediately inform Accent if, in the opinion of the DPS Contractor, an instruction infringes the Data Protection Legislation.

## **2. GENERAL**

- 2.1 The DPS Contractor shall not appoint any third party processor of Personal Data under these DPS Terms and Conditions without Accent's prior written consent. If such consent is given the DPS Contractor shall enter into a written agreement with the third-party processor incorporating terms which are substantially similar to those set out in this Schedule 1 and which the DPS Contractor undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between Accent and the DPS Contractor, the DPS Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this paragraph 2.1.
- 2.2 Either Party may, at any time on not less than 30 days' notice, revise paragraphs 1.1 and 2.1 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 replaced by attachment to these DPS Terms and Conditions).

## **3. PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

- 3.1 Processing by the DPS Contractor
  - (a) Scope – the provision of the Works and Services
  - (b) Nature – the Personal Data will be processed for the provision of Works and/or Services as set out in the scope above.
  - (c) Purpose of processing – the specific processing activities will include collection, organisation, storage, retrieval, communication/disclosure, reporting, storing, analysis, presentation and other such activity which Accent as Data Controller may request in order to deliver the Works and Services.
  - (d) Duration of the processing – the term of the Framework Agreement
- 3.2 Types of Personal Data
  - i. Name
  - ii. Address
  - iii. phone number
  - iv. email address
  - v. disability/medical conditions
  - vi. Vulnerabilities (including do not visit alone requirements)
  - vii. Employment status (specifically requirements relating to avoiding school run or time off work needed)
  - viii. Preferred language
  - ix. Religion (including observance of religious festivals)
- 3.3 Categories of Data Subject – Accent's residents and staff