**Highways DPS Agreement**

Dynamic Purchasing System for Civils, Structures and Surface Treatments

**2024-2031**

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2024

1. **NORTH SOMERSET COUNCIL**

 **AND**

1. **[DPS Appointed Supplier]**

**Dynamic Purchasing System Agreement** for the provision of

Civil and Related Infrastructure Improvement Works

**Contents**

[1. DEFINITIONS AND INTERPRETATION 6](#_Toc148951493)

[2. COMMENCEMENT AND DURATION 15](#_Toc148951495)

[3. SCOPE OF THIS DPS AGREEMENT 16](#_Toc148951496)

[4. DPS APPOINTED SUPPLIER’S APPOINTMENT 18](#_Toc148951497)

[5. MINI COMPETITION PROCEDURE 19](#_Toc148951498)

[6. NEW ENTRANTS 23](#_Toc148951499)

[7. PRECEDENCE OF DOCUMENTS 24](#_Toc148951500)

[8. PRICES AND PAYMENT FOR THE DPS WORKS 25](#_Toc148951501)

[9. WARRANTIES, REPRESENTATIONS AND GUARANTEES 26](#_Toc148951502)

[10. REPORTING AND MEETINGS 29](#_Toc148951503)

[11. REPRESENTATIVES AND LIAISON RELATING TO THE DPS 30](#_Toc148951504)

[12. HEALTH AND SAFETY 31](#_Toc148951505)

[13. CORRUPT GIFTS AND FRAUD 32](#_Toc148951506)

[14. E-COMMERCE 34](#_Toc148951507)

[15. FINANCIAL INFORMATION, AUDITS AND COMPLIANCE WITH SELECTION CRITERIA 35](#_Toc148951508)

[16. RECORDS AND AUDIT ACCESS 36](#_Toc148951509)

[17. PUBLICITY AND BRANDING 38](#_Toc148951510)

[18. CONFIDENTIALITY 39](#_Toc148951511)

[19. FREEDOM OF INFORMATION AND TRANSPARENCY 41](#_Toc148951512)

[20. DATA PROTECTION 42](#_Toc148951513)

[21. TERMINATION 43](#_Toc148951514)

[22. SUSPENSION OF DPS APPOINTED SUPPLIER’S APPOINTMENT 47](#_Toc148951523)

[23. CONSEQUENCES OF TERMINATION AND EXPIRY 48](#_Toc148951524)

[24. INSURANCE 49](#_Toc148951525)

[25. VARIATIONS 50](#_Toc148951526)

[26. FORCE MAJEURE 50](#_Toc148951527)

[27. SUB-CONTRACTING, ASSIGNMENT AND NOVATION 51](#_Toc148951528)

[28. THIRD PARTY RIGHTS 52](#_Toc148951529)

[29. SEVERABILITY 53](#_Toc148951530)

[30. RIGHTS AND REMEDIES 54](#_Toc148951531)

[31. WAIVER 55](#_Toc148951532)

[32. ENTIRE AGREEMENT 56](#_Toc148951533)

[33. NOTICES 57](#_Toc148951534)

[34. GOVERNING LAW AND JURISDICTION 58](#_Toc148951535)

[35. AGENCY AND PARTNERSHIP 59](#_Toc148951536)

[36. DISPUTE RESOLUTION 60](#_Toc148951537)

[37. COUNTERPARTS 61](#_Toc148951538)

[APPENDIX 1 - SCOPE & SITE INFORMATION 63](#_Toc148951539)

[APPENDIX 2 – INVITATION TO MINI COMPETE (ITMC) – TENDER EXERCISE 64](#_Toc148951540)

[APPENDIX 3 – CONTRACTORS OFFER AND CLIENTS ACCEPTANCE 65](#_Toc148951541)

[APPENDIX 4 –CONDITIONS OF CONTRACT 66](#_Toc148951542)

[APPENDIX 5 – VARIATION PROCEDURE 68](#_Toc148951547)

APPENDIX 6 - APPOINTED SUPPLIER'S SELECTION QUESTIONNAIRE

This **DPS Agreement** is made the day of 202\_\_\_\_\_\_\_

**BETWEEN:**

(1) **NORTH SOMERSET COUNCIL** of  , Town Hall, Walliscote Grove Road, Weston Super Mare BS23 1UJ

#  (the “Council”); and

(2) **[NAME OF SERVICE APPOINTED SUPPLIER]** (Company No. [INSERT]) whose registered office is at [ADDRESS OF SERVICE APPOINTED SUPPLIER] (the “**DPS Appointed supplier**”).

each a “party” and together the “parties”.

# BACKGROUND

1. The Council sought applications for appointment to a dynamic purchasing system for provision of civil and infrastructure improvement works (divided into 3 categories) (the “**DPS**”) to itself by a contract notice [insert number] dated [insert date] placed in the Find a Tender System and the South East Shared Services Portal.

1. On the basis of the Selection Questionnaire, the Council appointed the DPS Appointed supplier to the DPS, as a potential appointed supplier of the DPS Works in respect of the DPS Appointed supplier’s Lots, in accordance with this DPS Agreement.

1. This DPS Agreement sets out the Mini Competition process that will be followed for any DPS Works which may be required by the Contracting Authority during the DPS Term and the main terms and conditions for any Call-Off Contracts which the Contracting Authority may conclude and the obligations of the DPS Appointed supplier under this DPS Agreement.

1. It is the parties’ intention that there will be no obligation for the Contracting Authority to award any Call Off Contract under this DPS Agreement during the DPS Term.

1. From the DPS Commencement Date, the DPS shall be continually open to new joiners throughout the DPS Term.

**IT IS AGREED** as follows:

**PART 1: GENERAL**

# DEFINITIONS AND INTERPRETATION

## In this DPS Agreement, unless the context otherwise requires:

|  |  |
| --- | --- |
| “Auditor”   | an auditor appointed by the National Audit Office or the Council or some other body that is required to audit the accounts of the Council including those relating to the Council’s purchase of the DPS Works under this DPS Agreement;   |
| “Authorised Officer”   | the representative(s) of the Council appointed to manage the performance of DPS Appointed suppliers under the DPS (as the same may be replaced or delegate his functions from time to time);   |
| “Call-Off Fees”   | the charges exclusive of Value Added Tax payable by the Contracting Authority for the Call-Off Services, as specified in the relevant Tender Return and Call-Off Contract;   |
| “Call-Off Conditions”   | the terms and conditions on which the DPS Appointed supplier shall provide the ordered DPS Works to the Contracting Authority as set out in Appendix 4 Conditions of Contract, subject to any amendments permitted pursuant to this DPS Agreement;   |
| “Call-Off Contract”   | a legally binding agreement (made pursuant to the provisions of this DPS Agreement) for the provision of the Call-Off Services made between a Contracting Authority and the DPS Appointed supplier comprising the Call-Off Conditions, the Call-off Scope and such Schedules and other documents as are referred to in the Call-Off Conditions;   |
| “Call-Off Services”  | the services required for the relevant Call-Off Contract as set out in the relevant Call-Off Scope & Site Information;   |
| “Call-Off Scope”   | the Contracting Authority’s detailed description of the services required for the relevant Contract, as published with the ITMC and Scope & Site Information;   |
| “Call-Off Term”   | the term of a Call-Off Contract (as specified in the relevant Call- Off Contract);  |
|   |   |
| “Confidential Information”   | 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 knowhow of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Legislation;  |
|  “Contract Notice”   | the contract notice [Insert reference and date] published on the Find a Tender System;   |
| “Contracting Authority”   |  Is North Somerset Council (Council) |
|   |   |
| “Data Protection Legislation”   | the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the General Data Protection Regulation and any legislation implemented in connection with the General Data Protection Regulation and any replacement legislation coming into effect from time to time, and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner’s Office;   |
| “Default”   | any breach of the obligations of the relevant party under this DPS Agreement (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or its staff in connection with or in relation to the subject matter of this DPS Agreement and in respect of which such Party is liable to the other;   |
| “Dispute”   | any dispute, difference or question of interpretation arising out of or in connection with this DPS Agreement, including any dispute, difference or question of interpretation relating to the DPS Works, failure to agree in accordance with the DPS Variation Procedure or any matter where this DPS Agreement directs the parties to resolve an issue by reference to the dispute resolution procedure set out in clause 36;   |
| “DPS”   | as defined in Recital A;  |
| “DPS Agreement”  | this agreement and all Appendices hereto;   |
| “DPS Commencement Date”  | [insert];  |
| “DPS End Date”  | the day four years from and including the DPS Commencement Date or (if applicable) the last day of the final Extension;   |
| “DPS Appointed supplier”   | any contractor appointed supplier appointed by the Contracting Authority as a potential appointed supplier of the DPS Works for the relevant Lot;   |
| “DPS Works”   | any and all of the services to be provided under the DPS as more particularly described in the Lot Specifications set out in guidance document.   |
| “DPS Term”   | the period from and including the DPS Commencement Date to the earlier of the DPS End Date and the date of termination (if this DPS Agreement is terminated in accordance with its terms or by operation of law);   |
| “EIR”   | the Environmental Information Regulations 2004 together with any guidance and / or codes of practice issues by the Information Commissioner’s Office or relevant Government Department in relation to such regulations;   |
| “Extension”  | as defined in clause 2.2;   |
| “FOIA”   | the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time together with any guidance and / or codes of practice issued by the Information Commissioner’s Office or relevant Government Department in relation to such legislation;   |
| “Force Majeure Event”   | war, natural flood, exceptionally adverse weather conditions, strike or lockout (other than a strike or lock-out which is limited to the DPS Appointed supplier’s Representatives), civil disorder, Act of God, power cuts or delays or other wholly exceptional events outside the control of the parties which could not have reasonably been foreseen or avoided;   |
| “Good Industry Practice”   | using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged as the case may be in the same type of work as that of the DPS Appointed supplier under the same or similar circumstances at the relevant time for such exercise;   |
| “Guidance”   | any guidance issued or updated by the UK government from time to time in relation to the Regulations;  |
| “Holding Company” | shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto; |
| “Information” | has the meaning given under section 84 of the FOIA; |
| “Information Commissioner’s Office” | the office of the Information Commissioner, being the regulator appointed in the UK as the data protection supervisory authority;  |
| “Initial Term” | the period of four years from and including the DPS Commencement Date;  |
| “Insolvency Event” |  in relation to the DPS Appointed supplier:  1. any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into (or, in the case of such a voluntary arrangement, being proposed);

 1. a supervisor, receiver, administrator, administrative receiver or other encumbrancer of a similar nature taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged with seven (7) days) upon the whole or any material part of its assets;

 1. a court makes an order that it be wound up or a resolution for its voluntary winding up is passed;

 1. it ceases or threatens to cease carrying on business or is or is deemed to be unable to pay its debts when they become due within the meaning of Section 123 of the Insolvency Act 1986;
2. the DPS Appointed supplier, being an individual(s), has a bankruptcy order made against him or compounds with his creditor or comes to any arrangements with any creditors;
 |
| “ITMC” | a document to be completed substantially in the form set out in Appendix 2 (Invitation to Mini Compete), issued by the Contracting Authority via the Portal, inviting the DPS Appointed supplier to submit a Tender Return;  |
| “Law”   | any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;   |
| “Lots”   | DPS service categories as set out in Highways DPS Guidance doc and Scope for the DPS;   |
| “Lot Specifications”  | the specification for each of the Lots set out in The Highways DPS Guidance Doc;  |
|   |   |
| “Mini-Competition Procedure”   | a tendering process carried out for the award of a Call-Off Contract pursuant Clause 5 of this DPS Agreement;   |
| “Mini-Competition Award Criteria”   | the award criteria to be applied for Mini Competition Procedures, as set out in the relevant ITMC;   |
| “Parent Company”   | any company which is the ultimate Holding Company of the DPS Appointed supplier and which is either responsible directly or indirectly for the business activities of the DPS Appointed supplier or which is engaged in the same or similar business to the DPS Appointed supplier;   |
| “Persistent Breach”  | 1. where two (2) or more Call-Off Contracts awarded to the DPS Appointed supplier under this DPS Agreement are terminated as a consequence of a material Default by the DPS Appointed supplier; or

1. the DPS Appointed supplier repeatedly breaching any of the terms of this DPS Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this DPS Agreement.

  |
| “Portal”  | means the Authority’s eTendering portal Pro Actis which can be accessed at [**www.supplyingthesouthwest.org.uk**](http://www.supplyingthesouthwest.org.uk)  |
| “Prohibited Act”   | (a) to directly or indirectly offer, promise or give any person working for or engaged by the Contracting Authority a financial or other advantage to:  |
|  |  | (i) induce that person to perform improperly a  |
|  |   |  relevant function or activity; or  |
|  |   | (ii) reward that person for improper performance  |
|  |    |  of a relevant function or activity;  |
|  | (b)  | to directly or indirectly request, agree to receive or  |
|  |   | accept any financial or other advantage as an  |
|  |   | inducement or a reward for improper performance of  |
|  |   | a relevant function or activity in connection with this  |
|  |    | Contract;  |
|  | (c)  | commit any offence under:  |
|  |   | (i) the Bribery Act 2010;  |
|  |   | (ii) section 117(2) of the Local Government Act  |
|  |   |  1972;  |
|  |   | (iii) legislation or common law concerning  |
|  |    |  fraudulent acts;  |
|  | (d)  | defraud, attempt to defraud or conspire to defraud the  |
|  |    | Contracting Authority;  |
| “Regulations”   | the Public Contracts Regulations 2015 (SI 2015/102);   |
| “Regulatory Bodies”   | those government departments and regulatory, statutory and other entities, committees 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 DPS Agreement or any other affairs of the Contracting Authority;   |
| “Relevant Lots”  | as defined in clause 4.1;   |
| “Representative”  | means any employee, officer, worker, agent or service appointed supplier engaged by a party in connection with the DPS Works including any Sub-Contractor;   |
| “Request for Information”   | a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR;   |
| “Request to Participate”  | the Selection Questionnaire submitted by the DPS Appointed supplier in response to the Council’s invitation to participate in the DPS and pursuant to which the DPS Appointed supplier was admitted to the DPS,;   |
| “Required Insurances”  | as defined in clause 24.1;  |
| “Selection Questionnaire”  | the selection questionnaire submitted by the DPS Appointed supplier Schedule 1 Selection Questionnaire.   |
| “Sub-Contract”   | any contract between the DPS Appointed supplier and a third party pursuant to which the DPS Appointed supplier agrees to source the provision of any of the DPS Works from that third party;   |
| “Sub-Contractor”   | the service appointed suppliers that enter into a Sub-Contract with the DPS Appointed supplier;   |
| “Tender Return”   | a tender submission submitted in response to an ITMC;   |
| “Tender Return Deadline”  | as defined in Clause 5.7.3;  |
|   |   |
| “Working Day”   | a day which is not a Saturday, Sunday or public holiday in England.  |

* 1. Unless the context otherwise requires, in this DPS Agreement:
		1. reference to any statute, order, regulation or other similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended or re-enacted by any subsequent statute, order, regulation or instrument.

* + 1. words importing the singular meaning include the plural meaning and vice versa;
		2. words importing the masculine include the feminine and the neuter and vice versa;
		3. the words ‘include’, ‘includes’ ‘including’ ‘for example’ and ‘in particular’ and words of similar effect shall be construed as if they were immediately followed by the words ‘without limitation’;
		4. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
		5. headings are included in this DPS Agreement for ease of reference only and shall not affect the interpretation or construction of this DPS Agreement.
		6. references Recitals, Clauses or Appendices shall be construed as a reference to a recital, clause or appendix to this DPS Agreement;
		7. a reference to a Clause is a reference to the whole of that clause unless stated otherwise;

* + 1. references in this DPS Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Appendix to this DPS Agreement so numbered;
		2. the Appendices form part of this DPS Agreement and shall be interpreted and construed as though set out in the main body of this DPS Agreement;
		3. time shall, during the summer time be British summer time but otherwise Greenwich mean time;

and

* + 1. in the event and to the extent only of any conflict between the clauses of this DPS Agreement and any of the Appendices, the clauses shall prevail over the Appendices.

* 1. Any decision, act or thing which the Contracting Authority is required or authorised to take or do under this DPS Agreement may be taken or done by the Authorised Officer or any person authorised, either generally or specially, by the Contracting Authority to take or do that decision, act or thing, provided that upon receipt of a written request the Contracting Authority shall inform the DPS Appointed supplier of the name of any person so authorised.

**PART 2: DPS ARRANGEMENTS AND CALL-OFF AWARD PROCEDURE**

# COMMENCEMENT AND DURATION

* 1. This DPS Agreement shall commence on the DPS Commencement Date and shall remain in force for the DPS Term.
	2. The Contracting Authority may, at its sole discretion, extend this DPS Agreement beyond the Initial Period by one or more periods up to a total maximum of two years (each an “**Extension**”). For the avoidance of doubt, the maximum DPS Term shall not extend beyond a maximum of 6 years in total from and including the DPS Commencement Date.
	3. If the Contracting Authority wishes to extend this DPS Agreement, it shall give the DPS Appointed supplier at least three (3) months’ written notice of its intention to do so before the expiry of the Initial Period or of a subsequent Extension (as appropriate).
	4. If the Contracting Authority provides the DPS Appointed supplier with such a notice, then the DPS Term shall be extended by the period set out in the notice and any such Extension shall be on the same terms and conditions as this DPS Agreement.
	5. If the Contracting Authority does not wish to extend this DPS Agreement beyond the Initial Period or any Extension (as appropriate) this DPS Agreement shall end on the expiry of the Initial Period or the expiry of the relevant Extension (as appropriate).

# SCOPE OF THIS DPS AGREEMENT

* 1. This DPS Agreement governs the relationship between the Contracting Authority and the DPS Appointed supplier in respect of the commissioning of the Works by the Contracting Authority under the Call-Off Contracts awarded under this DPS Agreement.
	2. The DPS Appointed supplier shall be eligible to participate in Mini-Competitions under this DPS Agreement run by the Contracting Authority during the DPS Term.
	3. The Parties acknowledge and agree that the Contracting Authority has the right to order the DPS Works pursuant to this DPS Agreement provided that they comply at all times with the Regulations and the Mini Competition Procedure. If there is a conflict between the Mini Competition Procedure and the Regulations, the Regulations shall take precedence.
	4. The DPS Appointed supplier acknowledges that, in entering this DPS Agreement, no form of exclusivity or volume guarantee has been granted by the Contracting Authority for the DPS Works. and that the Contracting Authority is at all times entitled to enter into other contracts and arrangements with other appointed suppliers (including other DPS Appointed suppliers) for the provision of any or all works which are the same as or similar to the DPS Works.
	5. The Council does not guarantee that any Call-Off Contracts will be awarded to the DPS Appointed supplier under this DPS Agreement. The DPS Appointed supplier acknowledges that there is no obligation for a Contracting Authority to purchase any DPS Works from the DPS Appointed supplier during the DPS Term and the Council similarly acknowledges that there is no obligation for the DPS Appointed supplier to bid for any DPS Works awarded through the DPS during the DPS Term.
	6. No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council in respect of the total quantities or values of the DPS Works to be procured by it or any Other Contracting Authority pursuant to this DPS Agreement and the DPS Appointed supplier acknowledges and agrees that it has not entered into this DPS Agreement on the basis of any such undertaking, statement, promise or representation.
	7. For the avoidance of doubt, the Council shall not in any circumstances have any involvement, responsibility, or liability to the DPS Appointed supplier and/or any Other Contracting Authority in respect of a Call-Off Contract and/or the DPS Works provided thereunder by the DPS Appointed supplier to any Other Contracting Authority.

# DPS APPOINTED SUPPLIER’S APPOINTMENT

* 1. The Council hereby assigns the DPS Appointed supplier as a DPS Appointed supplier for the Lots listed the DPS Guidance Document (page 3 ‘About the DPS’) and the DPS Appointed supplier shall be eligible to be considered for the award of Call-Off Contracts for DPS Works falling within the Relevant Lots during the DPS Term in accordance with the terms of this DPS Agreement.
	2. DPS Guidance Document (page 3 ‘About the DPS’) and the Selection Questionnaire sets out the Relevant Lots (i.e. those Lots to which the DPS Appointed supplier has been appointed).
	3. The DPS Appointed supplier shall at all times during the DPS Term maintain the organisational and technical ability and capacity to provide the DPS Works for the Relevant Lots in accordance with this DPS Agreement.
	4. Appointment as a DPS Appointed supplier entitles the DPS Appointed supplier to receive ITMCs (and, where successful, Call-Off Contracts resulting from the relevant Mini-Competition Procedure) for the Relevant Lots from the Contracting Authorities in accordance with the terms of this DPS Agreement.
	5. As part of a Mini-Competition, and/or at the time of awarding a Call-Off Contract, or at any time throughout the DPS Term and any Call-Off Term, a Contracting Authority shall have the right to challenge any information provided by the DPS Appointed supplier in response to the Selection Questionnaire for admittance to the DPS and the relevant Contracting Authority shall be entitled to request from the DPS Appointed supplier such confirmation and additional information as it deems necessary to demonstrate the DPS Appointed supplier’s ability to provide the DPS Works in accordance with this DPS Agreement and/or in accordance with the Call-Off Conditions. Failure to provide such information may lead to the exclusion and removal of the DPS Appointed supplier from the DPS or from the provision of the DPS Works under any Call-Off Contract.

# MINI COMPETITION PROCEDURE

* 1. If a Contracting Authority decides to commission DPS Works through the DPS at any time during the DPS Term, it will conduct a Mini-Competition Procedure in accordance with this Clause 5 (Mini Competition Procedure). For the avoidance of doubt, no Call-Off Contract will be awarded pursuant to this DPS Agreement without the Mini Competition Procedure first taking place.
	2. Any Other Contracting Authority shall only be entitled to issue an ITMC and enter into a Call-Off Contract following completion of an Access Agreement.
	3. In the event that the Contracting Authority considers it necessary to enter into a Call-Off Contract with the DPS Appointed supplier as a deed the DPS Appointed supplier agrees that it shall do so at no additional cost to the Contracting Authority.

* 1. Where the Contracting Authority wishes to procure DPS Works using the DPS it shall:

* + 1. identify the Lot into which its Call-Off Services fall;
		2. identify all the DPS Appointed suppliers appointed to that Lot;
		3. identify the Mini-Competition Award Criteria that will apply to the evaluation of Tender Returns;
		4. supplement and refine the Call-Off Conditions for the Call-Off Works only to the extent permitted by and in accordance with the requirements of the Regulations and the Guidance.
		5. invite Tender Returns by conducting a Mini Competition Procedure in accordance with Clauses 5.5 to 5.14.

* 1. Any Mini Competition Procedure conducted pursuant to this DPS Agreement shall be undertaken in accordance with the principles of fairness, openness and transparency.
	2. To ensure maximum fairness, openness and transparency, the Mini-Competition Procedure for any Call-Off Services will be open to all DPS Appointed suppliers (or, where applicable, to all DPS Appointed suppliers appointed to the relevant Lot) by way of an ITMC.
	3. The ITMC will include:

* + 1. details of the Lot to which the Call-Off Services relate;
		2. the Call-Off Scope and any other information the Contracting Authority considers relevant to the Call-Off Services;
		3. details of the time limit for the receipt of Tender Returns, which shall be a minimum of ten (10) days from the date on which the ITMC is published (“**Tender Return Deadline”)**;
		4. the Mini-Competition Award Criteria that will apply (which shall seek to balance the need for quality against cost and to maximise overall value for money); and
		5. instructions regarding how the Tender Return must be completed and returned.

* 1. The Contracting Authority will seek to minimise and mitigate unnecessary time and costs associated with submitting Tender Returns.
	2. The Contracting Authority shall apply the Mini-Competition Award Criteria to each Tender Return submitted by a DPS Appointed supplier in response to the ITMC as the basis of its decision to award the resulting Call Off Contract.
	3. The Contracting Authority shall award the Call-Off Contract to the DPS Appointed supplier whose Tender Return is assessed to be the most economically advantageous tender pursuant to the Mini-Competition Award Criteria.

* 1. Any award made as a result of a Mini Competition Procedure will be notified to all DPS Appointed suppliers who responded to the Mini-Competition.
	2. Any Tender Return submitted by the DPS Appointed supplier shall remain open for acceptance for a minimum period of 180 days.
	3. In the event that none of the DPS Appointed suppliers respond to the ITMC, the Contracting Authority reserves the right to enter into other contracts and arrangements for its Call-Off Services, including with service appointed suppliers not on the DPS.
	4. Notwithstanding that a Contracting Authority has followed the Mini Competition Procedure, the Contracting Authority may cancel, postpone, delay or end the Mini Competition Procedure without awarding a Call-Off Contract. Nothing in this DPS Agreement shall oblige a Contracting Authority to award any Call-Off Contract for DPS Works.
	5. Following the Mini Competition Procedure, the Contracting Authority shall populate and issue a Call-Off Contract to the successful DPS Appointed supplier.
	6. Following receipt of the populated Call-Off Contract, the DPS Appointed supplier shall promptly and in any event within five (5) Working Days acknowledge receipt of the Call-Off Contract and either:

* + 1. notify the Contracting Authority that it declines to accept the award of the Call-Off Contract; or
		2. notify the Contracting Authority that it accepts the award of the Call-Off Contract by signing and returning the Call-Off Contract to the Contracting Authority.
	1. If the DPS Appointed supplier:

* + 1. notifies the Contracting Authority that it declines to accept the award of a Call-Off Contract in accordance with clause 5.16.1; or
		2. the time-limit referred to in clause 5.16 for acceptance of the Call-Off Contract has expired,

then the offer from the Contracting Authority to the successful DPS Appointed supplier shall lapse and the Contracting Authority may award the Call-Off Contract to the DPS Appointed supplier that submitted the next most economically advantageous tender in accordance with the relevant Mini-Competition Award Criteria.

* 1. If the DPS Appointed supplier seeks to modify or impose conditions on the fulfilment of the Call-Off Contract, the offer from the Contracting Authority to the successful DPS Appointed supplier shall lapse and the Contracting Authority may:

* + 1. award the Call-Off Contract to the second placed DPS Appointed supplier under the Mini Competition Procedure; or
		2. end the Mini Competition Procedure without awarding the Call-Off Contract.

* 1. If the DPS Appointed supplier complies with this Clause 5 and signs and returns the Call-Off Contract, the Contracting Authority shall signal its acceptance of the DPS Appointed supplier’s offer and the formation of a Call-Off Contract by counter-signing the Call-Off Contract and returning a copy to the DPS Appointed supplier.
	2. The DPS Appointed supplier warrants that all Tender Returns submitted by the DPS Appointed supplier shall be made in good faith and that the DPS Appointed supplier shall not fix or adjust the amount of its Tender Return by or in accordance with any agreement or arrangement with any other person. The DPS Appointed supplier certifies that it will not:  communicate to any person other than the Contracting Authority the amount or approximate amount of its Tender Return, except where the disclosure, in confidence, of the approximate amount of the Tender Return is necessary to obtain quotations required for the preparation of the Tender Return; or

* + 1. enter into any arrangement or agreement with any other person that it or the other person(s) shall
		2. refrain from making a Tender Return or as to the amount of any Tender Return to be submitted.

* 1. The Call-Off Conditions shall be the applicable set of terms and conditions contained in Appendix 4 (Conditions of Contract) of this DPS Agreement, as indicated in the ITMC.

# NEW ENTRANTS

* 1. From the DPS Commencement Date the DPS will be continually open to new joiners throughout the DPS Term.
	2. All potential new entrants to the DPS will be required to complete a replica of the documentation issued during the initial invitation to participate process, and the requests to participate will be evaluated on the same basis as the original requests to participate. Any new entrants will be appointed to the DPS for the remainder of the DPS Term and will be entitled to participate in any Mini-Competition Procedures and to be awarded Call-Off Contracts accordingly from the date on which the new entrant is formally appointed to the DPS. For the avoidance of doubt, any appointment of new entrants to the DPS will not affect the DPS Appointed supplier’s position on the DPS nor any of its rights or obligations under this DPS Agreement or any Call-Off Contracts awarded under it.

# PRECEDENCE OF DOCUMENTS

* 1. The DPS Appointed supplier shall perform all Call-Off Contracts entered into with the Contracting Authority in accordance with:
		1. the requirements of this DPS Agreement; and
		2. the requirements of the Call-Off Contract.
	2. In the event of, and only to the extent of, any conflict or inconsistency between the documents listed, such conflict or inconsistency shall be resolved according to the following order of priority:
		1. the Call-Off Conditions;
		2. the Call-Off Scope;
		3. the terms of this DPS Agreement (excluding the Appendices);
		4. the Appendices to this DPS Agreement;
		5. any other document referred to in the Call-Off Conditions;
		6. any other document referred to in this DPS Agreement;
		7. the DPS Appointed supplier’s Tender Return for the relevant Call-Off Contract,

save to the extent that the standards or levels of service set out in the DPS Appointed supplier’s Tender Return are of a higher standard or level than those set out in the Scope and/or the Call-Off Scope; in which case, such higher standards or levels of performance set out in the DPS Appointed supplier’s Tender Return shall prevail (to the extent necessary to achieve the performance of such higher standards or levels of performance only).

# PRICES AND PAYMENT FOR THE DPS WORKS

* 1.  The Call-Off Prices shall be those offered by the DPS Appointed supplier in its Tender Return.

**PART 3: THE DPS APPOINTED SUPPLIER’S GENERAL DPS OBLIGATIONS**

# WARRANTIES, REPRESENTATIONS AND GUARANTEES

* 1. The DPS Appointed supplier warrants, represents and undertakes to the Council that:
		1. it has full capacity and authority, and all necessary consents (including, where its procedures so require, the consent of its Parent Company or Holding Company), to enter into and to perform its obligations under this DPS Agreement;
		2. this DPS Agreement is executed by a duly authorised representative of the DPS Appointed supplier;
		3. in entering into this DPS Agreement and any Call-Off Contract the DPS Appointed supplier has not committed any Prohibited Act;
		4. as at the DPS Commencement Date, all information, statements, warranties and representations contained in the DPS Appointed supplier’s response to the Selection Questionnaire and (unless otherwise agreed) any other document which resulted in the appointment of the DPS Appointed supplier onto the DPS are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of this DPS Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
		5. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress, or, to the best of its knowledge and belief pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this DPS Agreement and/or any Call-Off Contract thereunder;
		6. it is not subject to any contractual obligation, compliance with which will be likely to have an effect on its ability to perform its obligations under this DPS Agreement and / or any Call-Off Contract thereunder; and
		7. no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of their knowledge, are threatened) for the winding up of the DPS Appointed supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the DPS Appointed supplier’s assets or revenue.

* 1. Each time a Call-Off Contract is entered into, the warranties, representations and undertakings in this clause 9 (Warranties, Representations and Guarantees) shall be deemed to be repeated by the DPS Appointed supplier with reference to the circumstances existing at the time that they are deemed to be repeated.
	2. For the avoidance of doubt, the fact that any provision within this DPS Agreement is expressed as a warranty shall not preclude any right of termination the Council may have in respect of breach of that provision by the DPS Appointed supplier.
	3. The DPS Appointed supplier acknowledges and agrees that:
		1. the warranties, representations and undertakings contained in this DPS Agreement are material and are designed to induce the Council into appointing the DPS Appointed supplier to the DPS and to induce the
		2. Contracting Authorities to enter into any and all Call-Off Contracts thereunder;
		3. the Council has been induced into appointing the DPS Appointed supplier to the DPS and in doing so has relied upon the warranties, representations and undertakings contained in this DPS Agreement; and
		4. the Contracting Authority will (amongst other things) on each and every occasion that it enters into a Call-Off Contract be induced into doing so by, and in being so induced shall rely upon, the warranties, representations and undertakings contained in this DPS Agreement.

* 1. The DPS Appointed supplier warrants, represents and undertakes for the duration of the DPS Term that:

* + 1. all personnel used to provide the DPS Works will be vetted in accordance with Good Industry Practice;
		2. it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the DPS Appointed supplier's obligations under this DPS Agreement; and
		3. it shall at all times comply with Law in carrying out its obligations under this DPS Agreement.

# REPORTING AND MEETINGS

* 1. The Council may require the DPS Appointed supplier to attend performance monitoring meetings, to assess the quality and progress of the DPS Works being provided to Contracting Authorities by giving not less than ten (10) Working Days’ written notice.

# REPRESENTATIVES AND LIAISON RELATING TO THE DPS

* 1. The Authorised Officer shall liaise with and instruct the DPS Appointed supplier and its Representatives regarding all matters relating to performance by the DPS Appointed supplier of its obligations under this DPS Agreement and shall determine any matters or issue any notices as stipulated under this DPS Agreement.

# HEALTH AND SAFETY

* 1.  The DPS Appointed supplier shall comply and ensure its Representatives comply at all times with the Health and Safety at Work etc. Act 1974 and all other Laws pertaining to health and safety of employees and other affected persons including, but not limited to, the Management of Health and Safety at Work etc. Regulations 1999, the Reporting of Injuries, Diseases & Dangerous Occurrences Regulations 2013 and all other health, safety and welfare requirements applicable to the DPS Works including those detailed in the relevant Lot Scope.

# CORRUPT GIFTS AND FRAUD

* 1. The DPS Appointed supplier shall not (and will procure that anyone acting on its behalf or to its knowledge shall not):
		1. offer, give or agree to give to any employee, agent or representative of the Council or any other person any gift or consideration at any time which could act as an as an inducement or reward:-

* + - 1. for doing or not doing any act in relation to the obtaining or performance of this DPS
			2. Agreement, any Call-Off Contract or any other contract with the Council; or
			3. for showing or not showing favour or disfavour to any person in relation to this DPS

Agreement, any Call-Off Contract or any other contract with the Council;

* + 1. enter into this DPS Agreement, any Call-Off Contract or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the DPS Appointed supplier (or anyone acting on its behalf or to its knowledge) unless (before such contract is made) particulars of any such commission have been disclosed in writing to the Council;
		2. fix or adjust the amount of their Tender Return by or in accordance with any agreement or arrangement with any other person;

* + 1. communicate to any person other than the Contracting Authority the amount or approximate amount of their proposed Tender Return prices (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the Tender Return or for insurance purposes);
		2. enter into, with any other person, any agreement or arrangement that it shall refrain from tendering or as to the amount of any tender submitted for this DPS Agreement or a Mini Competition Procedure; or
		3. commit any Prohibited Act.

* 1.  The DPS Appointed supplier shall promptly inform the Council of the occurrence of any such Prohibited Act or similar offence of which it becomes aware.

# E-COMMERCE

* 1. The Council is committed to employing e-Commerce throughout its purchase to pay process and data management systems, including asset management systems. The DPS Appointed supplier will therefore be expected to support the Council in its aim of improving and increasing efficiency through the use of the systems throughout the DPS Term.
	2. The DPS Appointed supplier will be required to access and use all current and future systems as requested by the Council to deliver the DPS Works under this DPS Agreement.
	3. The DPS Appointed supplier shall be required to register on the Council’s e-Invoicing System on or before the DPS Commencement Date.

# FINANCIAL INFORMATION, AUDITS AND COMPLIANCE WITH SELECTION CRITERIA

* 1. The DPS Appointed supplier shall, whenever so required by the Council, provide the Council with such financial information and data reasonably requested by the Council to enable the Council:
		1. to comply with the Code of Practice on Local Council Accounting in the United Kingdom 2017/18 issued by the Chartered Institute of Public Finance and Accountancy (as the same may be updated or replaced from time to time);
		2. to examine, evaluate and be satisfied that the Council’s minimum standards of economic and financial standing, technical and professional ability and general standing that the DPS Appointed supplier is required to meet (as set out in the invitation to participate and Selection Questionnaire), are met.

**PART 4 – DPS APPOINTED SUPPLIER’S INFORMATION OBLIGATIONS**

# RECORDS AND AUDIT ACCESS

* 1. The DPS Appointed supplier shall keep and maintain until six (12) years after the date of termination or expiry (whichever is the earlier) of this DPS Agreement (or any longer period as may be agreed between the Parties), full and accurate records and accounts of the operation of this DPS Agreement including the DPS Works provided under it, the Call-Off Contracts entered into and the amounts paid to the DPS Appointed supplier by the Contracting Authorities thereunder.
	2. The DPS Appointed supplier shall keep the records referred to in clause 16.1 in accordance with Good Industry Practice.
	3. The DPS Appointed supplier shall provide such records and accounts on request during the DPS Term and for a period of six (6) years after expiry of the DPS Term (or expiry of the final Call-Off Term if later) to the Council and its internal and external Auditors.
	4. The Council shall use reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the DPS Appointed supplier or delay the provision of the DPS Works pursuant to a Call-Off Contract, save insofar as the DPS Appointed supplier accepts and acknowledges that the conduct of an audit carried out by the National Audit Office is outside of the control of the Council.
	5. Subject to the Council’s rights of confidentiality, the DPS Appointed supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:
		1. all information requested by the Auditor within the scope of the audit;
		2. reasonable access to sites controlled by the DPS Appointed supplier and to equipment used in the provision of the DPS Works; and
		3. access to the DPS Appointed supplier’s Representatives.

* 1. The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 16 (Records and Audit Access), unless the audit reveals a material Default by the DPS Appointed supplier in which case the DPS Appointed supplier shall reimburse the Council’s reasonable costs incurred in relation to the audit.

# PUBLICITY AND BRANDING

* 1. The DPS Appointed supplier shall not:

* + 1. advertise or publicise, or make any public announcements relating to this DPS Agreement and its content, Call-Off Contracts and their content, or the DPS Works; or
		2. use the name or brand of any Contracting Authority in any promotion or marketing or announcement of Call-Off Contracts;

without the prior consent of the Council or the relevant Contracting Authority, such consent not to be unreasonably withheld.

* 1. The Council shall be entitled to publicise this DPS Agreement.

* 1. Each party acknowledges to the other that nothing in this DPS Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.
	2. The DPS Appointed supplier shall not do anything or cause anything to be done which may damage the reputation of the Participating Authorities and/or bring the Participating Authorities into disrepute.

# CONFIDENTIALITY

* 1. Except to the extent set out in this clause 18 (Confidentiality) or where disclosure is expressly permitted elsewhere in this DPS Agreement, each party shall:
		1. treat the other party's Confidential Information as confidential and safeguard it accordingly; and
		2. not disclose the other party's Confidential Information to any other person without the information owner's prior written consent.

* 1. Clause 18.1 shall not apply to the extent that:
		1. such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the EIR pursuant to clause 19 (Freedom of Information and Transparency);
		2. such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
		3. such information was obtained from a third party without obligation of confidentiality;
		4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this DPS Agreement;
		5. such information it is independently developed without access to the other party's Confidential Information; or
		6. such information is required to enable a determination to be made under clause 36 (Dispute Resolution).

* 1. Nothing in this DPS Agreement shall prevent the Council from disclosing the DPS Appointed supplier's Confidential Information:
		1. to any Crown Body or any Other Contracting Authority. All Crown Bodies or Other Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or Other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Other Contracting Authority;
		2. to any consultant, contractor or other person engaged by the Council or any person conducting an Office of Government Commerce Gateway Review;
		3. for the purpose of the examination and certification of the Council's accounts or any other examination pursuant to the Audit Commission Act 1998; or
		4. for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.

* 1. The Council shall use reasonable endeavours to ensure that any Crown Body, government department, Contracting Authority, employee, third party or sub-contractor to whom the DPS Appointed supplier's Confidential Information is disclosed pursuant to clause 18.3 is made aware of the Council's obligations of confidentiality.
	2. The DPS Appointed supplier shall notify the Council in writing as soon as reasonably practicable if it becomes aware of a breach of this clause 18 (Confidentiality).

# FREEDOM OF INFORMATION AND TRANSPARENCY

* 1.  The DPS Appointed supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
	2. The DPS Appointed supplier shall and shall procure that its Sub-Contractors shall:

* + 1. transfer to the Council 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;
		2. provide the Council with a copy of all Information in its possession or power, in the form that the Council requires, within five (5) Working Days (or such other period as the Council may specify) of the Council's request; and
		3. provide all necessary assistance as reasonably requested by the Council to enable the Council 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.
	1. In no event shall the DPS Appointed supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.

* 1. The DPS Appointed supplier acknowledges that, except for any information which is exempt from disclosure in accordance with the FOIA or the EIR, the text of this DPS Agreement (including the Appendices) is not Confidential Information.
	2. Subject to the clause 19.4, the DPS Appointed supplier hereby gives its consent for the Council to publish this DPS Agreement (including the Appendices) in its entirety, including, from time to time, agreed changes to this DPS Agreement, to the general public in whatever form the Council decides.
	3. The DPS Appointed supplier shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

# DATA PROTECTION

* 1. Both Parties shall, and the DPS Appointed supplier shall procure that its Representatives shall, duly observe all their obligations under the Data Protection Legislation, which arise in connection with the performance of this DPS Agreement.
	2. The DPS Appointed supplier shall perform its obligations under this DPS Agreement in such a way as to ensure that it does not cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
	3. The DPS Appointed supplier shall be liable for and shall indemnify (and keep indemnified) the Council against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands incurred by the Council which arise directly from a breach by the DPS Appointed supplier of its obligations under the Data Protection Legislation, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Legislation by the DPS Appointed supplier or its Representatives.
	4. The provisions of this clause shall apply during the DPS Term and indefinitely after its expiry or termination.

**PART 5 – DEFAULT, TERMINATION AND REMOVAL OF THE DPS APPOINTED SUPPLIER FROM THE DPS**

# TERMINATION

##  Termination on Corruption

* + 1. The Council may terminate this DPS Agreement and remove the DPS Appointed supplier from the DPS by serving notice on the DPS Appointed supplier with effect from the date specified in such notice where the DPS Appointed supplier commits a Prohibited Act.

##  Termination on Breach of Information Obligations

* + 1. The Council may terminate this DPS Agreement and remove the DPS Appointed supplier from the DPS by serving notice on the DPS Appointed supplier in writing with effect from the date specified in such notice where the DPS Appointed supplier is in material Default of:
			1. clause 18 Confidentiality);
			2. clause 19 (Freedom of Information); and / or
			3. clause 20 (Data Protection).

## Termination on Default or Failure

* + 1. The Council may terminate this DPS Agreement and remove DPS Appointed supplier from the DPS by serving notice on the DPS Appointed supplier in writing with effect from the date specified in such notice where:
			1. the DPS Appointed supplier commits a material Default and:

* + - * 1. the DPS Appointed supplier has not remedied the material Default to the satisfaction of the Council within twenty (20) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the material Default and requesting it to be remedied; or
				2. the material Default is not, in the reasonable opinion of the Council, capable of remedy; or
				3. a Persistent Breach has occurred;

* + - 1. any warranty given by the DPS Appointed supplier pursuant to clause 9 (Warranties, Representations and Guarantees) is found to be untrue or misleading;
			2. the DPS Appointed supplier fails to effect or maintain the Required Insurances; or
			3. the DPS Appointed supplier commits a Default (other than as a consequence of a Default by the Council) which results in the criminal investigation, prosecution and conviction of the DPS Appointed supplier or any Sub-Contractor under health and safety Laws; or
			4. the DPS Appointed supplier materially fails to comply with or materially breaches any Law which imposes a criminal penalty or otherwise and where such failure or breach in the reasonable opinion of the Council adversely affects the reputation of the Council.

* + 1. In determining whether to exercise any right of termination pursuant to clause 21.3.1.5 the Council shall:
			1. act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
			2. give all due consideration, where appropriate, to action other than termination of this DPS Agreement.

## Termination on Financial Standing

* + 1. The Council may terminate this DPS Agreement by serving notice on the DPS Appointed supplier in writing with effect from the date specified in such notice where the DPS Appointed supplier fails to meet the minimum standards of economic and financial standing set out in the invitation to participate and Selection Questionnaire following any assessment carried out pursuant to clause 15 (Financial Information, Audits and Compliance with Selection Criteria).

##

## Termination on Insolvency

* + 1. The Council may terminate this DPS Agreement with immediate effect by notice in writing in the event of an Insolvency Event provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council.
		2. For the avoidance of doubt, a resolution by the DPS Appointed supplier or a court order that the DPS Appointed supplier be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event.

## Termination on Change of Control

* + 1. The DPS Appointed supplier shall notify the Council immediately in writing if the DPS Appointed supplier undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 (“Change of Control”) and provided this does not contravene any Law shall notify the Council immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation.
		2. The Council may terminate this DPS Agreement by giving notice in writing to the DPS Appointed supplier with immediate effect within six (6) months of:
			1. being notified that a Change of Control has occurred; or
			2. where no notification has been made, the date that Council becomes aware of the Change of Control,
			3. if the Council considers, acting reasonably, that such change is likely to have an adverse effect on the provision of the DPS Works, but the Council shall not be permitted to terminate this DPS Agreement or any Call-Off Contract where the Council has approved the Change of Control in advance.

* + 1. The Council may terminate this DPS Agreement by giving notice in writing to the DPS Appointed supplier with immediate effect where the DPS Appointed supplier makes any public announcement or a director of the board of directors of the DPS Appointed supplier advises an officer of the Council that the DPS Appointed supplier is no longer going to continue to develop or to offer the provision of services similar to the DPS Works and there is evidence that such announcement will materially adversely impact the ability of the DPS Appointed supplier to provide the DPS Works.

## Termination in compliance with the Regulations

* + 1. The Council may terminate this DPS Agreement where:
			1. this DPS Agreement has been subject to a substantial modification which would require a new procurement procedure in accordance with regulation 72(9) of the Regulations; or
			2. the DPS Appointed supplier has, at the time of the award of this DPS Agreement, been in one of the situations referred to in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure.

## Termination for continuing Force Majeure Event

* + 1. Either Party may, by written notice to the other, terminate this DPS Agreement if a Force Majeure Event endures for a continuous period of more than ninety (90) days.

# SUSPENSION OF DPS APPOINTED SUPPLIER’S APPOINTMENT

* 1. Without prejudice to the Council’s rights to terminate this DPS Agreement under clause 21 (Termination), if a right to terminate arises under clause 21 (Termination), the Council may suspend the DPS Appointed supplier’s right to participate in Mini-Competitions under any or all of the Relevant Lots by giving notice in writing to the DPS Appointed supplier (“**Suspension Notice**”). If the Council serves a Suspension Notice on the DPS Appointed supplier in accordance with this clause 2, the DPS Appointed supplier’s appointment shall be suspended for the period set out in the Suspension Notice or such other period notified to the DPS Appointed supplier by the Council in writing from time to time.
	2. A Suspension Notice issued by the Council shall include details of any performance improvements required from the DPS Appointed supplier including timescales for such improvement (“**Performance Improvement Plan**”). The DPS Appointed supplier shall be required to comply with the Performance Improvement Plan within the timescales set out in the Suspension Notice or such other timescale as may be agreed between the Parties.
	3. In the event that the DPS Appointed supplier fails to comply with the Performance Improvement Plan to the Council’s reasonable satisfaction, the Council shall be entitled to terminate this DPS Agreement in accordance with Clause 21.3 (Termination on Default or Failure).
	4. The service of a Suspension Notice shall not operate as a notice to terminate or suspend any Call-Off Contract already made under this DPS Agreement. Suspension of a DPS Appointed supplier pursuant to Clause 22.1 shall not cause any Call-Off Contracts to terminate or be suspended 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 the Call-Off Conditions.

# CONSEQUENCES OF TERMINATION AND EXPIRY

* 1. For the avoidance of doubt, the Council shall be entitled to exercise any of its rights of termination set out in Clause 21 (Termination) without incurring any penalty or additional costs to the DPS Appointed supplier.
	2. Notwithstanding the service of a notice to terminate this DPS Agreement, the DPS Appointed supplier shall continue to fulfil its obligations under this DPS Agreement until the date of expiry or termination set out in the notice.
	3. The rights of the Council (to terminate or otherwise) under clause 21 (Termination) are in addition (and without prejudice) to any other right or remedy which the Council may have to claim the amount of loss or damage suffered by the Council on account of the acts or omissions of the DPS Appointed supplier (or to take any action other than termination of this DPS Agreement).
	4. The service of a notice to terminate this DPS Agreement shall not operate as a notice to terminate any CallOff Contract made under this DPS Agreement. Termination or expiry of this DPS Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with the Call-Off Conditions.
	5. Termination or expiry of this DPS Agreement shall be without prejudice to any rights, remedies or obligations of either party accrued under this DPS Agreement before such termination or expiry.
	6. The provisions of the following clauses shall survive the termination or expiry of this DPS Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination: clause 1 (Definitions and Interpretation); clause 9 (Warranties, Representations and Guarantees); clause 13 (Corrupt Gifts and Fraud); clause 16 (Records and Audit Access); clause 17 (Publicity and Branding); clause 18 (Confidentiality); clause 19 (Freedom of Information and Transparency); clause 20 (Data Protection); clause 23 (Consequences of Termination and Expiry); clause 24 (Insurance); clause 28 (Third Party Rights); clause 29 (Severability); clause 32 (Entire Agreement); clause 34 (Governing Law and Jurisdiction); and clause 36 (Dispute Resolution).

**PART 6 – INSURANCE**

# INSURANCE

* 1. The DPS Appointed supplier shall throughout the duration of this DPS Agreement effect and maintain the following insurances with a reputable insurance company in relation to its obligations under this DPS Agreement:

* + 1. public liability insurance against all loss of and damage to property and injury to persons (including death) under which the cover shall not be less than five million pounds (£10,000,000) in respect of any one (1) incident;
		2. Employer’s liability insurance with a minimum limit of indemnity of ten million pounds (£10,000,000) in respect of any one (1) incident;
		3. professional indemnity insurance under which the cover is not less than one million pounds (£5,000,000) in respect of any one (1) incident and shall maintain such cover for six (6) years after the end of this DPS Agreement or the last Call-Off Contract (whichever is the later) for all claims to which this clause 24.1.33 applies;

Together the “**Required Insurances**”.

* 1. The DPS Appointed supplier shall upon request made from time to time produce to the Council documentary evidence that the Required Insurances are properly maintained.
	2. For specific Call-Offs Contracts, the DPS Appointed supplier may be required to effect and maintain policies with higher limits of indemnity than those of the Required Insurances. The policies required for each Call-Off contract will be set out in the relevant ITMC.

**PART 7 – OTHER PROVISIONS**

# VARIATIONS

* 1.  Any variations to this DPS Agreement (“**DPS Changes**”) must be made in accordance with the DPS Variation Procedure set out in Appendix 5 of this Agreement (DPS Variation Procedure).

# FORCE MAJEURE

* 1. Neither party shall be liable to the other for any failure to perform its obligations under this DPS Agreement where such performance is rendered impossible in the circumstances of a Force Majeure Event, but nothing in this clause 26 (Force Majeure) shall limit the obligations of the DPS Appointed supplier to use its best endeavours to fulfil its obligations under this DPS Agreement.
	2. A party cannot claim the relief from liability set out in clause 26.1 if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

# SUB-CONTRACTING, ASSIGNMENT AND NOVATION

* 1. This DPS Agreement is personal to the DPS Appointed supplier and the DPS Appointed supplier shall not assign, novate, subcontract or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this DPS Agreement without the prior written consent of the Council.
	2. Where the DPS Appointed supplier enters into a Sub-Contract for the purpose of performing its obligations under a Call-Off Contract, it shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due from the DPS Appointed supplier to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
	3. The Council may assign, novate or otherwise dispose of any or all of its rights and obligations under this DPS Agreement and any associated third party licences to any other contracting authority or to any other body which substantially performs any of the functions that previously had been performed by the Council and shall give notice of such assignment, novation or disposal to the DPS Appointed supplier.
	4. The DPS Appointed supplier shall enter into such agreement and / or deed as the Council shall reasonably require so as to give effect to any assignment, novation or disposal made pursuant to this clause 27 (Sub-Contracting, Assignment and Novation).

# THIRD PARTY RIGHTS

* 1. Except as provided in Clauses 3 (Scope of this DPS Agreement) and 5 (Mini Competition Procedure), a person who is not a party to this DPS Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this DPS Agreement.
	2. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this DPS Agreement are not subject to the consent of any other person.

# SEVERABILITY

* 1. If any provision, clause or part-provision of this DPS Agreement is or becomes invalid, illegal or unenforceable for any reason, by any court of competent jurisdiction, such provision shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision, clause or part-provision shall be severed and deemed deleted and the remainder of the provisions and clauses hereof shall continue in full force.
	2. If a provision of this DPS Agreement that is fundamental to the accomplishment of the purpose of this DPS Agreement is held to any extent to be invalid, the DPS Appointed supplier and the Council shall immediately commence good faith negotiations to remedy that invalidity.
	3. Any modification to or deletion of a provision, clause or part-provision under this clause 29 (Severability) shall not affect the validity and enforceability of the rest of this DPS Agreement.

# RIGHTS AND REMEDIES

* 1.  Except as expressly provided in this DPS Agreement, the rights and remedies of the parties provided under this DPS Agreement are in addition to, and not exclusive of, any rights or remedies provided by Law and the rights and remedies under this DPS Agreement shall be cumulative.
	2.  Unless a right or remedy of the Council is expressed to be an exclusive right or remedy, the exercise of it by the Council is without prejudice to the Council’s other rights and remedies.

# WAIVER

* 1. No failure or delay by a party to exercise any right or remedy provided under this DPS Agreement or by Law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
	2. The rights and remedies provided by this DPS Agreement may only be waived in writing by the relevant party in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to in such written notice.

# ENTIRE AGREEMENT

* 1. Without prejudice to clause 9.1.4, this DPS Agreement (including the Appendices) and the documents referred to in it constitute the entire agreement and understanding between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to their subject matter, provided that nothing in this clause 32 (Entire Agreement) shall operate to exclude any liability for fraud or misrepresentation.
	2. Save as provided for in clause 9 (Warranties, Representations and Guarantees), each of the parties acknowledges and agrees that in entering into this DPS Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this DPS Agreement.

# NOTICES

* 1. Any notice given or made under this DPS Agreement shall be in writing and in English and signed by or on behalf of the party giving it and may be given by:
		1. delivering the notice by hand, in which case the notice shall be deemed to have been duly served at the time it is so delivered or left; or
		2. posting the notice in a pre-paid envelope by first class, special delivery or recorded delivery post, in which case the notice shall be deemed to have been duly served at the time it would be delivered in the ordinary course of that method of posting; or
		3. by email, in which case the notice shall be deemed to have been duly served at the time of transmission.

* 1. For the purpose of clause 33.1, the address of each party shall be:

* + 1. For the Council:

 Address: [ ]

 Telephone: [INSERT]

 Email: [INSERT]

 For the attention of: [DPS MNAGER]

with copies to

* + 1. For the DPS Appointed supplier:

|  |
| --- |
| [INSERT][INSERT][INSERT][INSERT] |

Address: Telephone: Email:

For the attention of:

* 1. Either party may change its address for service by serving a notice in accordance with this clause 33 (Notices).

# GOVERNING LAW AND JURISDICTION

* 1. Without prejudice to the dispute resolution procedure set out in clause 36, the Parties accept the exclusive jurisdiction of the English courts and agree that this DPS Agreement is to be governed and construed according to the Law of England and Wales.

# AGENCY AND PARTNERSHIP

* 1. The DPS Appointed supplier is not and shall in no circumstances hold itself out as being the agent of the Council, otherwise than in circumstances expressly permitted by this DPS Agreement.
	2. Noting in this DPS Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party. Neither party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.

# DISPUTE RESOLUTION

* 1. The parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this DPS Agreement within twenty (20) Working Days of either party notifying the other of a dispute.
	2. Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
	3. The obligations of the parties under this DPS Agreement and/or any Call-Off Contract shall not be suspended, cease or be delayed by the reference of a dispute to negotiation, conciliation and/or mediation pursuant to this clause 36 (Dispute Resolution) and the DPS Appointed supplier and its Representatives shall comply fully with the requirements of this DPS Agreement at all times.
	4. If the dispute cannot be resolved by the parties pursuant to clause 36.1, the parties shall use their best endeavours in good faith to resolve the dispute by agreement. Such endeavours should include conciliation by an independent person to be agreed between the parties, or in the case of failure to agree, by a representative of a professional body appropriate in the circumstances of the case. Such an independent person shall be given all information and assistance by the Parties in carrying out their duties, and may be given by agreement between the parties the duty to recommend or approve terms of settlement between the Parties.
	5. In the event the dispute cannot be resolved by negotiation or conciliation under clause 36.4 within three (3) months, both parties shall attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
	6. If the parties fail to resolve the dispute by mediation within sixty (60) Working Days of a mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts pursuant to clause 34 (Governing Law and Jurisdiction).

# COUNTERPARTS

* 1. This DPS Agreement may be executed in one or more counterparts and any party may enter into this DPS Agreement by executing a counterpart. Any single counterpart or a set of counterparts executed in either case by all the Parties shall constitute one and the same agreement and a full original of this DPS Agreement for all purposes.

IN WITNESS whereof the parties hereto have executed this Contract as of the day and year first herein written

**SIGNED** for and on behalf of

**NORTH SOMERSET COUNCIL:**

Signature: ...................................................................

Name:...................................................................

Position: ...................................................................

Date:……………………………………………………

**SIGNED** for and on behalf of **DPS APPOINTED SUPPLIER:**

Signature: ...................................................................

Name:...................................................................

Position: ...................................................................

Date:……………………………………………………

# APPENDIX 1 - Scope & Site Information

**[INSERT COPY OF Appendix 1 – Scope & Site Information**

APPENDIX 2 – INVITATION TO MINI COMPETE (ITMC) – TENDER EXERCISE **DOCUMENT**

[INSERT COPY OF APPENDIX 2 – INVITATION TO MINI COMPETE]

# APPENDIX 4 – Conditions of Contract

**APPENDIX 4**

# APPENDIX 5 – DPS VARIATION PROCEDURE

## INTRODUCTION

* 1. This Appendix X (DPS Variation Procedure) details the scope of the variations permitted and the process to be followed where the Council proposes a variation to this DPS Agreement and / or the DPS.
	2. The Council may propose a variation to this DPS Agreement and / or the DPS under this Appendix X (DPS Variation Procedure) only where the variation does not amount to a material change to this DPS Agreement or the DPS Works.

##  PROCEDURE FOR PROPOSING A VARIATION

* 1. Except where paragraph 4 (Variations that are not permitted) applies, the Council may propose a variation using the procedure contained in this paragraph 2 (Procedure for Proposing a Variation).
	2. In order to propose a variation, the Council shall serve each DPS Appointed supplier with written notice of the proposal to vary this DPS Agreement and / or the DPS (“**Notice of Variation**”).
	3. The Notice of Variation shall contain details of the proposed variation providing sufficient information to allow each DPS Appointed supplier to assess the impact of the variation.
	4. On receipt of the Notice of Variation, each DPS Appointed supplier has ten (10) Working Days to respond in writing with any objections to the variation.
	5. Where the Council does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Council may then serve each DPS Appointed supplier with a written agreement detailing the variation to be signed and returned by each DPS Appointed supplier within ten (10) Working Days of receipt.
	6. On receipt of a signed agreement from each DPS Appointed supplier, the Council shall notify all DPS Appointed suppliers in writing of the commencement date of the variation.
	7. For the avoidance of doubt, any variation made pursuant to this paragraph 2 (Procedure for Proposing a Variation) need not be executed as a deed provided it is executed by a duly authorised representative of each of the Parties.

## OBJECTIONS TO A VARIATION

* 1. In the event that the Council receives one or more written objections to a variation, the Council may:

* + 1. withdraw the proposed variation; or
		2. propose an amendment to the variation.

## VARIATIONS THAT ARE NOT PERMITTED

* 1. In addition to the provisions contained in paragraph 1.2, the Council may not propose any variation that:

* + 1. may prevent one or more of the DPS Appointed suppliers from performing its obligations under the DPS Agreement; or
		2. is in contravention of any Law.

#  APPENDIX 6 – Appointed Supplier’s SQ Submission

# Insert Appointed Suppliers completed Selection Questionnaire