

DATED

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EN:PROCURE LIMITED

and

[CONSULTANT]

DYNAMIC PURCHASING SYSTEM AGREEMENT

in relation to the provision of Design and Consultancy Services Specialising in Green Retrofit
and Decarbonisation Strategies and Expertise

wardhadaway
lawfirm

THIS DYNAMIC PURCHASING SYSTEM AGREEMENT is dated

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BETWEEN:

- (1) **EN:PROCURE LIMITED** (company number 09149719) whose registered office is at 1st Floor, Sovereign Court, 300 Barrow Road, Meadowhall, Sheffield S9 1JQ ("**EN:Procure**"); and
- (2) **[INSERT]** (company number **[INSERT]**) whose registered office is at **[INSERT]** ("**Consultant**")

BACKGROUND:

- (A) EN:Procure is a Central Purchasing Body as defined under the Public Contracts Regulations 2015 which provides procurement, tendering and contract management services to its members. EN:Procure placed a contract notice **[OJEU REF NUMBER]** on **[DATE]** inviting Consultants to be admitted to a Dynamic Purchasing System for the use of Licenced Entities in accordance with the Public Procurement Rules ("**OJEU Notice**").
- (B) The Consultant made a request to participate by submitting its response to EN:Procure's selection questionnaire in response to the OJEU Notice ("**the Response**"). On the basis of the Response, EN:Procure admitted the Consultant to the Dynamic Purchasing System to provide consultancy services to Licensed Entities from time to time in accordance with this Dynamic Purchasing System Agreement.
- (C) The Dynamic Purchasing System Agreement sets out the procedure for the award of consultancy services by Licensed Entities, the main terms and conditions for the provision of such consultancy services and the obligations of the Consultant under this Dynamic Purchasing System.
- (D) The purpose of this Dynamic Purchasing System Agreement is to set out the Dynamic Purchasing System for collaborative working between EN:Procure, the Licensed Entities and the Consultant so as to fulfil the Dynamic Purchasing System Objectives.
- (E) It is the Parties' intention that there will be no obligation for any Licensed Entity to place any Orders/Contracts under this Dynamic Purchasing System Agreement.

NOW IT IS HEREBY AGREED as follows:

1 Definitions

Unless the context otherwise requires, the following words and phrases, where they appear in capitalised form in this Dynamic Purchasing System Agreement, shall have the meanings stated or referred to below:

"Admittance Criteria"

means the criteria that DPS Consultants were required to satisfy in order to be appointed to the various Lots of the Dynamic Purchasing System, as more particularly set out in the procurement documents issued by EN:Procure for the Dynamic Purchasing System;

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| “Competition” | means the procedure outlined in Clause 10.4; |
| "Confidential Information" | all information disclosed by one Party to another for the purposes of this Dynamic Purchasing System Agreement or any Underlying Contract entered into in pursuance of it, whether in writing, verbally or otherwise (including, without limitation, details of any Party's commercial terms) unless the Parties agree that such information is not to be regarded as confidential; |
| "Data Protection Legislation" | the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other Legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a Party; |
| "DPS Manager" | has the meaning given in Clause 10.4; |
| "DPS Representative" | has the meaning given in Clause 10.1; |
| “Dynamic Purchasing System Agreement” | means this dynamic purchasing system agreement and its schedules and appendices; |
| “Dynamic Purchasing System Objectives” | has the meaning given in Clause 5; |
| "DPS Consultants" | the Consultants (including the Consultant) admitted to the Dynamic Purchasing System under this Dynamic Purchasing System Agreement; |
| "Effective Date" | means [DATE]; |
| "EN:Procure Income" | in respect of each Underlying Contract, the amount payable by the Consultant to EN:Procure as agreed between the |

Consultant and EN:Procure pursuant to Clause 23.3;

"Entity"

means any of the following:

(a) any member or customer of EN:Procure from time to time, which may include:

(i) any Social Housing Provider in the United Kingdom;

(ii) any Community Land Trust or Community Interest Company;

(iii) any public sector body providing accommodation including universities;

(iv) any procurement consortia;

(b) any local authority in the United Kingdom;

(c) any entity or joint venture company that any of the entities referred to in paragraph (a) or (b) of this definition hold an interest in from time to time;

"FOIA"

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;

"Information"

has the meaning given to it under section 84 of the FOIA;

"Licence"

a licence in the form set out in Schedule 3 (Form of Licence);

"Licensed Entity"

a Licensee or a Sub-Licensee (as the context so requires);

"Licensee"

an Entity which has entered into a Licence with EN:Procure;

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| "Lots" | means the lots of the Dynamic Purchasing System set out in the OJEU Notice; |
| "Parties" | EN:Procure and the Consultant and "Party" shall be construed accordingly; |
| "Product Range" | means any range of products, goods or materials to be supplied by the Consultant under Supply Contracts awarded to it pursuant to this DPS Agreement |
| "Prohibited Act" | <p>means:</p> <p>(1) offering giving or agreeing to give to any servant of EN:Procure or a Licensed Entity any gift or consideration of any kind as an inducement or reward:</p> <p style="padding-left: 40px;">(i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Dynamic Purchasing System Agreement or any other agreement with EN:Procure or a Licensed Entity; or</p> <p style="padding-left: 40px;">(ii) for showing or not showing favour or disfavour to any person in relation to this Dynamic Purchasing System Agreement or any other agreement with EN:Procure or a Licensed Entity;</p> <p>(2) entering into this Dynamic Purchasing System Agreement or any other agreement with EN:Procure in connection with which commission has been paid or has been agreed to be paid by the Consultant or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to EN:Procure;</p> <p>(3) committing any offence:</p> |

2010 (i) under the Bribery Act or the Prevention of Corruption Acts 1889-1916;

(ii) under Legislation creating offences in respect of fraudulent acts, or

(iii) at common law in respect of fraudulent acts,

in relation to this Dynamic Purchasing System Agreement or any other agreement with EN:Procure or a Licensed Entity;

(4) any act or omission which leads to the commission of an offence under Section 117 of the Local Government Act 1972; or

(5) defrauding or attempting to defraud or conspiring to defraud EN:Procure or a Licensed Entity;

"Project Participants"

any and all persons who are involved the supply of materials which are being undertaken pursuant to the Underlying Contracts and indicate their willingness to embrace and adhere to the principles of collaborative working envisaged in this Dynamic Purchasing System Agreement;

"Request for Information"

a request for information or an apparent request under the Code of Practice on Access to Government Information or FOIA;

"Social Housing Provider"

any provider of social housing including, without limitation, registered housing providers, local authorities and ALMO's (or their subsidiaries);

"Sub-Licence"

a sub-licence in the form set out in Schedule 4 (Form of Sub Licence);

"Sub-Licensee"

an Entity which has entered into a Sub-Licence with EN:Procure and a Licensee;

"Suspension Notice"

has the meaning given to that term in Clause 20.2;

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| "Term" | the period from the Effective Date until the date falling 72 months thereafter unless terminated earlier in accordance with Clause 20; |
| "UK Data Protection Legislation" | all applicable data protection and privacy Legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; |
| "Underlying Contract" | any bespoke Consultant/works contract defined by the Licensed Entity and included within the Competition documentation, subject to such amendments as may be agreed between the Licensed Entity and the Consultant; |
| "Underlying Contract Award Criteria" | has the meaning set out in Schedule 2; |
| "Unpaid EN:Procure Income" | has the meaning given to that term in Clause 23.8; |
| "Unpaid EN:Procure Income Notice" | has the meaning given to that term in Clause 23.8; |
| "Warning Notice" | has the meaning given to that term in Clause 20.1 |
| "Working Day" | a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London; |

2 Interpretation

- 2.1 This Dynamic Purchasing System Agreement shall be construed in accordance with the rules of interpretation set out in Clause 2.2 of this Dynamic Purchasing System Agreement and the defined words and phrases listed in Clause 1.
- 2.2 In this Dynamic Purchasing System Agreement, unless the context otherwise requires:
 - 2.2.1 the headings are included for convenience only and shall not affect the interpretation of this Dynamic Purchasing System Agreement;
 - 2.2.2 the singular includes the plural and vice versa;

- 2.2.3 a gender includes any other gender;
 - 2.2.4 a reference to a person includes any individual, firm, partnership, company and any other body corporate;
 - 2.2.5 a reference to a statute, statutory instrument or other subordinate legislation ("**Legislation**") is to such Legislation as amended and in force from time to time, including any Legislation which re-enacts or consolidates it, with or without modification; and
 - 2.2.6 a reference to specific standards, codes of practice, guideline, rules and/or schemes shall be construed as including all amendments, modifications, supplements, re-drafts and/or substitutes thereto.
- 2.3 The Schedules to this Dynamic Purchasing System Agreement form part of this Dynamic Purchasing System Agreement.

3 Term of Dynamic Purchasing System

- 3.1 This Dynamic Purchasing System Agreement shall take effect on the Effective Date and (unless it is terminated in accordance with the terms of this Dynamic Purchasing System Agreement or is otherwise lawfully terminated), shall terminate at the end of the Term.
- 3.2 For the avoidance of doubt any Underlying Contract entered into before the termination of this Dynamic Purchasing System Agreement shall continue in full force and effect until its respective termination date, notwithstanding the termination or expiry of this Dynamic Purchasing System Agreement.

4 The Role of the Dynamic Purchasing System Agreement

- 4.1 This Dynamic purchasing System Agreement governs the relationship between EN:Procure and the Consultant in respect of the provision of the supply of materials (inducing surveying and installation where required by the Licensed Entity) by the Consultant to Licensed Entities.
- 4.2 The main aim of this Dynamic Purchasing System Agreement is to provide a supplemental and complementary system of provisions designed to encourage the Parties to work with each other, the Licenced Entities and with all other Project Participants in an open, co-operative and collaborative manner and in a spirit of mutual trust and respect with a view to achieving the Dynamic Purchasing System Objectives.
- 4.3 The Underlying Contracts are contracts for the supply of materials which are entered into between the Licensed Entities and the Consultant during the Term. The provisions of this Dynamic Purchasing System Agreement will supplement and complement the terms of any Underlying Contract. In the event of any conflict between the provisions of an Underlying Contract and the provisions of this Dynamic Purchasing System Agreement, the conflicting provisions of the relevant Underlying Contract will prevail over the conflicting provisions of this Dynamic Purchasing System Agreement.
- 4.4 The Consultant acknowledges that, in entering this Dynamic Purchasing System Agreement, no form of exclusivity or volume guarantee has been granted by EN:Procure for the supply of materials required by Licensed Entities under the Dynamic Purchasing System Agreement. EN:Procure and Licensed Entities are at all times

entitled to enter into other contracts and arrangements with other Consultants for the provision of any or all supply of materials which are the same as or similar to the supply of various Product Ranges.

- 4.5 Neither EN:Procure, any Licensed Entity or the Consultant is obliged to enter into any Underlying Contracts during the Term and, for the avoidance of doubt, neither EN:Procure or any Licensed Entity shall be liable for any loss of profits, loss of contracts or other costs or losses suffered or incurred by the Consultant as a result of the Consultant not being awarded one or more Underlying Contracts or choosing not to enter into one or more Underlying Contracts during the Term.

5 The Dynamic Purchasing System Objectives

- 5.1 The Dynamic Purchasing System Objectives are as follows:

- To provide a range of consultancy services to meet the needs of the Client as and when required.
- To provide value for money services, adding extra value when possible.
- To maintain a best value position through an integrated approach to cost management aimed at eliminating priced risk.
- To develop a partnership with collaborative, open, innovative and considerate approaches, continuously improving the DPS Agreement to bring value and service improvement via the best use of resources, knowledge and skills.
- To operate and maintain appropriate systems, processes and records to ensure that the Consultant will, at all times, deliver timely and accurate management information to the Client in accordance with the provisions of the DPS Agreement or Underlying Contract;
- To ensure a high level of Client satisfaction.
- To deliver innovation, expertise and continuous tangible improvements in efficiency, quality, productivity and environmental impact.

6 Competitions and Award of Underlying Contracts

- 6.1 The Parties acknowledge that where a Licensed Entity wishes to award an Underlying Contract under the Dynamic Purchasing System the selection of a DPS Consultant from a Lot shall be made by the Licensed Entity by way of a Competition conducted in accordance with the provisions of this Clause □.
- 6.2 The Licensed Entity shall identify the Lot under which it wishes to award an Underlying Contract and shall invite all DPS Consultant appointed to that Lot to take part in the Competition for the Underlying Contract (unless any such DPS Consultant confirms that it does not wish to be invited).
- 6.3 Prior to issuing the invitation to take part in a Competition to the DPS Consultant identified in accordance with Clause 6.2, the Licensed Entity (or EN:Procure acting on the Licensed Entity's behalf) may contact such DPS Consultants to ask them to confirm whether they wish to be invited to take part in the Competition.
- 6.4 The invitation to take part in the Competition shall:
- 6.4.1 be issued in writing electronically;

- 6.4.2 specify a fixed time limit for responding to the invitation to take part in the Competition, such time limit being of sufficient duration to allow proposals to be submitted, taking into account factors such as the complexity of the Underlying Contract in question, the nature of the Licensed Entity's requirements and the time needed to compile and submit proposals;
- 6.4.3 set out the Underlying Contract Award Criteria on which tenders submitted pursuant to the Competition will be assessed (which shall be determined by the Licensed Entity issuing the invitation having regard to the requirements of the Underlying Contract in question);
- 6.4.4 contain a copy of the form of Underlying Contract to be entered into with the successful DPS Consultant.
- 6.5 When invited by the Licensed Entity to take part in a Competition, the Consultant may either submit a written tender or decline the invitation to take part.
- 6.6 The Consultant shall be responsible for any costs it incurs in participating in a Competition and acknowledges and agrees that neither EN:Procure nor any Licensed Entity shall have any liability for such costs under any circumstances.
- 6.7 The Consultant acknowledges that if it declines an invitation to take part in a Competition for an Underlying Contract, neither EN:Procure nor the Licensed Entity in question shall be under any obligation to provide the Consultant with any further information relating to that Underlying Contract (including, without limitation, details of any changes to the scope or nature of the Underlying Contract).
- 6.8 The Licensed Entity shall evaluate all tenders received on the basis of the Underlying Contract Award Criteria as set out in the invitation and will inform all DPS Consultant taking part in the Competition of the outcome of that evaluation.
- 6.9 If the Consultant is selected to carry out an Underlying Contract following a Competition the Licensed Entity may issue an Underlying Contract to the Consultant for acceptance. If the Consultant does not confirm its acceptance of the Underlying Contract within five (5) Working Days of receipt of the same (or within such longer period as the Licensed Entity may specify) the Consultant shall be deemed to have declined the offer to enter into the Underlying Contract and the Licensed Entity may (in its absolute discretion):
 - 6.9.1 offer the Underlying Contract to the next highest scoring DPS Consultant in the Competition;
 - 6.9.2 recommence the Competition for the Underlying Contract; or
 - 6.9.3 abandon the award of the Underlying Contract altogether.

7 Confirmation of Admittance Criteria

- 7.1 In accordance with Regulation 34(25) of the Public Contracts Regulations 2015 EN:Procure may, at any time during the Term, request the Consultant to re-confirm that it continues to satisfy the Admittance Criteria for the Lots of this Dynamic Purchasing System Agreement to which it is appointed.

7.2 The Consultant shall provide EN:Procure with a written response to any request made by EN:Procure under Clause 7.1 within ten (10) Working Days of the date of the request.

7.3 If the Consultant fails to provide EN:Procure with written confirmation that it continues to satisfy the Admittance Criteria for one or more Lots of this Dynamic Purchasing System Agreement to which it is appointed within the ten (10) Working Day timescale referred to in Clause 7.2 EN:Procure may terminate the Consultant's appointment to the Lots in question by notice in writing having immediate effect.

8 Counterparts

This Dynamic Purchasing System Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

9 Contracts (Rights Of Third Parties) Act 1999

Without prejudice to any enforceable rights or benefits which third parties might have under or as a consequence of the Underlying Contracts and/or any collateral warranties provided or to be provided by the Consultant pursuant to the Underlying Contracts, and save for any right conferred by this Dynamic Purchasing System Agreement on a Licensed Entity, it is not intended that anything contained in this Dynamic Purchasing System Agreement should confer any enforceable rights or benefits upon third parties who are not parties to this Dynamic Purchasing System Agreement unless a contrary intention is expressly stated.

10 Representatives

10.1 On or before the Effective Date the Consultant shall appoint a DPS Representative to act as its representative in connection with this Dynamic Purchasing System Agreement and shall provide EN:Procure with the name and contact details of such person.

10.2 The Consultant shall keep EN:Procure informed of any change in the identity of its DPS Representative from time to time.

10.3 For the avoidance of doubt EN:Procure shall have no liability to the Consultant in respect of any matter that arises out of or in connection with any failure by the Consultant to comply with its obligation under Clause 10.2.

10.4 On or before the Effective Date, EN:Procure shall provide to the Consultant the name and contact details of the DPS Manager who will manage this Dynamic Purchasing System Agreement.

10.5 EN:Procure shall keep the Consultant informed of any change in the identity of the DPS Manager from time to time.

11 Collaborative Working

11.1 The Parties will continually impress upon all personnel involved with this Dynamic Purchasing System Agreement, and any Underlying Contracts awarded to the Consultant, their keen desire to work with each other and with all other Project

Participants in an open, co-operative and collaborative manner and in a spirit of mutual trust and respect with a view to achieving the Dynamic Purchasing System Objectives.

- 11.2 To this end, the Parties agree that they will each report to one another, and will welcome any reports from each other, of any instances where a Party's personnel have been particularly open, co-operative and/or collaborative and any instances in which a Party's personnel have not acted, or it is perceived that such personnel have not acted, in an entirely open, co-operative or collaborative manner and/or in a spirit of mutual trust and respect with a view to achieving the Dynamic Purchasing System Objectives.
- 11.3 The Parties will at all times endorse and support collaborative behaviour and address behaviour which is not collaborative.
- 11.4 In the event of a technical and/or logistical problem in relation to any Works with which the Consultant is involved pursuant to an Underlying Contract, whatever the origins of the problem and whoever may be contractually responsible for the same, the Parties will work together with the Licensed Entity and other Project Participants to try and find a solution to the problem which is safe and environmentally sensitive, minimises the effect on the carrying out of the Works, and is acceptable to EN:Procure.

12 **Dispute Resolution**

- 12.1 As soon as a Party becomes aware of any difference or dispute with the other Party arising over the operation of the terms of this Dynamic Purchasing System Agreement which does not fall to be dealt with under the terms of an Underlying Contract they shall give notice to the other Party.
- 12.2 The Parties shall use their reasonable endeavours to resolve the difference or dispute by mutual agreement. If the Parties are unable to resolve the difference or dispute by mutual agreement within ten (10) Working Days of the notice given under Clause 12.1, either Party may refer the matter to the DPS Manager for determination. On referral of any difference or dispute to the DPS Manager under this Clause the referring Party must immediately inform the other Party that the difference or dispute has been so referred.
- 12.3 The DPS Manager shall provide to the Parties notice of its decision in relation to the difference or dispute within ten (10) Working Days of referral of the difference or dispute to it under Clause 12.2.
- 12.4 If either of the Parties are not satisfied with the decision of the DPS Manager concerning the difference or dispute the Parties shall attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure. To initiate mediation, a Party shall give a notice ("**ADR Notice**") to the other Party, requesting mediation. The parties shall agree the identity of the mediator or, if not agreed between the Parties within ten (10) Working Days of the ADR Notice, the Party who served the ADR Notice shall apply to CEDR to nominate the mediator, attaching a copy of the ADR Notice to its application and copying its application to the other Party. The mediation shall start not later than ten (10) Working Days after the date of the ADR Notice (or, if later, not later than 10 Business Days after the parties have agreed the identity of the mediator or after CEDR has nominated the mediator). The Parties shall attempt in good faith to resolve the dispute and the cost of any such mediation shall be borne equally between the Parties.

- 12.5 Notwithstanding Clauses 12.2 to 12.4 either Party may at any time refer a dispute to adjudication in accordance with the Housing Grants (Construction and Regeneration) Act 1996 (as amended) and any adjudication shall be undertaken in accordance with Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended) ("**Scheme**") and the Scheme shall apply to such adjudication, subject to the following:
- 12.5.1 the Adjudicator shall (where practicable) be an individual with appropriate experience and expertise in the specialist area or discipline relevant to the issues in dispute and if the Adjudicator does not have the appropriate expertise and experience, the Adjudicator shall appoint an independent expert with such expertise and experience to advise the Adjudicator;
- 12.5.2 the Adjudicator shall give reasons for his decision and shall deliver his decision to the Parties as soon as practicable and within 2 Working Days of making his decision; and
- 12.5.3 the Adjudicator shall notify the Parties as soon as practicable if the Adjudicator becomes aware that it has any interest in the Dynamic Purchasing System Agreement, the Underlying Contract, the Works being the subject matter of the adjudication, or the Parties.
- 12.6 Subject to the above, any dispute which is not resolved within twenty (20) Working Days after the commencement of the mediation procedure in Clause 12.4 shall be considered unresolved and either of the Parties may refer such dispute to the High Court of England and Wales for resolution as business of the Technology and Construction Court.
- 12.7 Unless otherwise agreed in writing, the Parties shall continue to comply with their obligations under this Dynamic Purchasing System Agreement during the course of the dispute resolution procedure as set out in this Clause 12 with respect to all matters.
- 12.8 Nothing in this Clause 12 shall prevent a Party from seeking injunctive relief at any time.

13 Sharing Information and Know How

- 13.1 If a Party has in its possession, custody or control any knowledge or information (other than the excluded categories of knowledge and information referred to in Clause 13.2) which is, or it becomes, clear would be of assistance to another Party in the performance of the Underlying Contracts then that Party will promptly volunteer and share such knowledge or information with the other Party without having to be asked for the same and irrespective of whether that Party is contractually obliged to share such knowledge or information pursuant to the Underlying Contracts.
- 13.2 A Party shall not be expected to volunteer or share:
- 13.2.1 commercially confidential product pricing information, process operations or trade secrets;
- 13.2.2 knowledge or information which a Party is legally and/or contractually prohibited from disclosing to the other Party;
- 13.2.3 knowledge or information which is privileged from disclosure; or

13.2.4 knowledge or information in relation to the prices the Consultant has paid its sub-Consultants and Consultants for Works save where it has been agreed that the Underlying Contract will operate on an open book basis.

14 Communications Protocol

14.1 Without in any way detracting from or affecting the specific notice and communication requirements of the Underlying Contracts, the Parties, in conjunction with the other Project Participants, will use reasonable endeavours to develop and agree a common communications protocol the key objectives of which will be the promotion of clear and effective communication and the dissemination and ready availability of information essential to the success of the Works with which the Consultant is involved pursuant to an Underlying Contract.

14.2 In their communications with each other and with other Project Participants, the Parties will at all times use reasonable endeavours to keep matters factual and to the point and will avoid self-serving statements, assertions of blame and/or emotive or provocative language.

15 Confidentiality & Publicity

15.1 The Consultant shall not by itself, its employees or agents and shall procure that its sub-Consultants shall not:

15.1.1 communicate with representatives of the press, television, radio or other communications or advertising media on any matter concerning this Dynamic Purchasing System Agreement; or

15.1.2 undertake any form of advertising or publicity in relation to this Dynamic Purchasing System Agreement (through social media or otherwise)

without the prior written consent of EN:Procure (such consent not to be unreasonably withheld or delayed).

15.2 During the Term and for a period of five (5) years after its termination or expiry for any reason, each of the Parties undertakes to the other to keep the Confidential Information confidential and not to disclose to any third party, except to the extent that:

15.2.1 the Confidential Information was already lawfully known, or became lawfully known to the relevant party independently;

15.2.2 the Confidential Information is in or comes into the public domain other than due to wrongful use or disclosure by the relevant party;

15.2.3 disclosure or use is necessary by the relevant party in connection with entry into this Dynamic Purchasing System Agreement or for the proper and effective performance of its obligations under this Dynamic Purchasing System Agreement (including disclosure by either party to its insurers and professional advisers); or

15.2.4 disclosure is required by law to any government, governmental department, agency, regulatory or fiscal body or authority (whether national or foreign).

15.3 The Consultant undertakes to keep confidential and not disclose to any third party any information supplied by EN:Procure or a Licensed Entity under this Dynamic

Purchasing System Agreement including, without limitation, any reference to the terms and conditions in any advertising or publicity material without the prior written approval of EN:Procure and the Licensed Entity (as appropriate).

- 15.4 The Consultant shall not disclose to any person whatsoever any information relating to EN:Procure and/or the Licensed Entities or their business or trade secrets of which it has or shall acquire pursuant to this Dynamic Purchasing System Agreement, including (without limitation) details of any EN:Procure Income payable to EN:Procure under this Dynamic Purchasing System Agreement.
- 15.5 The Consultant may from time to time wish to make it known within the market place that it has acted for EN:Procure or a Licensed Entity but it shall not do so without obtaining the written consent of EN:Procure or the Licensed Entity (as appropriate), such consent not to be unreasonably withheld or delayed.

16 Data Protection

- 16.1 In this clause 16, "**Applicable Laws**" means (for so long as and to the extent that they apply to the Parties) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; "**Domestic UK Law**" means the UK Data Protection Legislation and any other law that applies in the UK; and "**Controller**", "**Processor**", "**Data Subject**", "**Personal Data**", "**Personal Data Breach**", "**processing and appropriate technical and organisational measures**" shall mean as defined in the Data Protection Legislation.
- 16.2 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 16 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.
- 16.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, EN:Procure is the Controller and the Consultant is the Processor.
- 16.4 Without prejudice to the generality of Clause 16.2, the Consultant shall, in relation to any Personal Data processed in connection with the performance by the Consultant of its obligations under this Dynamic Purchasing System Agreement:
- 16.4.1 process that Personal Data only on the documented written instructions of EN:Procure unless the Consultant is required by Applicable Laws to otherwise process that Personal Data. Where the Consultant is relying on Applicable Laws as the basis for processing Personal Data, the Consultant shall promptly notify EN:Procure of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Consultant from so notifying EN:Procure;
- 16.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by EN:Procure, 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);

16.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

16.4.4 not transfer any Personal Data outside of the European Economic Area.

16.4.5 assist EN:Procure 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;

16.4.6 notify EN:Procure without undue delay on becoming aware of a Personal Data Breach;

16.4.7 at the written direction of EN:Procure delete or return Personal Data and copies thereof to EN:Procure on termination of the Dynamic Purchasing System Agreement unless required by Applicable Law to store the Personal Data; and

16.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 16 and allow for audits by EN:Procure or EN:Procure's designated auditor and immediately inform EN:Procure if, in the opinion of the Consultant, an instruction infringes the Data Protection Legislation.

16.5 EN:Procure does not consent to the Consultant appointing any third-party processor of Personal Data under this Dynamic Purchasing System Agreement.

16.6 Either Party may, at any time on not less than thirty (30) days' notice, revise this clause 16 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 this Dynamic Purchasing System Agreement).

17 Health and Safety

Without in any way detracting from or affecting the Consultant's statutory and/or regulatory duties and responsibilities and/or the specific health and safety requirements of the Underlying Contracts, the Consultant will use reasonable endeavours to establish and maintain in relation to all Underlying Contracts a working environment in which health and safety is a fundamental consideration for everybody involved with and affected by the Works.

18 Compliance with Legislation

The Consultant shall carry out the Works and perform its other obligations under any Underlying Contract awarded to it and this Dynamic Purchasing System Agreement in compliance with all applicable Legislation (including, without limitation, the Equality Act 2010), orders, byelaws, notices and regulations from time to time in force.

19 Sustainability

The Consultant shall assist EN:Procure, the Licensed Entities and the other Project Participants to explore ways in which the environmental performance and sustainability

of the Works which are to be undertaken pursuant to Underlying Contracts might be improved and environmental impact reduced.

20 Suspension and Termination

Suspension and termination for material breach

20.1 If the Consultant commits any breach of the terms of this Dynamic Purchasing System Agreement or the terms of an Underlying Contract which EN:Procure considers may have a material and adverse effect on the carrying out of the Dynamic Purchasing System Agreement or the Works by the Consultant, EN:Procure may issue a Warning Notice. Such a Warning Notice shall:

20.1.1 provide full details of the breach(s) in question; and

20.1.2 specify the action that the Consultant is required to take to remedy such breach(s) and the reasonable timescale within which such action must be taken.

20.2 If the Consultant has not remedied the breach(s) to EN:Procure's reasonable satisfaction within the timescale set out in the Warning Notice EN:Procure may issue the Consultant with a Suspension Notice in respect of the Dynamic Purchasing System Agreement or one or more Lots, which Suspension Notice shall:

20.2.1 specify the particulars of the breach(s) in question and confirm which Lot(s) the Suspension Notice applies to;

20.2.2 set out the timescale within which the Consultant must remedy the breach(s); and

20.2.3 confirm that the Consultant shall be suspended from participating in Competitions in respect of this Dynamic Purchasing System Agreement or the Lot(s) in question until such time as the Consultant has remedied the breach(s) to EN:Procure's reasonable satisfaction

and the Consultant shall be so suspended.

20.3 If the Consultant remedies the breach(s) in question to EN:Procure's reasonable satisfaction within the timescales set out in the Suspension Notice the Suspension Notice in respect of the Dynamic Purchasing System Agreement or Lot(s) in question shall be lifted.

20.4 If the Consultant fails to remedy the breach(s) in question to EN:Procure's reasonable satisfaction within the timescales set out in the Suspension Notice EN:Procure may in its absolute discretion:

20.4.1 grant the Consultant an additional period of time to remedy the breach(s) in question to EN:Procure's reasonable satisfaction; or

20.4.2 terminate the Consultant's appointment to the Dynamic Purchasing System Agreement or Lot(s) in question by serving not less than one (1) months written notice on the Consultant. Unless such notice is withdrawn before the aforementioned notice period expires, the Consultant's appointment to the Dynamic Purchasing System Agreement or Lot(s) in question will terminate upon expiry of such notice period.

- 20.5 The provisions of Clauses 20.2 and 20.3 shall apply (the necessary changes having been made) in respect of any additional period of time the Consultant is given to remedy the breach(s) in question under Clause 20.4.

Termination for insolvency etc.

- 20.6 If the Consultant ceases to carry on its business, becomes insolvent, has a liquidator, trustee in bankruptcy, receiver, manager, administrator or administrative receiver appointed in respect of its assets or (where the Consultant 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, EN:Procure may terminate the appointment of the Consultant under this Dynamic Purchasing System Agreement or one or more Lots by notice in writing having immediate effect.

Termination for breach of Clause 24 (Modern Slavery)

- 20.7 EN:Procure may terminate the appointment of the Consultant under this Dynamic Purchasing System Agreement or one or more Lots by notice in writing having immediate effect in the event that the Consultant commits a breach of any of the provisions of Clause 24.

Termination for Prohibited Acts

- 20.8 EN:Procure may terminate the appointment of the Consultant under this Dynamic Purchasing System Agreement or one or more Lots by notice in writing having immediate effect in the event that the Consultant commits a Prohibited Act.

Termination pursuant to Clause 25 (Financial and Management Information)

- 20.9 EN:Procure may terminate the Consultant's appointment under this Dynamic Purchasing System Agreement or one or more Lots by serving not less than one (1) months written notice on the Consultant if the circumstances described in Clause 25.2 apply to the Consultant. Unless such notice is withdrawn before the aforementioned notice period expires, the Consultant's appointment to this Dynamic Purchasing System Agreement or to the Lot(s) in question or will terminate upon expiry of such notice period.

General

- 20.10 The termination of the Consultant's appointment under this Dynamic Purchasing System Agreement or one or more Lot(s) shall not automatically terminate any Underlying Contract entered into at or before the date of termination (unless the reason for termination is also a ground for the termination of any such Underlying Contract) and any terms of this Dynamic Purchasing System Agreement which have been incorporated into such Underlying Contract shall continue in full force and effect for the duration of the Underlying Contract.
- 20.11 For the avoidance of doubt the termination of the Consultant's appointment under one Lot shall not automatically terminate the Consultant's appointment under any other Lot unless EN:Procure expressly provides otherwise.
- 20.12 Following the issue of a notice of termination by EN:Procure to the Consultant pursuant to this Clause 20 the Consultant shall be prohibited from participating in the Competition and Award of Underlying Contracts in respect of this Dynamic Purchasing System

Agreement or the one or more Lot(s) in question, unless and until such notice of termination is withdrawn by EN:Procure.

21 Assignment, Novation and Licence

21.1 EN:Procure may at any time assign novate charge or otherwise transfer its interest in this Dynamic Purchasing System Agreement and/or any rights and obligations contained herein to any party without the consent of the Consultant being required.

21.2 The Consultant may not assign novate or otherwise transfer its interest in this Dynamic Purchasing System Agreement and/or any rights and obligations contained herein to any party without the written consent of EN:Procure (such consent not to be unreasonably withheld or delayed).

22 Audit

22.1 EN:Procure shall be entitled at any time on reasonable notice to inspect and audit the books and records of the Consultant (including, without limitation, copies of all invoices and credit notes) for the purpose of checking and verifying:

22.1.1 the amounts paid and/or payable by the Licensed Entities to the Consultant pursuant to the terms of Underlying Contract(s);

22.1.2 that the amounts paid and/or payable by the Licensed Entities to the Consultant pursuant to the terms of Underlying Contract(s) were calculated by reference to the Consultant's proposal(s) provided in accordance with Clause ☐; and

22.1.3 calculation and payment by the Consultant of the EN:Procure Income.

22.2 The Consultant shall ensure that any information requested from it by EN:Procure under Clause 22.1 is made available as soon as reasonably practicable.

22.3 If EN:Procure can demonstrate there are reasonable indications that the Consultant is in breach of this Dynamic Purchasing System Agreement and that there are discrepancies, errors or omissions in the information reviewed, then EN:Procure may conduct or cause to be conducted a review of all such information relating to this Dynamic Purchasing System Agreement and any Underlying Contract as EN:Procure may require. EN:Procure may nominate a third party independent reviewer to carry out such a review. The Consultant will promptly make available all information which EN:Procure or the independent reviewer may require for the purpose of the review, subject to the independent reviewer agreeing to confidentiality terms reasonably imposed by the Consultant. If, in the opinion of the independent reviewer, the Consultant was in breach of this Dynamic Purchasing System Agreement, the Consultant shall pay the reasonable fees of the independent reviewer. If, in the opinion of the independent reviewer, the Consultant was not in breach of this Dynamic Purchasing System Agreement, the fees of the independent reviewer shall be payable by EN:Procure.

22.4 The Consultant will produce a copy of, and allow EN:Procure at any time to inspect, any Underlying Contract for the purpose of verifying compliance by the Consultant and each Licensed Entity of their respective obligations under the Underlying Contract, this Dynamic Purchasing System Agreement and each agreement or document entered into under it. The Consultant consents to EN:Procure obtaining from a Licensed Entity a copy of any Underlying Contract and inspecting the same.

23 EN:Procure Income

- 23.1 The Consultant acknowledges the role that EN:Procure performs in managing the operation of this Dynamic Purchasing System Agreement and the value that EN:Procure may add to Underlying Contracts awarded to the Consultant under it by aggregating volume, standardising processes, and establishing effective communication between the Consultant and the Licenced Entities (amongst other things).
- 23.2 In consideration of the performance of the role described in Clause 23.1 the Consultant agrees that EN:Procure shall be entitled to be paid the EN:Procure Income agreed between EN:Procure and the Consultant pursuant to Clause 23.3 in respect of each Underlying Contract awarded to the Consultant under this Dynamic Purchasing System Agreement.
- 23.3 On or before the award of an Underlying Contract to the Consultant under this Dynamic Purchasing System Agreement, EN:Procure and the Consultant shall work together to establish and agree the EN:Procure Income payable by the Consultant to EN:Procure in respect of the Underlying Contract, and the method by which such EN:Procure Income shall be paid. The Parties acknowledge that such EN:Procure Income may comprise (without limitation) a payment for contract support, a contract management fee, a volume based rebate or a combination of any of these things.
- 23.4 The Consultant agrees that it shall not (and shall not be entitled to) enter into an Underlying Contract under this Dynamic Purchasing System Agreement unless and until EN:Procure and the Consultant have agreed the EN:Procure Income payable to EN:Procure in respect of that Underlying Contract and the method by which it shall be paid.
- 23.5 Within ten (10) days of the end of each month, EN:Procure shall issue an invoice to the Consultant setting out the EN:Procure Income due from the Consultant (if any) in respect of that month (the "**Invoice**").
- 23.6 The Consultant shall pay the amount set out in the Invoice to EN:Procure by direct debit (or by such other means as may be agreed between EN:Procure and the Consultant) within thirty (30) days after receipt of such Invoice.
- 23.7 If the Consultant fails to make any payment which (in accordance with Clause 23.6) is due in full on the due date EN:Procure may charge the Consultant interest (both before and after judgment) on the amount unpaid from time to time at the rate of 2% above the Bank of England base rate from time to time.
- 23.8 If the Consultant commits a breach of Clause 23.6 then, without prejudice to EN:Procure's other rights against the Consultant under this Dynamic Purchasing System Agreement or under common law:
- 23.8.1 EN:Procure may provide the Consultant and each relevant Licensed Entity with an Unpaid EN:Procure Income Notice notifying them of any failure by the Consultant to pay EN:Procure Income in accordance with this Clause 23 and the amount of such Unpaid EN:Procure Income; and
- 23.8.2 following receipt of an Unpaid EN:Procure Income Notice each relevant Licensed Entity shall set off against and deduct from any subsequent payments

to the Consultant under the relevant Underlying Contract(s) the amount of any Unpaid EN:Procure Income.

24 Modern Slavery

24.1 In performing its obligations under this Dynamic Purchasing System Agreement and any Underlying Contract awarded to it the Consultant shall:

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

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

24.2 The Consultant shall implement due diligence procedures for its Consultants and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

25 Financial and Management Information

25.1 The Consultant shall provide EN:Procure with copies of all applications for payment, payment notices, withholding notices, payment certificates, invoices and non-payment notices issued or received by the Consultant in relation to each Underlying Contract awarded to it under this Dynamic Purchasing System Agreement at the same time that such documents are either issued or received by the Consultant, as the case may be.

25.2 Within three (3) Working Days of any request the Consultant shall provide EN:Procure with such information as EN:Procure may reasonably require for the purposes of carrying out a review of the Consultant's financial position.

25.3 If EN:Procure on production of the information required under Clause 25.2 reasonably considers that there has been a material change in the financial position of the Consultant to such an extent that the capability of the Consultant to adequately fulfil its obligations under this Dynamic Purchasing System Agreement has been placed in jeopardy, EN:Procure may terminate the Consultant's appointment to this Dynamic Purchasing System Agreement or one or more Lots or in accordance with Clause 20.9.

26 Changes in Product Ranges

26.1 The Consultant shall promptly provide EN:Procure with written notification of any intended change to one or more of the Consultant's Product Ranges. Any notice given pursuant to this Clause 26.1 shall be and shall be referred to as a "Product Range Change Notice".

26.2 Where the change to the Product Range comprises of a deletion, substitution or replacement of a product within the Product Range the Product Range Change Notice shall include the following information as a minimum:

26.2.1 Rationale for and improvements created by the change;

26.2.2 Details of spare parts provision for existing installed products;

- 26.2.3 Impact of the change on existing projects and stock cover for future orders; and
- 26.2.4 Such other information as EN:Procure may reasonably request.
- 26.3 Where the change to the Product Range comprises of an addition to the Product Range the Product Range Change Notice shall include such information as EN:Procure may reasonably request in respect of the addition.
- 26.4 The Consultant acknowledges and agrees that EN:Procure shall be entitled to share any information provided pursuant to Clause 26.2 and Clause 26.3 with the Licensed Entities.
- 26.5 For the avoidance of doubt, nothing in this Clause 26 shall confer on EN:Procure any right or power to prevent the Consultant from implementing a change to one or more of the Consultant's Product Ranges.

27 Freedom of Information

- 27.1 The Consultant acknowledges that EN:Procure and the Licensed Entities may be subject to the requirements of the FOIA and the Consultant shall assist and co-operate with EN:Procure and the Licensed Entity concerned to enable them to comply with their information disclosure obligations.
- 27.2 The Consultant shall and shall procure that its sub-Consultants shall:
 - 27.2.1 transfer to EN:Procure or the Licensed Entity any Requests for Information that it receives as soon as practicable;
 - 27.2.2 provide EN:Procure or the Licensed Entity with a copy of all Information in its possession, power or control in the form that EN:Procure or the Licensed Entity requires within five (5) Working Days of request (or such other period as EN:Procure or the Licensed Entity may specify); and
 - 27.2.3 provide all necessary assistance as is reasonably requested by EN:Procure or the Licensed Entity to enable it to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA.
- 27.3 In no event shall the Consultant respond directly to a Request for Information unless expressly authorised to do so by EN:Procure or the Licensed Entity concerned.
- 27.4 The Consultant acknowledges that EN:Procure or the Licensed Entity may, acting in accordance with the applicable codes of practice on the discharge of the functions of public authorities under Part 1 of the FOIA, be obliged to disclose Information without consulting or obtaining consent from the Consultant or despite having taken the Consultant's views into account.
- 27.5 The Consultant shall ensure that all Information is retained for disclosure and shall permit EN:Procure or the Licensed Entity to inspect such records on reasonable notice during normal business hours as may be requested from time to time.

28 Limitation of Liability

- 28.1 The Consultant acknowledges that each Licensed Entity is independently responsible for the conduct of its award of an Underlying Contract under the Dynamic Purchasing System Agreement and that EN:Procure is not responsible or accountable for and shall have no liability whatsoever in relation to:
- 28.1.1 the conduct, acts or omissions of Licensed Entities in relation to the Dynamic Purchasing System Agreement; or
 - 28.1.2 the management, performance and/or non-performance of any Underlying Contract between the Consultant and Licensed Entities entered into pursuant to the Dynamic Purchasing System Agreement; or
 - 28.1.3 the Licensed Entities' public procurement obligations; or
 - 28.1.4 any contract or Underlying Contract formed as a result of an award or purported award under this Dynamic Purchasing System Agreement.
- 28.2 EN:Procure's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising out of or in connection with the performance or contemplated performance of this Dynamic Purchasing System Agreement shall be limited in so far as is lawful to the sum of one pound (£1.00). Nothing in this Clause 28 is intended to exclude the liability of EN:Procure for death or personal injury caused by the negligence of EN:Procure.
- 28.3 EN:Procure shall not be liable to the Consultant for:
- 28.3.1 any loss of profit, whether direct or indirect;
 - 28.3.2 any indirect or consequential loss or damage;
 - 28.3.3 any loss of business, depletion of good-will or otherwise;
 - 28.3.4 any costs, expenses or other claims for consequential compensation;
- whatsoever and howsoever caused which arises out of or in connection with this Dynamic Purchasing System Agreement.

29 **Survival of Certain Clauses**

The provisions of Clauses 15, 16, 23 and 27 (and without limitation to the foregoing, any other provision of this Dynamic Purchasing System Agreement 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 this Dynamic Purchasing System Agreement.

30 **Governing Law**

This Dynamic Purchasing System Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS whereof this Dynamic Purchasing System Agreement is executed as a Deed and delivered on the date stated at the beginning of it.

Executed by **EN:PROCURE LIMITED** acting
by two directors or one director and the
secretary: Director

.....
Director/Secretary

Executed by **[THE CONSULTANT]** acting by
two directors or one director and the
secretary: Director

.....
Director/Secretary

SCHEDULE 1

LOTS

Note to Bidders: This Schedule will be populated with the details of the successful Dynamic Purchasing System Consultants that have been appointed to each Lot

SCHEDULE 2

UNDERLYING CONTRACT AWARD CRITERIA

The Licensed Entity conducting the Competition under Clause ☐ of this Dynamic Purchasing System Agreement will confirm to the DPS Consultants, in the invitation to take part in the Competition, the Underlying Contract Award Criteria that will be used to assess tenders that are submitted pursuant to the Competition. Such Underlying Contract Award Criteria will be based on the criteria set out in the table below, with such amendments as the Licensed Entity may stipulate to reflect the requirements of the Underlying Contract in question.

The percentage weightings given to the price and qualitative elements of the Underlying Contract Award Criteria will be confirmed by the Licensed Entity conducting the Competition in the invitation to take part in the Competition. Such weightings will be within the ranges set out in the table below. Accordingly, the Consultant acknowledges that a Competition may be assessed on the basis of price alone, if the Licensed Entity considers it appropriate.

| Criteria | Criteria weighting |
|----------|--------------------|
| Price | 20-100% |
| Quality | 0-80% |

SCHEDULE 3
FORM OF LICENCE

DATED

20[]

EN:PROCURE LIMITED

and

[LICENSEE]

LICENCE

in relation to a Dynamic Purchasing System for

the provision of Design and Consultancy Services Specialising in Green Retrofit and
Decarbonisation Strategies and Expertise

THIS LICENCE is made the [] day of [] 20[]

BETWEEN:

- (1) **EN:PROCURE LIMITED** (company number 09149719) whose registered office is at 1st Floor, Sovereign Court, 300 Barrow Road, Meadowhall, Sheffield, S9 1JQ ("**EN:Procure**"); and
- (2) [**Licensee**] (Company No. []) of/ whose registered office is at [] ("**Licensee**").

WHEREAS:

- (1) Following an advertisement in the Official Journal of the European Union dated [], reference [] and a competitive procurement process undertaken in accordance with the Public Contracts Regulations 2015, EN:Procure has established a Dynamic Purchasing System for the provision of consultancy services. ("**Dynamic Purchasing System**").
- (2) DPS Consultants may join the Dynamic Purchasing System at any time during its Term by entering into a form of dynamic purchasing system agreement with EN:Procure ("**Dynamic Purchasing System Agreement**").
- [(3) The Licensee is a [member] [customer] [other]¹ of [].]
- [(3) The Licensee is a collaborative procurement vehicle for providers of social housing]²
- (4) EN:Procure wishes to grant the Licensee the right to enter into Underlying Contracts with DPS Consultants under the Dynamic Purchasing System.

NOW THIS LICENCE WITNESSETH as follows:

1. Definitions

- 1.1 Where the Dynamic Purchasing System Agreement assigns a meaning to any word or expression which is used in this Licence, the same meaning shall, unless the context otherwise requires and unless defined hereunder, be given to it in this Licence.
- 1.2 In this Licence unless the context otherwise requires the following terms shall have the meanings given to them below:

"Effective Date" means []³

"Licence Period" means the period commencing on the Effective Date until the end of the Term or earlier termination of the Dynamic Purchasing System Agreement in accordance with the terms of the Dynamic Purchasing System Agreement or upon the Revocation Date, whichever is the earlier;

"Relevant Underlying Contract" means an Underlying Contract entered into by the Licensee under Clause 2;

¹ Delete as appropriate

² Include if the entity taking the licence is PP or another consortium.

³ Insert date that the Licence will be deemed to be effective from

"Revocation Date" means:

- (i) the date on which the Licensee receives written notice from EN:Procure in accordance with the provisions of Clause 4.2 of this Licence that the Licensee's right to enter into Underlying Contracts pursuant to the Dynamic Purchasing System has been revoked by EN:Procure; or
- (ii) the last day of the notice period referred to in Clause 4.1A;

whichever is the earlier;

"Sub-Licensee" means an Entity to whom, pursuant to and in accordance with Clause 8 (Sub-Licence) of this Licence, the Licensee has granted the right to enter into Underlying Contracts with DPS Consultants;

1.3 In this Licence, unless the context otherwise requires:

- 1.3.1 the headings are included for convenience only and shall not affect the interpretation of this Licence;
- 1.3.2 the singular includes the plural and vice versa;
- 1.3.3 a gender includes any other gender;
- 1.3.4 a reference to a person includes any individual, firm, partnership, company and any other body corporate;
- 1.3.5 a reference to a statute, statutory instrument or other subordinate legislation ("**Legislation**") is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification; and
- 1.3.6 a reference to specific standards, codes of practice, guideline, rules and/or schemes shall be construed as including all amendments, modifications, supplements, re-drafts and/or substitutes thereto.

2. Right to Enter into Underlying Contracts

- 2.1 In consideration of the covenants given by the Licensee under this Licence, with effect from the Effective Date EN:Procure grants to the Licensee for the duration of the Licence Period the right under the Dynamic Purchasing System to enter into Underlying Contracts with DPS Consultants.
- 2.2 The Licensee warrants and undertakes to EN:Procure that it will enter into each such Underlying Contract on its own behalf and not on behalf of or as agent or nominee for any third party.

3. Compliance with Obligations

- 3.1 The Licensee covenants with EN:Procure that the Licensee will duly discharge, perform and observe all the liabilities, obligations and stipulations of the Licensee under any Relevant Underlying Contracts it enters into pursuant to the Dynamic Purchasing System and will keep EN:Procure duly and effectually indemnified against all actions, proceedings, claims, demands, costs, damages, penalties and expenses whatsoever under or in respect of any such Relevant Underlying Contracts.

- 3.2 The Licensee covenants with EN:Procure that the Licensee shall comply with those obligations in the Dynamic Purchasing System Agreement that are expressed to be obligations of the Parties as though the Licensee were itself a party to the Dynamic Purchasing System Agreement.
- 3.3 The Licensee covenants with EN:Procure that the Licensee shall comply with those obligations in the Dynamic Purchasing System Agreement that are expressed to be obligations of a Licensee and in particular the Licensee covenants with EN:Procure that the Licensee shall observe the terms of Clause 6 of the Dynamic Purchasing System Agreement in conducting any Competitions under the Dynamic Purchasing System.
- 3.4 The Licensee will produce a copy of, and allow EN:Procure at any time to inspect, each Relevant Underlying Contract it or its Sub-Licensees or Sub-Sub-Licensees enter into under the Dynamic Purchasing System for the purpose of verifying compliance by the DPS Consultant and the Licensee, Sub-Licensees and Sub-Sub-Licensees of their respective obligations under the Relevant Underlying Contract, the Dynamic Purchasing System Agreement or any document entered into under it. The Licensee consents to EN:Procure obtaining from the DPS Consultants a copy of each such Relevant Underlying Contract and inspecting the same.
- 3.4 The Licensee agrees that prior to issuing an invitation to take part in a Competition under the Dynamic Purchasing System it shall provide EN:Procure with a copy of the proposed invitation together with such other documentation as EN:Procure may require, and the Licensee further agrees that it shall not issue the invitation to the DPS Consultants until EN:Procure has provided the Licensee with its written consent to the same.

4. Revocation

- 4.1A EN:Procure may revoke the Licensee's right to enter into Underlying Contracts pursuant to the Dynamic Purchasing System at any time by giving not less than one (1) month's prior written notice to the Licensee.
- 4.1 Without prejudice to Clause 4.1A, EN:Procure may revoke the Licensee's right to enter into Underlying Contracts pursuant to the Dynamic Purchasing System where:
- 4.1.1 the Licensee ceases to be a member or customer of EN:Procure;
- 4.1.2 the Licensee commits a material breach of the provisions of this Licence;
- 4.1.3 the Licensee commits a material breach of the provisions of the Dynamic Purchasing System Agreement; and/or
- 4.2 If EN:Procure wishes to exercise its right under Clause 4.1, it must serve a written notice on the Licensee stating that the Licensee's right to enter into Underlying Contracts pursuant to the Dynamic Purchasing System has been revoked by EN:Procure.
- 4.3 Following the Revocation Date, the Licensee shall not be entitled to enter into any new Underlying Contract pursuant to the Dynamic Purchasing System, unless and until the Licensee is granted a further Licence.

5. Payment of EN:Procure Income

- 5.1 The Licensee acknowledges the provisions of Clause 23 of the Dynamic Purchasing System Agreement. In particular, the Licensee acknowledges and agrees that pursuant to Clause 23 of the Dynamic Purchasing System Agreement EN:Procure is entitled to receive for so long as each Relevant Underlying Contract is in force the EN:Procure Income applicable to that Relevant Underlying Contract and may collect this out of monies received by the DPS Consultants from the Licensee under the Relevant Underlying Contracts.
- 5.2 If a DPS Consultant fails to pay EN:Procure Income to EN:Procure in respect of any Relevant Underlying Contract, then EN:Procure may, in accordance with Clause 23.8 of the Dynamic Purchasing System Agreement, issue an Unpaid EN:Procure Income Notice to the Licensee. The Unpaid EN:Procure Income Notice will inform the Licensee of the relevant Unpaid EN:Procure Income.
- 5.3 Following receipt of an Unpaid EN:Procure Income Notice, the Licensee shall set off against and deduct from any subsequent payment to the DPS Consultant under the Relevant Underlying Contract the amount of the Unpaid EN:Procure Income and pay such amount to EN:Procure in satisfaction of the Unpaid EN:Procure Income.

6. Representative

- 6.1 Within five (5) days of the date of this Licence the Licensee shall appoint a representative to act as its representative in connection with the Dynamic Purchasing System Agreement ("**Representative**") and shall provide the DPS Manager with the name and contact details of this Representative.
- 6.2 The Licensee shall keep the DPS Manager informed of any change in the identity of its Representative from time to time.

7. Sub-Licence

Provided that EN:Procure consents in writing, the Licensee may grant the right to enter into Underlying Contracts with DPS Consultants to other Entities by entering into a Sub-Licence with the particular Entity in the form set out in Schedule 4 of the Dynamic Purchasing System Agreement. The parties acknowledge that EN:Procure shall also be a party to such Sub-Licence.

9. Assignment and Novation

- 9.1 EN:Procure may, at any time, assign, novate, charge or transfer its interest in this Licence and/or any rights arising under it to any party without the consent of the Licensee being required.
- 9.2 The Licensee may not assign novate or otherwise transfer its interest in this Licence and/or any rights or obligations arising under it to any party without the written consent of EN:Procure (such consent not to be unreasonably withheld or delayed).

10. General

- 10.1 This Licence is supplemental to the Dynamic Purchasing System Agreement and the provisions thereof shall apply hereto insofar as they are necessary to give effect to this Licence.

10.2 This Licence shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS whereof this Licence is executed as a Deed and delivered on the date stated at the beginning of it.

Executed by **EN:PROCURE LIMITED** acting
by two directors or one director and the
secretary: Director

.....
Director/Secretary

Executed by **[THE LICENSEE]** acting by two
directors or one director and the secretary: Director

.....
Director/Secretary

SCHEDULE 4
FORM OF SUB-LICENCE

DATED

20[]

[LICENSEE (CONSORTIUM)]

and

[SUB-LICENSEE]

and

EN:PROCURE LIMITED

SUB-LICENCE

in relation to a Dynamic Purchasing System for

the provision of Design and Consultancy Services Specialising in Green Retrofit and
Decarbonisation Strategies and Expertise

THIS SUB-LICENCE is made the [] day of [] 20[]

BETWEEN:

- (1) **[Licensee (Consortium)]** (Company Number []) whose registered office is at [] ("**Licensee**");
- (2) **[Sub-Licensee]** (Company Number []) of/whose registered office is at [] ("**Sub-Licensee**"); and
- (3) **EN:PROCURE LIMITED** (company number 09149719) whose registered office is at 1st Floor, Sovereign Court, 300 Barrow Road, Meadowhall, Sheffield, S9 1JQ ("**EN:Procure**").

WHEREAS:

- (1) Following an advertisement in the Official Journal of the European Union dated [], reference [] and a competitive procurement process undertaken in accordance with the Public Contracts Regulations 2015, EN:Procure has established a Dynamic Purchasing System for the provision consultancy services
- (2) DPS Consultants may join the Dynamic Purchasing System at any time during its Term by entering into a form of dynamic purchasing system agreement with EN:Procure ("**Dynamic Purchasing System Agreement**").
- [(3) The Licensee is a collaborative procurement vehicle for providers of social housing]⁴
- [(4) The Sub-Licensee is a [member] [customer] [other]⁵ of the Licensee [and is a collaborative procurement vehicle for providers of social housing]⁶
- (5) The Licence was made pursuant to Dynamic Purchasing System for consultancy services
- (6) Pursuant to the right conferred upon the Licensee by Clause 8 of the Licence, the Licensee wishes to grant to the Sub-Licensee the right to enter into Underlying Contracts with DPS Consultants under the Dynamic Purchasing System.

NOW THIS SUB-LICENCE WITNESSETH as follows:

1. Definitions

- 1.1 Where the Dynamic Purchasing System Agreement assigns a meaning to any word or expression which is used in this Sub-Licence, the same meaning shall, unless the context otherwise requires and unless defined hereunder, be given to it in this Sub-Licence.
- 1.2 In this Sub-Licence unless the context otherwise requires the following terms shall have the meanings given to them below:

"Effective Date" means []⁷

"Relevant Underlying Contract" means an Underlying Contract entered into by the Sub-Licensee under Clause 2;

⁴ Include if the entity taking the licence is EN consortium.

⁵ Delete as appropriate.

⁶ Include wording in square brackets if the entity taking the sub-licence from EN or another consortium.

⁷ Insert date that the Sub-Licence will be deemed to be effective from

"Revocation Date" means:

- (i) the date on which the Sub-Licensee receives written notice from the Licensee in accordance with the provisions of Clause 4.2 that the Sub-Licensee's right to enter into Underlying Contracts pursuant to the Dynamic Purchasing System has been revoked;
- (ii) the date on which the Sub-Licensee receives written notice from EN:Procure in accordance with the provisions of Clause 4.4 that the Sub-Licensee's right to enter into Underlying Contracts pursuant to the Dynamic Purchasing System has been revoked; or
- (iii) the last day of the notice period referred to in Clause 4.3A

whichever is the earlier;

"Sub-Licence Period" means the period commencing on the Effective Date until the end of the Term or earlier termination of the Dynamic Purchasing System Agreement in accordance with the terms of the Dynamic Purchasing System Agreement or upon the Revocation Date, whichever is the earlier;

1.3 In this Sub-Licence, unless the context otherwise requires:

- 1.3.1 the headings are included for convenience only and shall not affect the interpretation of this Sub-Licence;
- 1.3.2 the singular includes the plural and vice versa;
- 1.3.3 a gender includes any other gender;
- 1.3.4 a reference to a person includes any individual, firm, partnership, company and any other body corporate;
- 1.3.5 a reference to a statute, statutory instrument or other subordinate legislation ("**Legislation**") is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification; and
- 1.3.6 a reference to specific standards, codes of practice, guideline, rules and/or schemes shall be construed as including all amendments, modifications, supplements, re-drafts and/or substitutes thereto.

2. Right to Enter into Underlying Contracts

- 2.1 In consideration of the covenants given by the Sub-Licensee under this Sub-Licence, with effect from the Effective Date the Licensee grants to the Sub-Licensee for the duration of the Sub-Licence Period the right under the Dynamic Purchasing System to enter into Underlying Contracts with DPS Consultants.
- 2.2 The Sub-Licensee warrants and undertakes to EN:Procure that it will enter into each such Underlying Contract on its own behalf and not on behalf of or as agent or nominee for any third party.

3. Compliance with Obligations

- 3.1 The Sub-Licensee covenants with the Licensee and EN:Procure that the Sub-Licensee will duly discharge, perform and observe all the liabilities, obligations and stipulations of the Sub-Licensee under any Relevant Underlying Contracts it enters into pursuant to the Dynamic Purchasing System and will keep the Licensee and EN:Procure duly and effectually indemnified against all actions, proceedings, claims, demands, costs, damages, penalties and expenses whatsoever under or in respect of any such Relevant Underlying Contracts.
- 3.2 The Sub-Licensee covenants with the Licensee and EN:Procure that the Sub-Licensee shall comply with those obligations in the Dynamic Purchasing System Agreement that are expressed to be obligations of the Parties as though the Sub-Licensee were itself a party to the Dynamic Purchasing System Agreement.
- 3.3 The Sub-Licensee covenants with the Licensee and EN:Procure that the Sub-Licensee shall comply with those obligations in the Dynamic Purchasing System Agreement that are expressed to be obligations of a Licensee or Sub-Licensee and in particular the Sub-Licensee covenants with the Licensee and EN:Procure that the Sub-Licensee shall observe the terms of Clause 6 of the Dynamic Purchasing System Agreement in conducting any Competitions under the Dynamic Purchasing System.
- 3.4 The Sub-Licensee will produce a copy of, and allow EN:Procure or the Licensee at any time to inspect, each Relevant Underlying Contract the Sub-Licensee enters into pursuant to the Dynamic Purchasing System for the purpose of verifying compliance by the DPS Consultants and the Sub-Licensee of their respective obligations under the Relevant Underlying Contract, the Dynamic Purchasing System Agreement or any document entered into under it. The Sub-Licensee consents to EN:Procure and the Licensee obtaining from the DPS Consultant a copy of each Relevant Underlying Contract and inspecting the same.
- 3.5 The Sub-Licensee agrees that prior to issuing an invitation to take part in a Competition pursuant to the Dynamic Purchasing System it shall provide EN:Procure with a copy of the proposed invitation together with such other documentation as EN:Procure may require, and the Sub-Licensee further agrees that it shall not issue the invitation to the DPS Consultants until EN:Procure has provided the Sub-Licensee with its written consent to the same.

4. Revocation

Revocation by the Licensee

- 4.1 The Licensee may revoke the Sub-Licensee's right to enter into Underlying Contracts pursuant to the Dynamic Purchasing System if:
 - 4.1.1 the Sub-Licensee ceases to be a member or customer of the Licensee;
 - 4.1.2 the Sub-Licensee commits a material breach of the provisions of this Sub-Licence; and/or
 - 4.1.3 the Sub-Licensee commits a material breach of the provisions of the Dynamic Purchasing System Agreement.
- 4.2 If the Licensee wishes to exercise its right under Clause 4.1, it must serve a written notice on the Sub-Licensee (copied to EN:Procure) stating that the Sub-Licensee's right to enter into Underlying Contracts pursuant to the Dynamic Purchasing System has been revoked by the Licensee.

Revocation by EN:Procure

- 4.3A EN:Procure may revoke the Sub-Licensee's right to enter into Underlying Contracts pursuant to the Dynamic Purchasing System at any time by serving not less than one (1) month's prior written notice on the Sub-Licensee (copied to the Licensee).
- 4.3 Without prejudice to Clause 4.3A, EN:Procure may revoke the Sub-Licensee's right to enter into Underlying Contracts pursuant to the Dynamic Purchasing System if:
 - 4.3.1 the Sub-Licensee commits a material breach of the provisions of this Sub-Licence;
 - 4.3.2 the Sub-Licensee commits a material breach of the provisions of the Dynamic Purchasing System Agreement; and/or
 - 4.3.3 EN:Procure has, pursuant to Clause 4 of the Licence, revoked the Licensee's right to enter into Underlying Contracts pursuant to the Dynamic Purchasing System.
- 4.4. If EN:Procure wishes to exercise its right under Clause 4.3, it must serve a written notice on the Sub-Licensee (copied to the Licensee) stating that the Sub-Licensee's right to enter into Underlying Contracts pursuant to the Dynamic Purchasing System has been revoked by EN:Procure.
- 4.5. Following the Revocation Date, the Sub-Licensee shall not be entitled to enter into any new Underlying Contract pursuant to the Dynamic Purchasing System unless and until the Sub-Licensee is granted a further Sub-Licence.

5. Payment of EN:Procure Income

- 5.1 The Sub-Licensee acknowledges the provisions of Clause 23 of the Dynamic Purchasing System Agreement. In particular, the Sub-Licensee acknowledges and agrees that pursuant to Clause 23 of the Dynamic Purchasing System Agreement EN:Procure is entitled to receive for so long as each Relevant Underlying Contract is in force the EN:Procure Income applicable to that Relevant Underlying Contract and EN:Procure may collect this out of monies received by DPS Consultants from the Sub-Licensee under the Relevant Underlying Contracts.
- 5.2 If a DPS Consultant fails to pay EN:Procure Income to EN:Procure in respect of any Relevant Underlying Contract, then EN:Procure may, in accordance with Clause 23.8 of the Dynamic Purchasing System Agreement, issue an Unpaid EN:Procure Income Notice to the Sub-Licensee. The Unpaid EN:Procure Income Notice will inform the Sub-Licensee of the relevant Unpaid EN:Procure Income.
- 5.3 Following receipt of an Unpaid EN:Procure Income Notice, the Sub-Licensee shall set off against and deduct from any subsequent payment to the DPS Consultant under the Relevant Underlying Contract the amount of any Unpaid EN:Procure Income and pay such amount to EN:Procure in satisfaction of the Unpaid EN:Procure Income.

6. Representative

- 6.1 Within five (5) days of the date of this Sub-Licence the Sub-Licensee shall appoint a representative to act as its representative in connection with the Dynamic Purchasing System ("**Representative**") and shall provide the DPS Manager with the name and contact details of this Representative.

6.2 The Sub-Licensee shall keep the DPS Manager informed of any change in the identity of its Representative from time to time.

7. Assignment and Novation

7.1 EN:Procure may, at any time, assign, novate, charge or transfer its interest in this Sub-Licence and/or any rights arising under it to any party without the consent of the Licensee or Sub-Licensee being required.

7.2 The Sub-Licensee may not assign novate or otherwise transfer its interest in this Sub-Licence and/or any rights or obligations arising under it to any party without the written consent of both EN:Procure and the Licensee (such consent not to be unreasonably withheld or delayed).

8. General

8.1 This Sub-Licence is supplemental to the Dynamic Purchasing System Agreement and the provisions thereof shall apply hereto insofar as they are necessary to give effect to this Sub-Licence.

8.2 This Sub-Licence shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS whereof this Sub-Licence is executed as a Deed and delivered on the date stated at the beginning of it.

Executed by **[THE LICENSEE]** acting by two
directors or one director and the secretary:

Director

.....

Director/Secretary

Executed by **[THE SUB-LICENSEE]** acting by
two directors or one director and the
secretary:

Director

.....

Director/Secretary

Executed by **EN:PROCURE LIMITED** acting
by two directors or one director and the
secretary: Director
.....
Director/Secretary