

**DYNAMIC PURCHASING AGREEMENT FOR THE PROVISION OF  
HORTICULTURAL AND LANDSCAPE GOODS AND SERVICES**

between

**LANCASHIRE COUNTY COUNCIL**

and

**[SUPPLIER]**

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**THIS AGREEMENT** is dated

## **PARTIES**

- (1) **LANCASHIRE COUNTY COUNCIL** whose principal place of business is at PO Box 100, County Hall, Preston, Lancashire PR1 0LD (the **Authority**); and
- (2) the entity which as a sole trader, partnership or with another trading status has its principal place of business (or as a limited company has its company number and registered office) as set out in Part 1 of the standard selection questionnaire submitted to the Authority and selected by the Authority to be an eligible supplier to join the Authority's DPS for the provision of Horticultural and Landscape Goods and Services (the **Supplier**).

## **BACKGROUND**

- (A) The Authority has agreed to establish an electronic purchasing system allowing for the Authority to purchase horticultural and landscape (Goods) and (Services) across the county of Lancashire.
- (B) The Authority placed a Find a Tender Notice with the Authority reference ML/CAS/LCC/24/1684 seeking expressions of interest from potential suppliers for the provision of Goods and Services to the Authority under a DPS.
- (C) The Authority shall seek the appointment of eligible suppliers, known as DPS Providers (of which the Supplier is one), to supply the Goods or the Services for each of a series of separate requirements which may be awarded by following a mini-competition (between eligible suppliers appointed to the Authority's DPS).
- (D) The Supplier represented to the Authority that it is capable of supplying the Goods or providing the Services in accordance with the requirements as set out in the Invitation to Participate and, in particular, the Supplier made representations to the Authority in the Request to Participate.
- (E) On the basis of the Supplier's Request to Participate, the Authority selected the Supplier to enter an Agreement along with a number of other DPS Providers appointed to the DPS in parallel to supply the Goods or provide the Services to the Authority from time to time on a call-off basis.
- (F) This Agreement sets out the procedure for ordering the Goods or Services, the main terms and conditions for the supply of the Goods or the provision of the Services and the obligations of the Supplier under this Agreement.

## **AGREED TERMS**

### **1. Definitions and Interpretation**

1.1 The definitions and rules of interpretation in this Clause 1.1 apply in this Agreement.

**ADR Notice:** means as defined in Clause 21.1 (Dispute Resolution).

**Agreement:** means this agreement and all schedules to this agreement.

**Agreement Variation Procedure:** means the procedure set out in Schedule 6 (Variation Procedure).

**Application:** means the Supplier's response to the Invitation to Participate.

**Approval:** means the prior written approval of the Authority.

**Audit:** means an audit carried out pursuant to Clause 10 (Records and audit access).

**Auditor:** means the National Audit Office or an auditor appointed by the Authority as the context requires.

**Authorised Representative:** means the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in Clause 30 (Notices).

**Award Criteria:** means the award criteria to be applied to Tenders received through mini-competitions for the Goods or the Services as set out in the relevant Invitation to Tender.

**Call-off Terms and Conditions Goods:** means the terms and conditions for the supply of Goods in Schedule 5 (Call-off Terms and Conditions) which are incorporated by reference when the Order Form is issued to the Supplier.

**Call-off Terms and Conditions Services:** means the terms and conditions for the provision of Services in Schedule 5 (Call-off Terms and Conditions) which are incorporated by reference when the Order Form is issued to the Supplier.

**Categories:** means the Goods or Services divided into categories as referred to in the Find a Tender Notice and set out in Part 1 of Schedule 1.

**Change of Control:** means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.

**Code:** means as defined in Clause 14.4 (Freedom of information).

**Commencement Date:** means [xx] day of [month] 2025.

**Complaint:** means any formal complaint raised by the Authority or any third party in relation to the Supplier's performance under the Agreement or any Contract in accordance with Clause 20 (Complaints handling and resolution).

**Confidential Information:** means any information which has been designated as confidential by either Party in writing (including by the Supplier as "Commercially Sensitive Information") or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the Data Protection Legislation.

**Consistent Failure:** means as set out in Schedule 7 (Management and Performance).

**Contract:** means a legally binding agreement (made pursuant to the provisions of this Agreement) for the supply of the Goods or the Services made between the Authority and the Supplier comprising an Order Form, its appendices (if any) and the Call-off Terms and Conditions.

**Critical Failure:** means as set out in Schedule 7 (Management and Performance).

**Default:** means any breach of the obligations of the relevant Party under a Contract (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

**Data Protection Legislation:** shall mean all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018

(DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party.

**Dispute:** means as defined in Clause 21.1 (Dispute resolution). **Dispute Notice:** means as defined in Clause 21.1 (Dispute resolution). **DPA:** means the Data Protection Act 2018.

**DPS:** means dynamic purchasing system, an electronic system being used to select DPS Providers to supply the Goods or provide the Services to the Authority as set out in this Agreement and in accordance with the procedure set out at Regulation 34 of the Regulations.

**DPS Providers:** means the Supplier and other suppliers appointed as suppliers under agreements similar to this Agreement through the Authority's DPS for the Goods and Services.

**Environmental Information Regulations or EIR:** means the Environmental Information Regulations 2004 (*SI 2004/3391*) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Find a Tender Notice:** means the contract notice [REFERENCE NUMBER] published in Find a Tender on [DATE].

**FOIA:** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Goods:** means the Goods detailed in Part 1 of Schedule 1 (Goods and Services Categories).

**Guidance:** means 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.

**Intellectual Property Rights:** means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off.

**Invitation to Participate or ITP:** means the Authority's invitation to participate.

**Invitation to Tender or ITT:** means the Authority's invitation to tender to eligible DPS Providers to compete in a mini-competition for the award of Goods or Services and a Contract.

**Key Personnel:** means the personnel for the Authority and for the Supplier responsible for the management of the DPS Agreement.

**Law:** the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Goods or the Services or with which the Supplier must comply.

**Month:** means a calendar month.

**Notice of Variation:** means as defined in paragraph 2.2 of Schedule 6 (Variation Procedure).

**Order Form:** means a document setting out details of an order for Goods in the form set out in Schedule 4 (Order Form).

**Parent Company:** means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged in the same or similar business to the Supplier.

**Party:** means the Authority and/or the Supplier and collectively the Parties

**Personal Data:** means as defined in the Data Protection Legislation.

**Price:** means the price for the Goods or the Services applicable to a Contract following a mini-competition between DPS Providers.

**Prohibited Act:** the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the 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 Agreement;
- (c) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Authority; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Authority.

**Regulations:** means the Public Contracts Regulations 2015 (SI 2015/102).

**Regulatory Bodies:** means those government departments and regulatory, statutory and other entities, committees, ombudsmen 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 Agreement or any other affairs of the Authority.

**Requests for Information:** means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

**Request to Participate or RTP:** means the Application submitted by the Supplier electronically via the Authority's tendering system seeking to participate as a DPS Provider in response to the Authority's ITP in the Authority's DPS for the supply of the Goods and Services.

**Required Insurances:** means as defined in Clause 12 (Insurance).

**Specification:** means the specification for the Goods or the Services referred to in Part 2 of Schedule 1 (Goods and Services Categories).

**Staff:** means all persons employed by the Supplier together with the Supplier's servants, agents, suppliers and subcontractors used in the performance of its obligations under this

Agreement or any Contracts.

**Services:** means the Services detailed in Part 1 of Schedule 1 (Goods and Services Categories).

**Subcontract:** means any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the supply of any of the Goods or provide any Services from that third party.

**Sub-Contractor:** means the contractors or suppliers that enter into a Subcontract with the Supplier.

**Tender:** means the documents submitted to the Authority by a DPS Provider in response to the Authority's Invitation to Tender issued to eligible DPS Providers for formal offers to supply the Authority with Goods or to provide Services for the Authority under a mini-competition.

**Term:** the period of the Term as may be varied by the earlier termination of this Agreement in accordance with its terms.

**Termination Date:** means the date of expiry or termination of this Agreement.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**Working Days:** means any day other than a Saturday, Sunday or public holiday in England and Wales.

**Year:** means a calendar year.

1.2 The interpretation and construction of this Agreement shall all be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (d) 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;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- (g) the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement shall include the Schedules;
- (h) references in this Agreement to any Clause or sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or sub-Clause or Schedule to this Agreement so numbered;

- (i) references in this 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 Schedule to this Agreement so numbered; and
  - (j) reference to a Clause is a reference to the whole of that Clause unless stated otherwise.
- 1.3 This Agreement will supplement and complement the provisions of any Contract. In the event of a conflict or discrepancy between this Agreement and the Contract, the Parties will have full regard to the principles set out in Clause 1.4 with a view to resolving that conflict or discrepancy. Where a conflict or discrepancy between this Agreement and any Contract cannot be resolved by reference to those principles the order of priority shall be as set out in Clause 5.2 (Contract Performance and Precedence of Documents).
- 1.4 This Agreement provides a mechanism for the Goods or Services to be called off from the Supplier by the Authority and a supplemental set of provisions designed to encourage the Authority and the Supplier to work with each other in an open, co-operative and collaborative manner and in a spirit of mutual trust and respect. The Parties will at all times endorse and support collaborative behaviour.

## **2. Term of Agreement**

- 2.1 This Agreement shall take effect on the Commencement Date and shall automatically expire at midnight on the 4<sup>th</sup> anniversary of the implementation date of the Procurement Act 2023, unless it is otherwise terminated in accordance with the provisions of this Agreement, or otherwise lawfully terminated.

## **3. Scope of Agreement**

- 3.1 The Authority appoints the Supplier as a DPS Provider to supply the Goods or provide the Services and the Supplier shall be eligible to be awarded Contracts by the Authority for such Goods or Services during the Term.
- 3.2 The Authority may in its absolute discretion and from time to time during the Term request the Authority to order Goods or Services from the Supplier in accordance with the ordering and award procedure set out in Clause 4 (Award Procedures) on its behalf. Subject to Clause 3.2, if there is a conflict between Clause 4 (Award Procedures) and the Regulations, the Regulations shall take precedence.
- 3.3 If and to the extent that any Goods or Services under this Agreement are required:
- 3.3.1 the Authority shall comply with the ordering procedure in Clause 4 (Award Procedures); and
  - 3.3.2 the Authority shall enter into a Contract with a Supplier for these Goods or Services whose terms are materially in accordance with the Call-off Terms and Conditions for the Goods or the Services.
- 3.4 The Supplier acknowledges that, in entering this Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for the Goods or the Services and that the Authority will be at all times entitled to:
- 3.4.1 enter into other contracts and arrangements with other DPS Providers for the provision of any or all of the Goods or the Services; or
  - 3.4.2 enter into other contracts and arrangements with other suppliers for the provision of goods or services which are the same as or similar to the Goods or Services.

## **4. Award Procedures**

- 4.1 The Parties acknowledge that the Authority shall award Contracts in accordance with the



terms laid down in this Agreement and particularly in accordance with the relevant Invitation to Tender and Schedule 2 (Award Criteria) to this Agreement.

- 4.2 The Parties acknowledge that the award of any Contract for Goods or Services to the Supplier shall be for Goods or Services by mini-competition between DPS Providers and where the Supplier is successful according to Clause 4.3.
- 4.3 Where the Authority wishes to request Goods or Services under this Agreement using a mini competition, the Authority shall:
- 4.3.1 identify the DPS Providers capable of performing the Contract for its requirements for the Goods or Services;
- 4.3.2 conduct a mini-competition seeking a Tender from eligible, invited DPS Providers by issuing an Invitation to Tender document setting out the Authority's requirements and a deadline by which the Tender must be submitted;
- 4.3.3 evaluate all Tender submissions received by the Invitation to Tender deadline in accordance with the Award Criteria set out in the Invitation to Tender;
- 4.3.4 (on conclusion of the Tender submission evaluation process) award a Contract to the DPS Provider submitting the most economically advantageous Tender on the basis of the Award Criteria specified in the Invitation to Tender;
- 4.3.5 prepare and send to the successful DPS Provider an Order Form incorporating the Call-off Terms and Conditions (by reference following which the DPS Provider will respond to the Authority to either:
- 4.3.5.1 accept the invitation to deliver the specification set out in the Invitation to Tender and offer to enter into the Contract with the Authority; or
- 4.3.5.2 notify the Authority that it declines to deliver the specification set out in the Invitation to Tender and shall not enter into the Contract (whereby the Contract offer from the Supplier shall lapse and the Authority may then send the Contract to the next DPS Provider that has submitted the next most economically advantageous Tender (and so on until all DPS Providers decline and the Authority has to reprocure such Goods or Services)),
- provided that if a DPS Provider does not respond to the Order Form and commence to supply the Goods or provide the Services then the DPS Provider is deemed to have accepted the invitation and offered to enter into the Contract; and
- 4.3.6 where:
- 4.3.6.1 on receipt of the DPS Provider's response to the Order Form (where the DPS Provider has accepted the invitation and offered to enter into the Contract); or
- 4.3.6.2 the DPS Provider does not respond to the Order Form and commences supply of the Goods or provide the Services,
- the Authority is deemed to have accepted the DPS Provider's offer to enter into the Contract; and
- 4.3.7 the DPS Provider shall supply the Goods or provide the Services in accordance with the terms of the Contract.
- 4.4 The Supplier agrees that each Tender submitted by the Supplier in relation to a mini-competition for the Goods or the Services held pursuant to this Clause 4 shall remain open for acceptance for one hundred (100) days from the specified commencement date for the supply of such Goods or the provision of such Services (or such other period specified in the Invitation

to Tender issued by the Authority in accordance with this Clause 4).

- 4.5 Notwithstanding the fact that the Authority has followed the procedure set out above in this Clause 4 for Goods or Services, the Authority may cancel, postpone, delay or end the procedure without awarding a Contract for the Goods or the Services or awarding a Contract. Nothing in this Agreement shall oblige the Authority to award any Contract for Goods or Services and no DPS Provider shall be entitled to any exclusive arrangement for the supply of Goods or provision of Services to the Authority.
- 4.6 Subject to Clauses 4.1 to 4.5 above, a Contract may be placed with the Supplier by the Authority serving an Order Form in writing in substantially the form described in Schedule 4 (Order Form) or such similar or analogous form agreed with the Supplier including systems of ordering such as e-mail or other online solutions.
- 4.7 If the Supplier modifies or imposes conditions on the fulfilment of a Contract (or Order Form) the Authority may either:
- 4.7.1 reissue the Contract incorporating the modifications or conditions in a new Invitation to Tender; or
- 4.7.2 treat the Supplier's response as notification of its inability to fulfil the specification and the provisions of Clause 4.3(f)(ii) shall apply.
- 4.8 The Parties acknowledge and agree that the issue of an Invitation to Tender is an "invitation to treat" by the Authority. Accordingly, the DPS Provider shall electronically submit its Tender as its offer to the Authority on the terms of the Contract (being the Order Form and Call-off Terms and Conditions). The Authority shall signal its acceptance of the DPS Provider's offer and the formation of a Contract by requesting the Authority to issue an Order Form to the Supplier.

## **5. Contract Performance and Precedence of Documents**

- 5.1 The Supplier shall perform all Contracts entered into with the Authority in accordance with:
- 5.1.1 the requirements of this Agreement; and
- 5.1.2 the terms and conditions of the respective Contracts.
- 5.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of a Contract, such conflict or inconsistency shall be resolved according to the following order of priority:
- 5.2.1 the Clauses of the Contract;
- 5.2.2 the Order Form (except any appended (Supplier's Request to Participate and/or Tender) (where applicable));
- 5.2.3 the Invitation to Tender requiring a Tender (where applicable);
- 5.2.4 the Tender (where applicable);
- 5.2.5 the terms of the Agreement, the Schedules to the Agreement and the appendices (if any) to the Order Form;
- 5.2.6 the Invitation to Participate;
- 5.2.7 the Request to Participate;
- 5.2.8 any other document referred to in the Clauses of the Contract; and
- 5.2.9 any other document referred to in the Clauses of the Agreement.

## **6. Prices for Goods and Services**

- 6.1 In consideration of the supply of the Goods or provision of the Services by the Supplier in accordance with the terms and conditions of this Agreement, the Authority shall pay the sum of one pound (£1.00) (receipt and sufficiency of which the Supplier expressly acknowledges).
- 6.2 The Authority shall pay the charges to the Supplier in accordance with the provisions set out in the relevant Contract. The charges applicable for the Goods or the Services will be determined at Contract award stage.
- 6.3 The Supplier shall invoice the Authority for payment of the charges in accordance with the relevant Contract.
- 6.4 (Unless otherwise specified in the Contract) the Authority shall pay the charges which have become payable to the Supplier in accordance with Clause 11 (Payment) of the Call-off Terms and Conditions.
- 6.5 The prices offered by the Supplier for Contracts to the Authority for Goods or Services shall, subject to Clause 4 Award Procedures), be tendered in accordance with the requirements of the mini-competition held pursuant to Clause 4 (Award Procedures) and Schedule 2 (Award Criteria).

## **7. Warranties and Representations**

- 7.1 The Supplier warrants and represents to the Authority that:
- (a) it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Agreement and any Contract;
  - (b) this Agreement is executed by a duly authorised representative of the Supplier;
  - (c) in entering into this Agreement or any Contract it has not committed any Prohibited Act;
  - (d) as at the Commencement Date, all information, statements and representations contained in the Request to Participate are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority before the execution of this Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading ;
  - (e) 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 that will or might affect its ability to perform its obligations under this Agreement and any Contract which may be entered into with the Authority;
  - (f) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement and any Contract; and
  - (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the 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 Supplier's assets or revenue.

## **8. Goods and Services Pre-requisites**

- 8.1 The Supplier shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Agreement and any Contract.
- 8.2 The Supplier shall bear the cost of ensuring that the Goods or the Services shall comply with all applicable Law.
- 8.3 As at the date of this Agreement the Authority and the Supplier do not envisage that a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) will apply in relation to the supply of the Goods under any Contract.

## **9. NOT USED**

## **10. Records and Audit Access**

- 10.1 The Supplier shall keep and maintain until seven (7) years after the date of termination or expiry (whichever is the earlier) of this Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Agreement including the Goods or the Services provided under it, the Contracts entered into with the Authority and the amounts paid by the Authority.
- 10.2 The Supplier shall keep the records and accounts referred to in Clause 10.1 above in accordance with good accountancy practice.
- 10.3 The Supplier shall afford the Authority or the Auditor (or both) such access to such records and accounts as may be required from time to time.
- 10.4 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Term and for a period of seven (7) years after expiry of the Term to the Authority and the Auditor.
- 10.5 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the supply of the Goods or the provision of the Services pursuant to the Contracts, save insofar as the supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Authority.
- 10.6 Subject to the Authority's rights of confidentiality, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
- (a) all information requested by the Auditor within the scope of the Audit;
  - (b) reasonable access to sites controlled by the Supplier and to equipment used in the provision of the Goods or the Services; and
  - (c) access to the Staff.
- 10.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 10, unless the Audit reveals a material default by the Supplier in which case the Supplier shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.

## **11. Confidentiality**

- 11.1 Subject to Clause 11.2, the Parties shall keep confidential the Confidential Information of the other Party in respect of all matters relating to this Agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 11.2 Clause 11.1 shall not apply to any disclosure of information:

- (a) required by any applicable Law, provided that Clause 14.1 (Freedom of information) shall apply to any disclosures required under the FOIA or the Environmental Information Regulations;
- (b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Agreement;
- (c) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of Clause 11.1;
- (d) by the Authority of any document to which it is a Party and which the Parties to this Agreement have agreed contains no Confidential Information;
- (e) to enable a determination to be made under Clause 21 (Dispute resolution);
- (f) which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party, and the disclosing Party is not under any obligation of confidence in respect of that information;
- (g) by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the information; and
- (h) by the Authority relating to this Agreement and in respect of which the Supplier has given its prior written consent to disclosure.

## 12. Insurance

12.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- 12.1.1 public liability insurance with a limit of indemnity of not less than £5,000,000 (FIVE MILLION POUNDS) in relation to any one claim arising out of each and every event without limit on the number of claims in any one year or other period;
- 12.1.2 employer's liability insurance with a limit of indemnity of not less than £10,000,000 (TEN MILLION POUNDS); and
- 12.1.3 product liability insurance with a limit of indemnity of not less than £2,000,000 (TWO MILLION POUNDS STERLING) in relation to any one claim or series of claims. Product liability insurance will only be required when Goods are being ordered under the DPS.

(the "Required Insurances") in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the Agreement or any Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

12.2 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this Clause 12 or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

12.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

12.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Agreement, or any Contract.

- 12.5 The Supplier shall not do or permit anything to be done which makes void or voidable any insurance policy.
- 12.6 The Supplier shall promptly pay all premiums and do all other things necessary to keep all of its insurance in force.
- 12.7 The Supplier may be required to provide additional insurance cover to meet the requirements of any Contracts awarded. Any additional insurance requirements will be detailed within the Contract.

### **13. Data Protection**

The Supplier shall (and shall procure that any of its Supplier's Personnel involved in the provision of the Agreement shall) comply with any the provisions and obligations imposed by the Data Protection Legislation in relation to the storing and processing of Personal Data and all Personal Data acquired by either Party to the other shall be returned to the disclosing Party on request. Both parties agree to indemnify each other in respect of any unauthorised disclosure or processing of personal data or breach of Data Protection Legislation which arise in connection with the Agreement.

### **14. Freedom of Information**

- 14.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority (at the Supplier's expense) to enable the Authority to comply with these information disclosure requirements.
- 14.2 The Supplier shall and shall procure that its Sub-Contractors shall:
- (a) transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
  - (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
  - (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 14.3 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 14.4 The Supplier acknowledges that the Authority may (acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public Authority functions under Part 1 of FOIA (issued under section 45 of the FOIA, July 2018) (Code)) be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- (a) without consulting with the Supplier; or
  - (b) following consultation with the Supplier and having taken its views into account, provided always that where Clause 14.4(a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 14.5 The Supplier shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

14.6 The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 14.3.

## 15. Publicity

15.1 Unless otherwise directed by the Authority, the Supplier shall not make any press announcements or publicise this Agreement in any way without the Authority's Approval.

15.2 The Authority shall be entitled to publicise this Agreement in accordance with any legal obligation on the Authority, including any examination of this Agreement by the Auditor or otherwise.

15.3 The Supplier shall not do anything that may damage the reputation of the Authority or bring the Authority into disrepute.

## 16. NOT USED

## 17. Termination on Default

17.1 The Authority may terminate this Agreement by serving written notice on the Supplier with effect from the date specified in such notice:

- (a) where the Supplier commits a material breach of this Agreement and:
  - (i) the Supplier has not remedied the material breach to the satisfaction of the Authority within ten (10) Working Days, or such other longer period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or
  - (ii) the material breach is not, in the reasonable opinion of the Authority, capable of remedy; or
- (b) where the Authority terminates a Contract awarded to the Supplier under this Agreement as a consequence of Default by the Supplier; or
- (c) where a Consistent Failure has occurred; or
- (d) where a Critical Failure has occurred.

17.2 For the purposes of Clause 17.1(a), material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

- (a) a substantial portion of this Agreement; or
- (b) any of the obligations set out in Clauses 7.1(c) and 7.1(d) (Warranties and Representations), 10 (Records and Audit Access), 12 (Insurance), 13 (Data Protection), 14 (Freedom of Information), 22 (Prevention of Bribery) and 23 (Subcontracting and assignment),

over the Term of this Agreement. In deciding whether any breach is material no regard shall be had to whether such breach occurs by some accident, mishap, mistake or misunderstanding.

### Termination on insolvency and Change of Control

17.3 Without affecting any other right or remedy available to it, the Authority may terminate this Agreement with immediate effect by giving written notice to the Supplier

- (a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one (1) or more other companies or the solvent reconstruction of the Goods or Services Provider;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (g) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within fourteen (14) days;
- (i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 17.3(a) to Clause 17.3(h) (inclusive);
- (j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (k) any warranty given by the Supplier in Clause 7 of this Agreement is found to be untrue or misleading.

17.4 The Supplier, not being an individual, shall notify the Authority immediately if the Supplier undergoes a Change of Control. The Supplier, being an individual, shall notify the Authority immediately if the Supplier's business is acquired by a third party. The Authority may terminate the Agreement by giving notice in writing to the Supplier with immediate effect within six (6) Months of:

- (a) (where the Supplier is not an individual) being notified that a Change of Control has occurred;
- (b) (where the Supplier is not an individual) where no notification has been made, the date that the Authority becomes aware of the Change of Control;
- (c) (where the Supplier is an individual) being notified that the Supplier's business has been



acquired by a third party; or

- (d) (where the Supplier is an individual) where no notification has been made, the date that the Authority becomes aware of the Supplier's business being acquired by a third party,

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

#### **Termination by the Authority for convenience**

- 17.5 The Authority shall have the right to terminate this Agreement, or to terminate the provision of any part of the Agreement at any time by giving written notice to the Supplier and all other DPS Providers having similar agreements to this Agreement with the Authority. The Parties acknowledge that if the Authority exercises its rights under this Clause 17.5 it shall exercise its equivalent rights under all agreements with the DPS Providers.

#### **Termination on mandatory grounds**

- 17.6 The Authority is required by virtue of Regulation 73 of the Regulations to ensure that all contracts which it awards contain provisions enabling the Authority to terminate those contracts under certain circumstances. The Authority will terminate the whole of this Agreement with immediate effect by the service of a written notice on the Supplier in the following circumstances:

- (a) where the Agreement has been subject to a substantial modification which will include any change in the Agreement irrespective of the monetary value and which meets one (1) or more of the following conditions:
- (i) materially alters the character of the Agreement;
  - (ii) would have allowed other potential suppliers to participate in the procurement procedure other than those initially selected or allowed for the acceptance of a tender other than that originally accepted;
  - (iii) attracted additional suppliers in the procurement procedure; or
  - (iv) the modification changes the economic balance of the Agreement in favour of the Supplier in a manner which was not provided for in the original agreement;
  - (v) the modification extends the scope of the Agreement considerably; or
  - (vi) a new supplier replaces the Supplier other than where the change arises from a clear and precise unequivocal review clause or the exercising of an option which outlines the scope and nature of the possible modification as well as the conditions under which the option can be exercised and that the option exercised does not alter the overall nature of the Agreement or following a universal or partial succession into the position of the Supplier following corporate restructuring such as a takeover, merger, acquisition or insolvency and provided that this does not entail other substantial modifications and where the purpose of the modification is not aimed at circumventing procurement Law; or
- (b) where post-award of the Agreement it is discovered that the Supplier should have been excluded from the procurement procedure on certain mandatory exclusion grounds for a breach of Regulation 57 of the Regulations. These exclusion grounds are where the Supplier has been convicted of any of the offences that are detailed in Regulation 57 of the Regulations.
- (c) The Authority shall have the right to terminate this DPS Agreement forthwith in the

event that any of the matters specified in The Local Government (Exclusion of Non-Commercial Considerations) (England) Order 2022, or any other legislation having a similar purpose, as ceasing to be non-commercial matters for the purposes of section 17(5)(e) of the Local Government Act 1988 applies to the Supplier.

#### **Termination by the Supplier for convenience**

17.7 The Supplier shall have the right to terminate this Agreement immediately at any time by giving at least three (3) months written notice to the Authority.

#### **18. Suspension of Supplier's Appointment**

18.1 Without prejudice to the Authority's rights to terminate the Agreement in Clause 17 (Termination) above, if a right to terminate this Agreement arises in accordance with Clause 17 (Termination), the Authority may suspend the Supplier's right to be awarded Contracts from the Authority by giving notice in writing to the Supplier. If the Authority provides notice to the Supplier in accordance with this Clause 18, the Supplier's appointment shall be suspended immediately for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time.

18.2 The Authority may also suspend the Supplier's right to receive Contracts from the Authority by giving notice in writing to the Supplier where an investigation into the Supplier's Goods or Services is required due to performance and/or concerns the Authority may have with the Goods or the Services.

#### **19. Consequences of Termination and Expiry**

19.1 Notwithstanding the service of a notice to terminate the Agreement, the Supplier shall continue to fulfil its obligations under the Agreement until the date of expiry or termination of the Agreement or such other date as required under this Clause 19.

19.2 Unless expressly stated to the contrary, the service of a notice to terminate the Agreement shall not operate as a notice to terminate any Contract made under the Agreement. Termination or expiry of the Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

19.3 Within twenty (20) Working Days of the date of termination or expiry of the Agreement, the Supplier shall return or destroy at the request of the Authority any data, personal information relating to the Authority or its personnel or Confidential Information belonging to the Authority in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority (in which event the Authority will reimburse the Supplier's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Authority, save that it may keep one (1) copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Agreement, or such period as is necessary for such compliance.

19.4 Termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Agreement before termination or expiry.

19.5 The provisions of Clauses 7 (Warranties and Representations), 10 (Records and Audit Access), 11 (Confidentiality), 12 (Insurance), 13 (Data Protection), 14 (Freedom of Information), 15 (Publicity), 17 (Termination), 19 (Consequences of Termination and Expiry), 22 (Prevention of Bribery), 23 (Subcontracting and assignment) and 31 (Governing Law and Jurisdiction), shall survive the termination or expiry of the Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

#### **20. Complaints Handling and Resolution**

- 20.1 The Supplier shall notify the Authority of any Complaint within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Goods or Services Provider's plans to resolve such Complaint.
- 20.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Agreement or a Contract, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Agreement or a Contract, the Supplier shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing shall deal with the Complaint fully, expeditiously and fairly.

## **21. Dispute Resolution**

- 21.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (a Dispute) then except as expressly provided in this Agreement or in the Call-off Terms and Conditions, the Parties shall follow the procedure set out in this Clause 21:
- (a) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Representatives of the Authority and the Supplier shall attempt in good faith to resolve the Dispute;
  - (b) if the Representatives of the Authority and the Supplier are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the Head of Service, Highways of the Authority and a more senior representative of the Supplier than the Supplier's Representative who shall attempt in good faith to resolve it; and
  - (c) if the Head of Service, Highways of the Authority and the more senior representative of the Supplier are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, where relevant the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing (ADR Notice) to the other Party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve.
- 21.2 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under Clause 31 (Governing law and jurisdiction) which Clause 31 shall apply at all times.

## **22. Prevention of Bribery**

- 22.1 The Supplier:
- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Agreement and any Contract made under it commit a Prohibited Act; and
  - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Agreement or any Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Agreement.
- 22.2 The Supplier shall:
- (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and

- (b) within thirty (30) days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Supplier) compliance with this Clause 22 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request.

22.3 The Supplier shall comply with the Authority's anti-bribery policy (which shall be disclosed to the Supplier) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

22.4 If any breach of Clause 22.1 is suspected or known, the Supplier must notify the Authority immediately.

22.5 If the Supplier notifies the Authority that it suspects or knows that there may be a breach of Clause 22, the Supplier must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documents. This obligation shall continue for seven (7) years following the expiry or termination of this Agreement.

22.6 The Authority may terminate this Agreement by written notice with immediate effect if the Supplier, its Staff or Sub-Contractors (in all cases whether or not acting with the Supplier's knowledge) breaches Clause 22.1.

22.7 Any notice of termination under Clause 22.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
- (c) the date on which this Agreement will terminate.

22.8 Notwithstanding Clause 21 (Dispute resolution), any dispute relating to:

- (a) the interpretation of this Clause 22; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Authority and its decision shall be final and conclusive.

22.9 Any termination under this Clause 22 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

### **23. Subcontracting and Assignment**

23.1 Subject to Clause 23.2, neither Party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other Party, neither may the Supplier sub-contract the whole or any part of its obligations under this Agreement except with the Approval of the Authority.

23.2 In the event that the Authority consents to a novation of this Agreement a charge of £750 will be payable to cover the Authority's legal costs in preparing and finalising the deed of novation.

23.3 The Authority shall be entitled to novate the Agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

### **24. Variations to Agreement**

Any variations to the Agreement must be made only in accordance with the Agreement Variation Procedure set out in Schedule 6 (Variation Procedure) and the Regulations.

## **25. Third Party Rights**

- 25.1 Except as provided in this Agreement, a person who is not a Party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 25.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

## **26. Severance**

- 26.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it 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 or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 26.1 shall not affect the validity and enforceability of the rest of this Agreement.
- 26.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **27. Rights and Remedies**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by Law.

## **28. Waiver**

No failure or delay by a Party to exercise any right or remedy provided under this 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.

## **29. Entire Agreement**

- 29.1 This Agreement, the schedules and the documents annexed to it or otherwise referred to in it and the ITP and all schedules and the documents annexed to it and otherwise referred to in it contain the whole agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the Parties relating to that subject matter, provided that nothing in this Clause 29 shall operate to exclude any liability for fraud.
- 29.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## **30. Notices**

- 30.1 Except as otherwise expressly provided within this Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party sending the communication.

30.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, or post), or e-mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 30.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of e-mail or sooner where the other Party acknowledges receipt of such letters, or e-mail.

30.3 For the purposes of Clause 30.2, the address of each Party shall be:

(a) for the Authority:

Authority's Representative: Head of Service, Highways

Address: Lancashire County Council, PO Box 100, County Hall, Fishergate,  
Preston, PR1 0LD

For the attention of: Ridwan Musa

E-mail: ridwan.musa@lancashire.gov.uk

(b) for the Supplier:

Supplier's Representative: [                      ]

Address: [                      ]

For the attention of: [                      ]

E-mail: [                      ]

30.4 Either Party may change its address for service by serving a notice in accordance with this Clause 30.

### **31. Governing Law and Jurisdiction**

31.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Laws of England.

31.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

Signed by ..... )  
 Name ..... )  
 Position..... )

for and on behalf the **Authority**

Signed by ..... )  
 Name ..... )  
 Position ..... )

for and on behalf of the **Supplier**

## Schedule 1 – Goods and Services Categories

### Part 1 – Goods and Services

The Goods and Services required by the Authority are divided into the following categories:

| <b>GOODS</b>    |   |
|-----------------|---|
| Category 1      | Plants                                  |
| Category 2      | Planting Products                       |
| Category 3      | Growing Media                           |
| Category 4      | Vegetation & Surface Treatment Products |
| <b>SERVICES</b> |   |
| Category 5      | Plant Establishment                     |
| Category 6      | Plant & Tree Aftercare & Maintenance    |
| Category 7      | Treatment Services                      |

### Part 2 Specification

As set out in the relevant Invitation to Tender for each Contract.



## Schedule 2 – Award Criteria

The Award Criteria that will be used to evaluate each Invitation to Tender will be clearly stated in the relevant ITT document, the Authority will select the Award Criteria from one of the following options:

1. Price (100%), or
2. Price (100%) and Quality (Pass / Fail), or
3. Price and Quality from one of the following combinations:

| Criterion    | Weighting (1) | Weighting (2) | Weighting (3) |
|--------------|---------------|---------------|---------------|
| Price        | 80%           | 70%           | 60%           |
| Quality      | 10%           | 20%           | 30%           |
| Social Value | 10%           | 10%           | 10%           |
| <b>Total</b> | <b>100%</b>   | <b>100%</b>   | <b>100%</b>   |

**Schedule 3 – Not used**

## Schedule 4 – Order Form

The Order Form, a purchase order issued by the Authority, will consist of an electronic order form comprising the following (and any additional information reasonably included or requested by the Authority):

- Supplier's name and address;
- Order number (to be quoted on all Supplier invoices);
- Premises or site where the Goods are to be delivered or the Services are to be performed;
- DPS Reference Number;
- Invitation to Tender (mini-competition) Reference Number;
- Specification or statement of Requirements (including any drawings);
- Price;
- Delivery Date and time, the Due Date or Collection Date;
- Contract Manager's Name;
- Invoice address.

## **Schedule 5 – Call-off Terms and Conditions**

Please see separate documents.

The Schedule 5 – Call-off Terms and Conditions relevant to each Contract will be published with the Invitation to Tender.

## **Schedule 6 – Variation Procedure**

### **1. INTRODUCTION**

- 1.1 This Schedule 6 (Variation Procedure) details the scope of the variations permitted and the process to be followed where the Authority proposes a variation to this Agreement.
- 1.2 The Authority may propose a variation to the Agreement under this Schedule 6 (Variation Procedure) only where the variation does not amount to a material change in the Agreement or the nature of the Goods and Services which would breach the Law.

### **2. PROCEDURE FOR PROPOSING A VARIATION**

- 2.1 Except where paragraph 4 applies, the Authority may propose a variation using the procedure contained in this paragraph 2.
- 2.2 Except where the Authority or Supplier propose minor amendments or rectifications specific to the Supplier and/or this Agreement which may be agreed between the Parties and implemented, in order to propose a variation which affects this Agreement and every other corresponding agreement made between the Authority and any other DPS Provider, the Authority shall electronically serve each DPS Provider with written notice of the proposal to vary the Agreement (**Notice of Variation**).
- 2.3 The Notice of Variation shall:
- (a) contain details of the proposed variation providing sufficient information to allow each DPS Provider to assess the variation; and
  - (b) require each DPS Provider to notify the Authority within fourteen (14) days of any proposed changes.
- 2.4 On receipt of the Notice of Variation, each DPS Provider has fourteen (14) days to electronically respond to the Authority in writing with any objections to the variation.
- 2.5 Where the Authority does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Authority may then electronically serve each DPS Provider with a written statement detailing the variation to be electronically signed (or acknowledged) and notified by each DPS Provider to the Authority within fourteen (14) days of receipt.
- 2.6 On receipt of an electronically signed confirmation from each DPS Provider, the Authority shall notify all DPS Providers in writing of the commencement date of the variation.

### **3. OBJECTIONS TO A VARIATION**

In the event that the Authority receives one (1) or more written objections to a variation, the Authority may:

- (a) withdraw the proposed variation; or
- (b) propose an amendment to the variation.

### **4. VARIATIONS THAT ARE NOT PERMITTED**

In addition to the provisions contained in paragraph 1.2, the Authority may not propose any variation that:

- (a) may prevent one (1) or more of the DPS Providers from performing its obligations under the Agreement; or
- (b) is in contravention of any Law.

## Schedule 7 – Management and Performance

### 1. MANAGEMENT OF THE DPS AGREEMENT

1.1 The Authority's Key Personnel is:

| Name and Position:                    | Email Address, Tel / Mobile No:   |
|---------------------------------------|---|
| Paul Johnstone<br>Procurement Manager | <a href="mailto:paul.johnstone@lancashire.gov.uk">paul.johnstone@lancashire.gov.uk</a><br>Tel: 01772 535465 |

1.2 [The Supplier's Key Personnel for Category 1 – Plants is:]

| Name and Position: | Email Address, Tel / Mobile No: |
|--------------------|---------------------------------|
|                    |                                 |

1.3 [The Supplier's Key Personnel for Category 2 – Planting Products is:]

| Name and Position: | Email Address, Tel / Mobile No: |
|--------------------|---------------------------------|
|                    |                                 |

1.4 [The Supplier's Key Personnel for Category 3 – Growing Media is:]

| Name and Position: | Email Address, Tel / Mobile No: |
|--------------------|---------------------------------|
|                    |                                 |

1.5 [The Supplier's Key Personnel for Category 4 – Vegetation & Surface Treatment Products is:]

| Name and Position: | Email Address, Tel / Mobile No: |
|--------------------|---------------------------------|
|                    |                                 |

1.6 [The Supplier's Key Personnel for Category 5 – Plant Establishment is:]

| Name and Position: | Email Address, Tel / Mobile No: |
|--------------------|---------------------------------|
|                    |                                 |

1.7 [The Supplier's Key Personnel for Category 6 – Plant & Tree Aftercare & Maintenance is:]

| Name and Position: | Email Address, Tel / Mobile No: |
|--------------------|---------------------------------|
|                    |                                 |

1.8 [The Supplier's Key Personnel for Category 7 – Treatment Services is:]

| Name and Position: | Email Address, Tel / Mobile No: |
|--------------------|---------------------------------|
|                    |                                 |

### 2. MEETINGS

1.1 Type: Review with any DPS Provider.

1.1.1 Quorum: A minimum of one key representative from the Authority and Supplier.

1.1.2 Frequency: As and when requested by either Party.

### 3. REPORTS

- 1.1 Type: Spend Report from any DPS Provider, content to include details of Goods or Services by type and quantity purchased.
- 1.2 Frequency: As and when requested by the Authority.

### 4. PERFORMANCE

#### 4.1 Consistent Performance

The table below provides details of the events that may be monitored to determine the overall performance of a DPS Provider following the award of Contracts under the DPS Agreement.

| Consistent Failure Event |  | Action                    |
|--------------------------|--|---------------------------|
| 1.                       | Where Goods are released, or Services are provided without an Order (except in the case of an Emergency Order refer to Schedule 2 of the Call-off Terms and Conditions) on two or more occasions in a rolling one (1) month period.  | Performance Notice issued |
| 2.                       | Where Invoices are submitted which do not comply with the requirements set out in Schedule 2 of the Call-off Terms and Conditions on two or more occasions in a rolling month period.  | Performance Notice issued |
| 3.                       | Failure to deliver the Goods or provide the Services by the due date and time and/or supply all of the Goods ordered and/or to the delivery location specified on the Order Form on two or more occasions in a rolling month period. | Performance Notice issued |

#### Remedies for Consistent Failure

The Authority has the right to issue a Performance Notice to the DPS Provider which will include details of the Consistent Failure(s).

The DPS Provider shall submit to the Authority within seven (7) days of receipt of the Performance Notice details of the reason(s) for the Consistent Failure(s) and provide details of the actions that will be taken to remedy the failure(s) ("**Remedial Plan**").

The Authority will confirm whether it approves the Remedial Plan within ten (10) days of its submission. If the Authority, acting reasonably, does not approve the Remedial Plan, then the Authority may, at its discretion, issue a Default Notice.

#### 4.2 Critical Performance

The table below provides details of the events that may be monitored to determine the overall performance of a DPS Provider following the award of Contracts under the DPS Agreement.

| Critical Failure Event |   | Action                |
|------------------------|---|-----------------------|
| 1.                     | Where a Performance Notice has been issued and the DPS Provider has failed to respond.  | Default Notice issued |
| 2.                     | Where a Performance Notice has been issued to a DPS Provider on two or more occasions in a rolling three-month period.                      | Default Notice issued |
| 3.                     | Where the Authority, acting reasonably, does not approve the Remedial Plan submitted by a DPS Provider in response to a Performance Notice. | Default Notice issued |
| 4.                     | Failure to supply the Goods or provide the Services in accordance with the Specification.   | Default Notice issued |
| 5.                     | Failure to give warning notice as soon as it becomes known there will be a  | Default Notice        |

|    |  |                       |
|----|--|-----------------------|
|    | delay or of the inability to deliver the Goods that are marked as critical on the Order Form on time and/or supply all of the Goods ordered and/or to the delivery location specified on any one occasion. | issued                |
| 6. | Failure to give warning notice as soon as it becomes known there will be a delay or of the inability to provide the Services specified on the Order Form on any one occasion.                              | Default Notice issued |
| 7. | Failure to deliver the Goods that are marked as critical on the Order Form on time and/or supply all of the Goods ordered and/or to the delivery location specified on any one occasion.                   | Default Notice issued |
| 8. | Failure to provide the Services within the agreed time frame specified on the Order Form on any one occasion.  | Default Notice issued |

### Remedies for Critical Failure

The Authority has the right to issue a Default Notice to the DPS Provider which will include details of the Critical Failure(s).

The DPS Provider shall submit to the Authority within seven (7) days of receipt of the Default Notice the reason(s) for the Critical Failure(s) and provide details of the actions that will be taken to remedy the failure(s) ("**Recovery Plan**").

The Authority will review the Recovery Plan within ten (10) days of its submission and notify the DPS Provider if the Recovery Plan is accepted by the Authority.

Where a Recovery Plan is not submitted, or the Authority, acting reasonably, does not approve the Recovery Plan, or a further Default Notice is issued to a DPS Provider within a rolling six (6) month period, the DPS Provider will be suspended from the DPS Agreement until such time as the Recovery Plan is agreed.

The Authority may terminate the DPS Agreement in accordance with Clause 17 of the DPS Agreement if more than two Default Notices are issued to a DPS Provider within a rolling six (6) month period.



**Schedule 8 – Supplier's Request to Participate**