

**DYNAMIC PURCHASING SYSTEM AGREEMENT
FOR THE PROVISION OF
CLEANING AND FACILITIES SERVICES**

Between

LANCASHIRE COUNTY COUNCIL

And

[SUPPLIER]

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THIS AGREEMENT is dated the date on which the Lead Authority admits the Supplier to the DPS.

PARTIES

- (1) **LANCASHIRE COUNTY COUNCIL**, whose principal place of business is at PO Box 100, County Hall, Preston, Lancashire, PR1 0LD (the "**Lead Authority**"); and
- (2) the entity named in Part 1 of the Selection Questionnaire submitted by that entity to the Lead Authority, the principal place of business of which is as set out therein (the "**Supplier**"),

(each of which is a "**Party**" and together they are the "**Parties**").

BACKGROUND

- (A) The Lead Authority and other Placing Authorities require the provision of the Services at educational establishments across the county of Lancashire. In order to facilitate the procurement of such Services, the Lead Authority has established the Dynamic Purchasing System for the Provision of Cleaning and Facilities Services (the "**DPS**").
- (B) The Lead Authority published a Find a Tender Notice (reference [REFERENCE]) on [DATE] to advertise its intention to establish the DPS and to seek expressions of interest from potential suppliers of the Services. The Lead Authority has subsequently invited interested potential suppliers, by means of an Invitation to Participate, to apply for admission to the DPS by submitting a Request to Participate.
- (C) In its Request to Participate, the Supplier has represented to the Lead Authority that it is capable of providing the Services in accordance with the requirements set out in the Invitation to Participate, and it has made representations to the Lead Authority in relation to its competence and capability.
- (D) On the basis of the Supplier's representations, the Lead Authority has admitted the Supplier (and other such suppliers who have made equivalent representations) to the DPS and the Supplier shall be eligible for the award of Call-Off Contracts to provide the Services to the Placing Authorities following the conclusion of mini-competitions conducted in accordance with this DPS Agreement.
- (E) This DPS Agreement sets out the procedure for awarding Call-Off Contracts for the provision of the Services which the Placing Authorities may require from time to time, as well as the terms and conditions for the provision of such Services and the obligations of the Supplier during and after the Term.
- (F) Pursuant to the Authority SLA and the Access Agreement agreed between the Lead Authority and each of the Placing Authorities, the Lead Authority is authorised to manage the DPS and enter into this DPS Agreement with the DPS Suppliers, and to conduct mini-competitions and subsequently manage Call-Off Contracts awarded to DPS Suppliers by all Placing Authorities (including by the Lead Authority itself) in accordance with this DPS Agreement.

AGREED TERMS

1. Definitions and Interpretation

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

"Access Agreement": means the Access Agreement Pertaining to the Dynamic Purchasing System for the Provision of Cleaning and Facilities Services entered into by the Lead Authority and each of the Placing Authorities pursuant to which a Placing Authority is entitled to let a Call-off Contract in accordance with the procedure set out in this DPS Agreement (subject to

the Placing Authority also entering into the Authority SLA with the Lead Authority).

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

"Approval": means the prior written approval of the Lead 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 Lead Authority as the context requires.

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

"Authority SLA": means the Lead Authority's Service Level Agreement for Grounds Support Services and/or Building Cleaning/Caretaking Support Services to Schools, pursuant to which the Lead Authority has agreed to provide to the Placing Authority certain procurement and contract management services pertaining to the Services.

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

"Call-Off Contract": means a legally binding agreement (made pursuant to the provisions of this DPS Agreement) for the provision of the Services made between a Placing Authority and the Supplier comprising a Call-off Contract Acceptance Form and its appendices, and the Call-off Terms and Conditions.

"Call-Off Contract Acceptance Form": means the document setting out details of the Services and Price in the form set out in Schedule 4 (Call-Off Contract Acceptance Form) or as otherwise agreed in accordance with Clause 4.6 (Award Procedures).

"Call-Off Terms and Conditions": means the terms and conditions in Schedule 5 (Call-Off Terms and Conditions) which are incorporated by reference to any Call-Off Contract.

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

"Commencement Date": is the date upon which the Supplier is admitted to the DPS.

"Complaint": means any formal complaint raised by the Lead Authority or any other Placing Authority in relation to the Supplier's performance under the DPS Agreement or any Call-Off 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 that which is designated by the Supplier as "Commercially Sensitive Information") or that ought reasonably to be considered 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.

"Default": means any breach of the obligations of the relevant Party under a Call-Off 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 Call-Off 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 the Dynamic Purchasing System for the Provision of Cleaning and Facilities Services, being an electronic system used by the Lead Authority and other Placing Authorities to select DPS Suppliers to provide to the Lead Authority and other Placing Authorities the cleaning and facilities services set out in this Agreement, and in accordance with the procedure set out at Regulation 34 of the Regulations.

"DPS Agreement": means this Dynamic Purchasing System Agreement for the Provision of Cleaning and Facilities Services and all its Schedules.

"DPS Suppliers": means the suppliers, including the Supplier, which have met the criteria to be admitted to the DPS, and which have been admitted to the DPS by the Lead Authority, as potential providers of the Services pursuant to agreements identical to this DPS Agreement, mutatis mutandis.

"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 published on www.find-tender.service.gov.uk.

"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.

"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 Supplier's request to participate in the DPS.

"Invitation to Tender": means the Lead Authority's invitation to tender to eligible DPS Suppliers to compete in a mini-competition for the award of a Call-Off Contract to provide the

Services to the Placing Authorities.

"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 Services or with which the Supplier must comply.

"Month": means a calendar month.

"Notice of Variation": is as defined in paragraph 2.2 of Schedule 6 (Variation Procedure).

"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 either the Lead Authority and/or the Supplier as the context requires.

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

"Placing Authorities": means the organisations which are authorised by the Lead Authority to enter into Call-Off Contracts with the DPS Suppliers pursuant to this DPS Agreement. The Lead Authority's authorisation is contingent upon such organisations having entered into the Authority SLA (at an 'Enhanced' rate) and the Access Agreement with the Lead Authority. The Placing Authorities are described in Schedule 3.

"Price": means the price for Services applicable to a Call-Off Contract following a mini-competition between DPS Suppliers.

"Prohibited Act": the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Lead 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 DPS 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 DPS Agreement or any other contract with the Lead Authority; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Lead Authority.

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

"Requests for Information": means a request for information or an apparent request under the FOIA or the EIRs.

"Request to Participate" or "RTP": means the most recent selection questionnaire electronically submitted by the Supplier to the Lead Authority, via the Lead Authority's tendering system, in response to the Lead Authority's ITP.

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

"Services": means the services (and, if applicable, the goods) as detailed in Part 1 of Schedule 1 (Services) and the Invitation to Tender.

"Specification": means the specification for the Services referred to in Part 2 of Schedule 1 (Services).

"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 DPS Agreement or any Call-Off Contracts.

"Subcontract": means any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

"Sub-Contractor": means the third party that enter into a Subcontract with the Supplier.

"Tender": means the documents submitted to the Lead Authority by a DPS Supplier in response to the Lead Authority's Invitation to Tender issued to eligible DPS Suppliers for formal offers to supply Placing Authorities with Services under a mini-competition.

"Term": means the period commencing on the Commencement Date and ending on 27th October 2028, or on the earlier termination of this DPS Agreement in accordance with its provisions or otherwise lawfully.

"Termination Date": means the date of expiry or termination of this DPS 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.

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

"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 DPS 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 DPS Agreement and shall have effect as if set out in full in the body of this DPS Agreement and any reference to this DPS Agreement shall include the Schedules;
- (h) references in this DPS 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 DPS Agreement so numbered;
- (i) references in this DPS Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Agreement so numbered; and
- (j) reference to a Clause is a reference to the whole of that Clause unless stated otherwise.

2. Term of Agreement

- 2.1 This DPS Agreement shall take effect on the Commencement Date and shall expire automatically at midnight on 23rd February 2029, or such other date as is specified in regulation 5(4)(b)(ii) of the Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) Regulations 2024 (as amended), if later, unless this DPS Agreement is terminated prior to that date in accordance with the provisions of this DPS Agreement, or otherwise lawfully terminated.

3. Scope of Agreement

- 3.1 The Lead Authority appoints the Supplier as a DPS Supplier of the Services and the Supplier shall henceforth be eligible for the award of Call-Off Contracts for such Services for the duration of the Term.
- 3.2 The Lead Authority may, or Placing Authorities may in their absolute discretion and from time to time during the Term instruct the Lead Authority to, order the Services in accordance with the procedure set out in Clause 4 (Award Procedures). 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 Services under this DPS Agreement are required:
- (a) the Lead Authority shall comply with the procedure in Clause 4 (Award Procedures) when ordering either for itself or on the Placing Authority's behalf; and
 - (b) the relevant Placing Authority shall enter into a Call-Off Contract with a Supplier for these Services.
- 3.4 The Supplier acknowledges that no form of exclusivity or volume guarantee has been granted by any Placing Authority for the Services and that the Placing Authorities are at all

times entitled to:

- (a) enter into other contracts and arrangements with other DPS Suppliers for the provision of any or all of the Services; or
- (b) enter into other contracts and arrangements with other suppliers who are not DPS Suppliers for the provision of services which are the same as or similar to the Services.

4. Award Procedure

- 4.1 The Parties acknowledge that the Lead Authority shall award Call-Off Contracts on behalf of itself and other Placing Authorities in accordance with the terms laid down in this DPS Agreement, and in accordance with the relevant Invitation to Tender and Schedule 2 (Award Criteria) to this DPS Agreement.
- 4.2 The Supplier acknowledges that it may only be selected to deliver the Services where it has won a mini-competition between the DPS Suppliers in accordance with the process described at Clause 4.3.
- 4.3 Where a Placing Authority wishes to request Services under this DPS Agreement, the Lead Authority shall on behalf of the Placing Authority:
 - (a) identify the appropriate Lot for the required Services;
 - (b) identify the DPS Suppliers capable of performing the Call-Off Contract for the required Services;
 - (c) conduct a mini-competition seeking Tenders from eligible, invited DPS Suppliers, by issuing an Invitation to Tender document setting out the Placing Authority's requirements and the deadline by which the Tender must be submitted;
 - (d) evaluate all Tender submissions received by the Invitation to Tender deadline in accordance with the Award Criteria set out in the Invitation to Tender;
 - (e) on conclusion of the Tender submission evaluation process, award a Call-Off Contract to the DPS Supplier submitting the most economically advantageous Tender on the basis of the Award Criteria specified in the Invitation to Tender;
 - (f) prepare and send to the successful DPS Supplier a Call-off Contract Acceptance Form incorporating the Call-off Terms and Conditions (by reference), following which the DPS Supplier is required to respond electronically to the Placing Authority, within the timeframe specified, to either:
 - (i) accept the invitation to deliver the Services as set out in the Invitation to Tender and offer to enter into the Call-Off Contract with the Placing Authority; or alternatively,
 - (ii) notify the Placing Authority that it declines to deliver the Services as set out in the Invitation to Tender and shall not be prepared to enter into a Call-Off Contract;
 - (g) where:
 - (i) the DPS Supplier has accepted the invitation in the Call-Off Acceptance Form to enter into the Call-Off Contract; or

- (ii) the DPS Supplier does not respond to the Call-Off Contract Acceptance Form within the specified timeframe and instead commences performance of the Services,

the Placing Authority is deemed to have accepted the DPS Supplier's offer to enter into the Call-Off Contract and the DPS Supplier shall provide the Services in accordance with the terms of the Call-Off Contract; and

- (h) where the DPS Supplier has declined to deliver the Services as set out in the Invitation to Tender and has confirmed that it shall not be prepared to enter into a Call-Off Contract, the Lead Authority shall be entitled to send the Call-Off Contract Acceptance Form to the DPS Supplier that has submitted the second most economically advantageous Tender (and so on, until either a DPS Supplier accepts the invitation to deliver the Services, or all DPS Suppliers decline, in which case the Placing Authority shall seek to repro cure the Services.

- 4.4 The Supplier agrees that each Tender it submits in relation to a mini-competition for Services held pursuant to this Clause 4 shall remain open for acceptance for thirty (30) days from the specified commencement date for such Services (or such other period specified in the Invitation to Tender issued by the Placing Authority in accordance with this Clause 4).
- 4.5 The Placing Authorities reserve the right to cancel, postpone, delay or end the procedure set out in this Clause 4 at any time without awarding a Call-Off Contract. Nothing in this Agreement shall oblige the Placing Authority to award any Call-Off Contract and no DPS Supplier shall be entitled to any exclusive arrangement for the delivery of Services to the Placing Authority.
- 4.6 Subject to Clauses 4.1 to 4.5 above, a Call-Off Contract may be placed with the Supplier by the Lead Authority serving a Call-Off Contract Acceptance Form in writing in substantially the form described in Schedule 4 (Contract Acceptance Form) or such similar or analogous form agreed with the Supplier including systems of ordering involving fax, e-mail or other online solutions.
- 4.7 If the Supplier modifies or imposes conditions on the fulfilment of a Call-Off Contract (or Call-Off Contract Acceptance Form) the Lead Authority may at its discretion either:
 - (a) reissue the Contract incorporating the modifications or conditions in a new Invitation to Tender; or
 - (b) treat the Supplier's response as notification of its inability or unwillingness to deliver the Services as set out in the Invitation to Tender and the provisions of Clause 4.3(f)(ii) and 4.3(h) shall apply.
- 4.8 The Parties acknowledge and agree that the issue of an Invitation to Tender is an "invitation to treat" by the Placing Authority. Accordingly, the DPS Supplier shall electronically submit its Tender as its offer to the Placing Authority on the Call-off Terms and Conditions. The Placing Authority shall signal its willingness to accept the DPS Supplier's offer and intention to enter into a Call-Off Contract by requesting the Lead Authority to issue a Call-Off Contract Acceptance Form on its behalf to the DPS Supplier. The Call-Off Contract shall be formed when the DPS Supplier accepts the Call-Off Contract Acceptance Form or commences performance of the Services pursuant to clause 4.3(g)(ii).

5. Contract Performance and Precedence of Documents

- 5.1 The Supplier shall perform all Call-Off Contracts entered into with a Placing Authority in accordance with:

- (a) the requirements of this DPS Agreement; and
- (b) the terms and conditions of the respective Call-Off Contracts.

5.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this DPS Agreement and the terms and conditions of a Call-Off Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the clauses of the Call-Off Contract;
- (b) the Call-Off Contract Acceptance Form (except the Supplier's Request to Participate and/or Tender, if appended);
- (c) the Invitation to Tender requiring a Tender (where applicable);
- (d) the Tender (where applicable);
- (e) the terms of the DPS Agreement, the Schedules to the DPS Agreement and the appendices to the Call-Off Contract Acceptance Form, except Part 4 of Schedule 1 (Services);
- (f) the Invitation to Participate;
- (g) the Request to Participate;
- (h) any other document referred to in the clauses of the Call-off Contract; and
- (i) any other document referred to in the Clauses of the DPS Agreement.

6. Prices for Services

6.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this DPS Agreement, the Lead Authority shall pay the sum of £1.00 (receipt and sufficiency of which the Supplier expressly acknowledges).

6.2 The Placing Authority shall pay the charges to the Supplier in accordance with the provisions set out in the relevant Call-Off Contract. The applicable charges shall be determined at the stage at which the Call-off Contract is awarded to the Supplier.

6.3 The Supplier shall invoice the Placing Authority for payment of the charges in accordance with the relevant Call-Off Contract.

6.4 Unless otherwise specified in the Call-Off Contract, the Placing 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 Placing Authority for Services shall 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 Lead 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 DPS Agreement and any Call-Off Contract;
- (b) this DPS Agreement is executed by a duly authorised representative of the Supplier;
- (c) in entering into this DPS Agreement or any Call-Off 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 Lead Authority before the execution of this DPS Agreement and it will promptly advise the Lead 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 DPS Agreement and any Call-Off Contract which may be entered into with a Placing 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 DPS Agreement and any Call-Off 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. 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 DPS Agreement and any Call-off Contract.
- 8.2 The Supplier shall bear the cost of ensuring that the Services comply with all applicable Law.

9. Representatives

- 9.1 The Lead Authority's initial Authorised Representative is Mark Hodges (Contract Manager in the Lead Authority's Asset Management Service), who can be contacted at Mark.Hodges@lancashire.gov.uk and on 07971 888 616.
- 9.2 The Supplier's initial Authorised Representative is the person whose contact details are as shown in the "Contact Details" box in Part 1 of the Request to Participate.

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 DPS Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this DPS

Agreement including the Services provided under it, the Call-Off Contracts entered into with Placing Authorities and the amounts paid by each Placing 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 Lead 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 Lead Authority and the Auditor.
- 10.5 The Lead Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to the Call-Off 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 Lead Authority.
- 10.6 Subject to the Lead 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 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 Lead Authority for the Lead 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 DPS 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 DPS 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 Lead Authority of any document to which it is a party and which the Parties to this DPS 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 Lead Authority to any other department, office or agency of the government, provided that the Lead Authority informs the recipient of any duty of confidence owed in respect of the information; and
- (h) by the Lead Authority relating to this DPS 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 (1) claim arising out of each and every event without limit on the number of claims in any one (1) year;

12.1.2 employer's liability insurance with a limit of indemnity of not less than £10,000,000 (ten million pounds) in relation to any one (1) claim or series of claims; and

12.1.3 where the Services include the supply of goods, product liability insurance with a limit of indemnity of not less than £2,000,000 (two million pounds) in relation to any one (1) claim arising out of each and every event without limit on the number of claims in any one (1) year,

(the "**Required Insurances**"), in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the DPS Agreement or any Call-Off 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 Lead 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 Lead 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 DPS Agreement, or any Call-Off 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 Call-Off Contracts awarded. Any additional insurance requirements will be detailed

within the Call-Off Contract.

13. Data Protection

13.1 The Supplier shall (and shall procure that all of its Staff involved in the provision of this DPS Agreement shall) comply with all of 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 from the other shall be returned to the other 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 arises in connection with the DPS Agreement.

14. Freedom of Information

14.1 The Supplier acknowledges that the Lead Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Lead Authority (at the Supplier's expense) to enable the Lead 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 Lead 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 Lead Authority with a copy of all Information in its possession or power in the form that the Lead Authority requires within five (5) Working Days (or such other period as the Lead Authority may specify) of the Lead Authority requesting that Information; and
- (c) provide all necessary assistance as reasonably requested by the Lead Authority to enable the Lead 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 Lead Authority.

14.4 The Supplier acknowledges that the Lead Authority may (acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004) (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 Lead 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 DPS Agreement or relating to the DPS Agreement is retained for disclosure and shall permit the Lead 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 Lead Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 14.3.

15. Publicity

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

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

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

16. NOT USED

17. Termination

Termination on Default

17.1 The Lead Authority may terminate this DPS 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 DPS Agreement and:
 - (i) the Supplier has not remedied the material breach to the satisfaction of the Lead Authority within ten (10) Working Days, or such other longer period as may be specified by the Lead 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 Lead Authority, capable of remedy; or
- (b) where a Placing Authority terminates a Call-Off Contract awarded to the Supplier under this DPS Agreement as a consequence of Default by the Supplier.

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 Lead Authority would otherwise derive from:

- (a) a substantial portion of this DPS 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 DPS 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 Lead Authority may terminate this DPS Agreement with immediate effect by giving written notice to the Supplier if:

- (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 Supplier;
- (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 Lead Authority immediately if the Supplier undergoes a Change of Control, or if it reasonably suspects that it may undergo a Change of Control. The Supplier, being an individual, shall notify the Lead Authority immediately if the Supplier's business is acquired by a third party, or is likely to be acquired by a third party. The Lead Authority may terminate the DPS 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 Lead 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 Lead 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 Lead Authority for Convenience

- 17.5 The Lead Authority shall have the right to terminate this DPS Agreement, or to terminate the provision of any part of the DPS Agreement at any time by giving written notice to the Supplier and any other DPS Suppliers having similar agreements to this DPS Agreement with the Lead Authority.

Termination on Mandatory Grounds

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

- (a) where the DPS Agreement has been subject to a substantial modification which will include any change in the DPS Agreement irrespective of the monetary value and which meets one (1) or more of the following conditions:
 - (i) materially alters the character of the DPS 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 DPS 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 DPS 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 DPS 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;

- (b) where post-award of the DPS 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; or
- (c) where the Lead Authority has a right or obligation to terminate this DPS Agreement 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, in which case the Lead Authority shall terminate the DPS Agreement forthwith.

Termination by the Supplier for Convenience

- 17.7 The Supplier shall have the right to terminate this Agreement immediately at any time by giving written notice to the Lead Authority.

18. Suspension of Supplier's Appointment

- 18.1 Without prejudice to the Lead Authority's rights to terminate this DPS Agreement in Clause 17 (Termination), if a right to terminate this DPS Agreement arises in accordance with Clause 17 (Termination), the Lead Authority may suspend the Supplier's right to be awarded Call-Off Contracts from Placing Authorities by giving notice in writing to the Supplier. If the Lead 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 Lead Authority in writing from time to time.

19. Consequences of Termination and Expiry

- 19.1 Notwithstanding the service of a notice to terminate this DPS Agreement, the Supplier shall continue to fulfil its obligations under this DPS Agreement until the date of expiry or termination 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 this DPS Agreement shall not operate as a notice to terminate any Call-Off Contract made under the DPS Agreement. Termination or expiry of this DPS Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 19.3 Within thirty (30) Working Days of the date of termination or expiry of this DPS Agreement, the Supplier shall return or destroy at the request of the Lead Authority any data, personal information relating to the Lead Authority or its personnel or Confidential Information belonging to the Lead Authority in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Lead Authority (in which event the Lead 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 Lead 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 DPS Agreement, or such period as is necessary for such compliance.
- 19.4 Termination or expiry of this DPS Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this DPS Agreement before 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 DPS 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 Lead Authority of any Complaint within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Supplier'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 DPS Agreement or a Call-Off Contract, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the DPS Agreement or a Call-Off 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 DPS Agreement or the performance, validity or enforceability of it (a "**Dispute**") then except as expressly provided in this DPS 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 (a "**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the Representatives of the Lead Authority and the Supplier shall attempt in good faith to resolve the Dispute;
 - (b) if the Representatives of the Lead 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 senior management of the Lead Authority and the Supplier who shall attempt in good faith to resolve it; and
 - (c) if the senior management of the Lead Authority and 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. 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.
- 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 DPS Agreement and any Call-Off 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 Lead Authority, or that an agreement has been reached to that effect, in connection with the execution of this DPS Agreement or any Call-Off Contract, excluding any arrangement of which full details have been disclosed in writing to the Lead Authority before execution of this DPS Agreement.

22.2 The Supplier shall:

- (a) if requested, provide the Lead Authority with any reasonable assistance, at the Lead Authority's reasonable cost, to enable the Lead 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 Lead 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 DPS Agreement. The Supplier shall provide such supporting evidence of compliance as the Lead Authority may reasonably request.

22.3 The Supplier shall comply with the Lead 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 Lead Authority immediately.

22.5 If the Supplier notifies the Lead Authority that it suspects or knows that there may be a breach of Clause 22, the Supplier must respond promptly to the Lead Authority's enquiries, co-operate with any investigation, and allow the Lead 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 DPS Agreement.

22.6 The Lead Authority may terminate this DPS 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 Lead Authority believes has committed the Prohibited Act; and
- (c) the date on which this DPS 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 Lead 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 Lead 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 DPS 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 DPS Agreement except with the express prior written consent of the Lead Authority.

- 23.2 The Lead 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 Lead Authority.

24. Variations

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

25. Third Party Rights

- 25.1 Except as provided in this DPS Agreement, a person who is not a Party to this DPS Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this DPS Agreement. 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 DPS Agreement are not subject to the consent of any other person.

26. Severance

- 26.1 If any provision or part-provision of this DPS 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 DPS Agreement.

- 26.2 If any provision or part-provision of this DPS 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

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

28. Waiver

28.1 No failure or delay by a Party to exercise any right or remedy provided under this DPS Agreement or by Law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

29. Entire Agreement

29.1 This DPS 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 DPS Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this DPS Agreement.

30. Notices

30.1 Except as otherwise expressly provided within this DPS Agreement, no notice or other communication from one Party to the other shall have any validity under the DPS 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, post, registered post or by the recorded delivery service), or by fax 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 delivered two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of e-mail or fax (unless the fax or email is sent after 5:00 PM on a Working Day in which case it shall be deemed delivered at 9:00 AM on the next Working Day), or sooner where the other Party acknowledges receipt of such letters, or fax or e-mail.

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

(a) for the Lead Authority:

FAO Mark Hodges (Asset Management Service)
Lancashire County Council
PO Box 100
County Hall
Preston
Lancashire
PR1 0LD

E-mail: Mark.Hodges@lancashire.gov.uk

(b) for the Supplier, the person whose contact details are as shown in the "Contact Details" box in Part 1 of the Request to Participate.

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 DPS 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 DPS Agreement or its subject matter or formation (including non-contractual disputes or claims).

This DPS Agreement has been entered into on the date upon which the Lead Authority admits the Supplier to the DPS.

Signed for and on behalf of the Lead Authority		Signed for and on behalf of the Supplier	
Signature:		Signature:	
Name:		Name:	
Role:		Role:	

Schedule 1

Services

Part 1 – Specification

See Schedule 1 (Specification) of the Call-Off Terms and Conditions.

Part 2 – Request to Participate

See Schedule 7 (Supplier's Request to Participate) of the Call-Off Terms and Conditions.

Schedule 2

Award Criteria

See Appendix 4 (Evaluation Criteria) of the Invitation to Participate.

Schedule 3

Placing Authorities

The Placing Authorities shall include the Lead Authority, and educational establishments (including nurseries, primary schools, secondary schools, colleges and higher education establishments) within the county of Lancashire which are maintained by the Lead Authority, and which have entered into the Authority SLA (at an 'Enhanced' rate) and the Access Agreement with the Lead Authority.

Schedule 4

Call-Off Contract Acceptance Form

See separate document.

Schedule 5

See separate document.

Call-Off Terms and Conditions

Schedule 6

Variation Procedure

1. Introduction

- 1.1 This Schedule 6 (Variation Procedure) details the scope of the permitted variations and the process to be followed where the Lead Authority proposes a variation to this DPS Agreement.

2. Procedure for Proposing a Variation

- 2.1 Where the Lead Authority proposes a variation which affects every DPS Agreement made between it and all DPS Suppliers, the Lead Authority shall electronically serve each DPS Supplier with written notice of the proposal to vary the DPS Agreements (a "**Notice of Variation**") which shall:

- (a) contain details of the proposed variation providing sufficient information to allow each DPS Supplier to assess the variation; and
- (b) require each DPS Supplier to notify the Lead Authority of any objections within fourteen (14) days of any proposed changes.

- 2.2 On receipt of the Notice of Variation, each DPS Supplier has fourteen (14) days to consider the variation and respond electronically to the Lead Authority in writing if it objects.

- 2.3 Provided that the Lead Authority does not receive any written objections to the variation within fourteen (14) days, the Lead Authority may electronically serve each DPS Supplier with a written statement detailing the variation. The DPS Suppliers shall electronically sign (or otherwise acknowledge) the written statement within fourteen (14) days of receipt.

- 2.4 On receipt of an electronically signed confirmation from each DPS Supplier, the Lead Authority shall notify all DPS Suppliers in writing of the commencement date of the variation.

- 2.5 Where the Lead Authority proposes a variation which implements minor amendments or rectifications specific to this DPS Agreement or the Supplier, such variations may be agreed between the Parties in writing.

3. Objections to a Variation

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

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

4. Prohibited Variations

- 4.1 The Lead Authority may only propose a variation to the DPS Agreement under this Schedule 6 (Variation Procedure) where the variation does not amount to a material change in the DPS Agreement or the Services and where such a variation would not breach the Law.

- 4.2 The Lead Authority may not propose any variation that:

- (a) may prevent any DPS Suppliers from performing their obligations pursuant to the DPS Agreements; or
- (b) is in contravention of any Law.