

CROWN COMMERCIAL SERVICE

and

[SUPPLIER NAME]

DYNAMIC PURCHASING SYSTEM AGREEMENT

FOR THE PROVISION OF

VEHICLE CONVERSIONS

GOODS AND SERVICES

Agreement Ref: RM3814

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This Agreement is made

BETWEEN:

- (1) the Minister for the Cabinet Office ("**Cabinet Office**") as represented by Crown Commercial Service, which is an executive agency and operates as a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP (the "**Authority**"); and
- (2) (the "**Supplier**").

RECITALS:

- A The Authority placed a contract notice **[Insert the OJEU reference number]** on 24/07/2017 (the "**OJEU Notice**") in the Official Journal of the European Union inviting providers of Vehicle Conversions for the supply of the Goods and/or Services to Contracting Authorities.
- B The Supplier made a request to participate by submitting its response to the Authority's selection questionnaire ("**SQ**") in response to the OJEU Notice (the "**SQ Response**").
- C Through the SQ Response, the Supplier represented to the Authority that it is capable of delivering the Goods and/or Services and, in particular, the Supplier made representations to the Authority in the SQ Response in relation to suitability, economic and financial standing and technical and professional ability.
- D On the basis of the Supplier's responses in the SQ Response, the Supplier was admitted to the Dynamic Purchasing System Agreement to provide the Goods and/or Services to Contracting Authorities from time to time on a call off basis in accordance with this Dynamic Purchasing System Agreement.
- E This Dynamic Purchasing System Agreement sets out the award and calling-off ordering procedure for purchasing the Goods and/or Services which may be required by Contracting Authorities, the template terms and conditions for any Contract which Contracting Authorities may enter into and the obligations of the Supplier during and after the Dynamic Purchasing System Period.
- F It is the Parties' intention that there will be no obligation for any Contracting Authority to award any Contracts under this Dynamic Purchasing System Agreement during the Dynamic Purchasing System Period.

A. PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

- 1.1.1 In this Dynamic Purchasing System Agreement, unless the context otherwise requires, capitalised expressions shall have the meanings set out in DPS Schedule 1 (Definitions) or the relevant DPS Schedule in which that capitalised expression appears.
- 1.1.2 If a capitalised expression does not have an interpretation in DPS Schedule 1 (Definitions) or the relevant DPS Schedule, it shall have the

meaning given to it in this Dynamic Purchasing System Agreement. If no meaning is given to it in this Dynamic Purchasing System Agreement, it shall in the first instance be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

1.2 Interpretation

1.2.1 In this Dynamic Purchasing System Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) reference to a gender includes the other gender and the neuter;
- (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
- (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (e) the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- (f) references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly;
- (g) references to "**representations**" shall be construed as references to present facts; to "**warranties**" as references to present and future facts; and to "**undertakings**" as references to obligations under this Dynamic Purchasing System Agreement;
- (h) references to "**Clauses**" and "**DPS Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Dynamic Purchasing System Agreement and references in any DPS Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the DPS Schedule or the part of the DPS Schedule in which the references appear;
- (i) any reference to this Dynamic Purchasing System Agreement includes DPS Schedule 1 (Definitions) and the DPS Schedules; and
- (j) the headings in this Dynamic Purchasing System Agreement are for ease of reference only and shall not affect the interpretation or construction of this Dynamic Purchasing System Agreement.

1.2.2 Subject to Clause 1.2.3, in the event and to the extent only of a conflict between any of the provisions of this Dynamic Purchasing System Agreement, the conflict shall be resolved, in accordance with the following descending order of precedence:

- (a) the Clauses and DPS Schedule 1 (Definitions); and
- (b) DPS Schedules 2 to 20 and 22 inclusive.

1.2.3 If there is any conflict between the provisions of this Dynamic Purchasing System Agreement and provisions of any Contract, the provisions of this Dynamic Purchasing System Agreement shall prevail over those of the Contract save that any refinement to the Template Order Form and Template Contract Terms permitted for the purposes of a Contract under Clause 4 and DPS Schedule 5 (Call for Competition Procedure) shall prevail over DPS Schedule 4 (Template Order Form and Template Contract Terms).

2. DUE DILIGENCE

2.1 The Supplier acknowledges that:

- 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance or its obligations under this Dynamic Purchasing System Agreement;
- 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy of the Due Diligence Information;
- 2.1.3 it has raised all relevant due diligence questions with the Authority before the DPS Commencement Date, has undertaken all necessary due diligence and has entered into this Dynamic Purchasing System Agreement in reliance on its own due diligence alone;
- 2.1.4 it shall not be excused from the performance of any of its obligations under this Dynamic Purchasing System Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
 - (a) misrepresentation of the requirements of the Supplier in the SQ or elsewhere;
 - (b) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
 - (c) failure by the Supplier to undertake its own due diligence.

3. SUPPLIER'S ADMITTANCE

3.1 The Authority hereby admits the Supplier to the Dynamic Purchasing System as a potential provider of the Goods and/or Services and the Supplier shall be eligible to be considered for the award of Contracts by the Authority and Other Contracting Authorities during the Dynamic Purchasing System Period.

3.2 In consideration of the Supplier agreeing to enter into this Dynamic Purchasing System Agreement and to perform its obligations under it the Authority agrees to pay and the Supplier agrees to accept on the signing of this Dynamic Purchasing System Agreement the sum of one pound (£1.00) sterling (receipt of which is hereby acknowledged by the Supplier).

4. SCOPE OF DYNAMIC PURCHASING SYSTEM AGREEMENT

- 4.1 Without prejudice to Clause 45 (Third Party Rights), this Dynamic Purchasing System Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Goods and/or Services by the Supplier.
- 4.2 The Supplier acknowledges and agrees that:
- 4.2.1 there is no obligation whatsoever on the Authority or on any Other Contracting Authority to invite or select the Supplier to provide any Goods and/or Services and/or to purchase any Goods and/or Services under this Dynamic Purchasing System Agreement; and
 - 4.2.2 in entering into this Dynamic Purchasing System Agreement no form of exclusivity has been conferred on the Supplier nor volume or value guarantee granted by the Authority and/or Other Contracting Authorities in relation to the provision of the Goods and/or Services by the Supplier and that the Authority and Other Contracting Authorities are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all goods and/or services which are the same as or similar to the Goods and/or Services.
- 4.3 In the event that any Other Contracting Authority makes an approach to the Supplier with a request for the supply of Equivalent Goods and/or Services, the Supplier shall promptly and in any event within five (5) Working Days of the request by the Other Contracting Authority, and before any supply of Equivalent Goods and/or Services is made, inform such Other Contracting Authority of the existence of this DPS and the Other Contracting Authority's ability to award Contracts for Goods and/or Services pursuant to this Dynamic Purchasing System Agreement.

5. CALL FOR COMPETITION PROCEDURE

- 5.1 If the Authority or any Other Contracting Authority decides to source any of the Goods and/or Services through this Dynamic Purchasing System Agreement, then it shall be entitled at any time in its absolute and sole discretion during the Dynamic Purchasing System Period to award Contracts for the Goods and/or Services from the Supplier by following DPS Schedule 5 (Call for Competition Procedure).
- 5.2 The Supplier shall comply with the relevant provisions in DPS Schedule 5 (Call for Competition Procedure).

6. ASSISTANCE IN RELATED PROCUREMENTS

- 6.1 Where a Relevant Supplier is bidding to provide New Goods and/or Services in circumstances where the Supplier or an Affiliate of the Supplier is already providing (or due to provide) Legacy Goods and/or Services to a Contracting Authority, the Supplier shall promptly provide the relevant Contracting Authority and/or the Relevant Supplier with all reasonable information and assistance as may be required from time to time to enable the relevant Contracting Authority and/or the Relevant Supplier, as appropriate, to:
- 6.1.1 carry out appropriate due diligence with respect to the provision of the New Goods and/or Services;
 - 6.1.2 effect a smooth transfer and/or inter-operation (as the case may be) between the Legacy Goods and/or Services and the New Goods and/or Services;
 - 6.1.3 carry out a fair Call for Competition Procedure for the New Goods and/or Services; and

6.1.4 make a proper assessment as to the risk related to the New Goods and/or Services.

6.2 When performing its obligations in Clause 6.1 the Supplier shall act consistently, applying principles of equal treatment and non-discrimination, with regard to requests for assistance from and dealings with each Relevant Supplier.

7. REPRESENTATIONS AND WARRANTIES

7.1 Each Party represents and warrants that:

- 7.1.1 it has full capacity and authority to enter into, and to perform its obligations under, this Dynamic Purchasing System Agreement;
- 7.1.2 this Dynamic Purchasing System Agreement is executed by its duly authorised representative;
- 7.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Dynamic Purchasing System Agreement; and
- 7.1.4 its obligations under this Dynamic Purchasing System Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

7.2 The Supplier represents and warrants that:

- 7.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 7.2.2 it has obtained and will maintain all licences, authorisations, permits, necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into and perform its obligations under this Dynamic Purchasing System Agreement;
- 7.2.3 it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Authority before the DPS Commencement Date;
- 7.2.4 its execution, delivery and performance of its obligations under this Dynamic Purchasing System Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;
- 7.2.5 as at the DPS Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its SQ Response, and any other documents submitted remain true and accurate except to the extent that

such statements and representations have been superseded or varied by this Dynamic Purchasing System Agreement;

- 7.2.6 if the Charges payable under this Dynamic Purchasing System Agreement exceed or are likely to exceed five (5) million pounds, as at the DPS Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
 - 7.2.7 it has and shall continue to have all necessary Intellectual Property Rights including in and to any materials made available by the Supplier (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Dynamic Purchasing System Agreement;
 - 7.2.8 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority and/or Other Contracting Authorities.
 - 7.2.9 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Dynamic Purchasing System Agreement;
 - 7.2.10 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or 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;
 - 7.2.11 for the duration of this Dynamic Purchasing System Agreement and any Contracts and for a period of twelve (12) Months after the termination expiry this Dynamic Purchasing System Agreement or, if later, any Contracts, the Supplier shall not employ or offer employment to any staff of the Authority or the staff of any Contracting Authority who has been associated with the procurement and/or provision of the Goods and/or Services without Approval or the prior written consent of the relevant Contracting Authority which shall not be unreasonably withheld; and
 - 7.2.12 in performing its obligations under this Dynamic Purchasing System Agreement and any Contract, the Supplier shall not (to the extent possible in the circumstances) discriminate between Contracting Authorities on the basis of their respective sizes.
- 7.3 Each of the representations and warranties set out in Clauses 7.1 and 7.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Dynamic Purchasing System Agreement.
- 7.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 7.1 and 7.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

7.5 For the avoidance of doubt, the fact that any provision within this Dynamic Purchasing System Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of the breach of that provision by the Supplier which constitutes a material Default of this Dynamic Purchasing System Agreement.

7.6 Each time that a Contract is entered into, the warranties and representations in Clauses 7.1 and 7.2 shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time.

8. GUARANTEE

8.1 Where the Authority has notified the Supplier that the award of this DPS Agreement is conditional upon receipt of the execution of the first Contract Agreement the Supplier shall provide a valid DPS Guarantee , then on or prior to the execution of the DPS Agreement, as a condition for the award of this DPS Agreement, the Supplier must have delivered to the Authority:

8.1.1 an executed DPS Guarantee from a DPS Guarantor; and

8.1.2 a certified copy extract of the board minutes and/or resolution of the DPS Guarantor approving the execution of the DPS Guarantee.

8.2 Where a Contracting Authority has notified the Supplier that the award of a Contract Agreement by that Contracting Authority shall be conditional upon receipt of a valid Contract Guarantee, then, on or prior to the execution of that Contract Agreement, as a condition for the award of this DPS Agreement, the Supplier must have delivered to the Contracting Authority:

8.2.1 an executed Contract Guarantee from a Contract Guarantor; and

8.2.2 a certified copy extract of the board minutes and/or resolution of the Contract Guarantor approving the execution of the Contract Guarantee.

9. CYBER ESSENTIALS SCHEME CONDITION

9.1 Where the Authority has notified the Supplier that the award of this Dynamic Purchasing System Agreement is conditional upon receipt of the first Contract the Supplier shall provide a valid Cyber Essentials Scheme Basic Certificate, then on or prior to the execution of the first Contract, as a condition for the award of this Dynamic Purchasing System Agreement, the Supplier must have delivered to the Authority evidence of the same.

9.2 Where the Supplier continues to Process Cyber Essentials Scheme Data during the Dynamic Purchasing System Period or the contract period of any Contract the Supplier shall deliver to the Authority evidence of renewal of a valid Cyber Essentials Scheme Basic Certificate on each anniversary of the first applicable certificate obtained by the Supplier under Clause 9.1.

9.3 Where the Supplier is due to Process Cyber Essentials Scheme Data after the commencement date of the first Contract but before the end of the Dynamic Purchasing System Period or contract period of the last Contract, the Supplier shall deliver to the Authority evidence of:

9.3.1 a valid Cyber Essentials Scheme Basic Certificate (before the Supplier Processes any such Cyber Essentials Scheme Data); and

- 9.3.2 renewal of a valid Cyber Essentials Scheme Basic Certificate on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Supplier under Clause 9.3.1.

9.4 In the event that the Supplier fails to comply with Clauses 9.2 or 9.3 (as applicable), the Authority reserves the right to terminate this Dynamic Purchasing System Agreement for material Default.

B. DURATION OF DYNAMIC PURCHASING SYSTEM AGREEMENT

10. DYNAMIC PURCHASING SYSTEM PERIOD

- 10.1 This Dynamic Purchasing System Agreement shall take effect on the DPS Commencement Date and shall expire, unless it is terminated earlier in accordance with the terms of this Dynamic Purchasing System Agreement or otherwise by the operation of Law, either;
 - 10.1.1 at the end of the Initial DPS Period; or
 - 10.1.2 where the Authority elects to extend the Initial DPS Period in accordance with Clause 10.1.2 below;
- 10.2 The Authority may extend the duration of this Dynamic Purchasing System Agreement for any period or periods up to a maximum of 1 year (12 months) in total from the expiry of the Initial Dynamic Purchasing System Period by giving the Supplier no less than three (3) Months' written notice.
- 10.3 The Authority acknowledges that the DPS will not be terminated within the initial first six (6) months from the DPS commencement date.

C. DYNAMIC PURCHASING SYSTEM AGREEMENT PERFORMANCE

11. DYNAMIC PURCHASING SYSTEM AGREEMENT PERFORMANCE

- 11.1 The Supplier shall perform its obligations under this Dynamic Purchasing System Agreement in accordance with:
 - 11.1.1 the requirements of this Dynamic Purchasing System Agreement, including DPS Schedule 8 (DPS Management);
 - 11.1.2 the terms and conditions of the respective Contracts;
 - 11.1.3 Good Industry Practice;
 - 11.1.4 all applicable Standards; and
 - 11.1.5 in compliance with all applicable Law.
- 11.2 The Supplier shall bring to the attention of the Authority any conflict between any of the requirements of Clause 11.1 and shall comply with the Authority's decision on the resolution of any such conflict.

12. KEY PERFORMANCE INDICATORS

- 12.1 The Supplier shall at all times during the Dynamic Purchasing System Period comply with the Key Performance Indicators and achieve the KPI Targets set out in Part B of DPS Schedule 2 (Goods and Key Performance Indicators).

13. STANDARDS

- 13.1 The Supplier shall comply with the Standards at all times during the performance by the Supplier of the Dynamic Purchasing System Agreement and any Contract, including any Standards set out in Part A of DPS Schedule 2 (Goods and/or Services and Key Performance Indicators).
- 13.2 Throughout the Dynamic Purchasing System Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by a Contracting Authority under a Contract, of the Goods and/or Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Variation Procedure.
- 13.3 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or a Contracting Authority's receipt under a Contract, of the Goods and/or Services is explained to the Authority and the Contracting Authority (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 13.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the DPS Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require Approval and shall be implemented within an agreed timescale.
- 13.5 Where a standard, policy or document is referred to in DPS Schedule 2 (Goods and/or Services and Key Performance Indicators) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall agree the impact of such change.

14. NOT USED

15. CONTINUOUS IMPROVEMENT – NOT USED

16. CONTRACT PERFORMANCE UNDER DYNAMIC PURCHASING SYSTEM AGREEMENT

- 16.1 The Supplier shall perform all its obligations under all Contracts:
- 16.1.1 in accordance with the requirements of this Dynamic Purchasing System Agreement;
 - 16.1.2 in accordance with the terms and conditions of the respective Contracts.
- 16.2 The Supplier shall draw any conflict in the application of any of the requirements of Clauses 16.1.1 and 16.1.2 to the attention of the Authority and shall comply with the Authority's decision on the resolution of any such conflict.

D. DYNAMIC PURCHASING SYSTEM AGREEMENT GOVERNANCE

17. DYNAMIC PURCHASING SYSTEM AGREEMENT MANAGEMENT

- 17.1 The Parties shall manage this Dynamic Purchasing System Agreement in accordance with DPS Schedule 8 (DPS Management).

18. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

- 18.1 The Supplier shall keep and maintain, until the later of:

- 18.1.1 seven (7) years after the date of termination or expiry of this Dynamic Purchasing System Agreement; or
 - 18.1.2 seven (7) years after the date of termination or expiry of the last Contract to expire or terminate; or
 - 18.1.3 such other date as may be agreed between the Parties,
- full and accurate records and accounts of the operation of this Dynamic Purchasing System Agreement, including the Contracts entered into with Contracting Authorities, the Goods provided pursuant to the Contracts, and the amounts paid by each Contracting Authority under the Contracts and those supporting tests and evidence that underpin the provision of the annual Self Audit Certificate and supporting Audit Report.
- 18.2 The Supplier shall keep the records and accounts referred to in Clause 18.1 in accordance with Good Industry Practice and Law.
- 18.3 The Supplier shall provide the Authority with a completed and signed annual Self Audit Certificate in respect of each Contract Year. Each Self Audit Certificate shall be completed and signed by an authorised senior member of the Supplier's management team or by the Supplier's external auditor and the signatory must be professionally qualified in a relevant audit or financial discipline.
- 18.4 Each Self Audit Certificate should be based on tests completed against a representative sample of 10% of transactions carried out during the period of being audited or 100 transactions (whichever is less) and should provide assurance that:
- 18.4.1 Orders are clearly identified as such in the order processing and invoicing systems and, where required, Orders are correctly reported in the MI Reports;
 - 18.4.2 all related invoices are completely and accurately included in the MI Reports;
 - 18.4.3 all Charges to Contracting Authorities comply with any requirements under this Dynamic Purchasing System Agreement on maximum mark-ups, discounts, charge rates, fixed quotes (as applicable); and
 - 18.4.4 an additional sample of twenty (20) public sector orders identified from the Supplier's order processing and invoicing systems as orders not placed under this Dynamic Purchasing System Agreement have been correctly identified as such and that an appropriate and legitimately tendered procurement route has been used to place those orders, and those orders should not otherwise have been routed via centralised mandated procurement processes executed by the Authority.
- 18.5 Each Self Audit Certificate should be supported by an Audit Report that provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken.
- 18.6 The Supplier shall afford any Auditor access to the records and accounts referred to in Clause 18.1 at the Supplier's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Auditors from time to time, in order that the Auditor may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Dynamic Purchasing System Agreement, including in order to:

- 18.6.1 verify the accuracy of the Charges and any other amounts payable by a Contracting Authority under a Contract (including proposed or actual variations to them in accordance with this Dynamic Purchasing System Agreement);
 - 18.6.2 verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
 - 18.6.3 verify the Open Book Data;
 - 18.6.4 verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
 - 18.6.5 identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - 18.6.6 identify or investigate any circumstances which may impact upon the financial stability of the Supplier the DPS Guarantor, Contract Guarantor and/or any Sub-Contractors or their ability to perform the Services;
 - 18.6.7 obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - 18.6.8 review any books of account and the internal contract management accounts kept by the Supplier in connection with this Dynamic Purchasing System Agreement;
 - 18.6.9 carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
 - 18.6.10 enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - 18.6.11 verify the accuracy and completeness of any Management Information delivered or required by this Dynamic Purchasing System Agreement;
 - 18.6.12 review any MI Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
 - 18.6.13 review the integrity, confidentiality and security of the Authority Personal Data; and/or
 - 18.6.14 receive from the Supplier on request summaries of all central government public sector expenditure placed with the Supplier including through routes outside the DPS in order to verify that the Supplier's practice is consistent with the Government's transparency agenda which requires all public sector bodies to publish details of expenditure on common goods and services.
- 18.7 The 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 Goods and/or Services pursuant to the Contracts, save insofar as the Supplier

accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of the Authority.

18.8 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:

18.8.1 all information within the scope of the Audit requested by the Auditor;

18.8.2 reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Goods and/or Services; and

18.8.3 access to the Supplier Personnel.

18.9 If an Audit reveals that the Supplier has underpaid an amount equal to or greater than one per cent (1%) of the Management Levy due in respect of any one Contract Year or year of any Contracts then, without prejudice to the Authority's other rights under this Dynamic Purchasing System Agreement, the Supplier shall reimburse the Authority its reasonable costs incurred in relation to the Audit.

18.10 If an Audit reveals that:

18.10.1 that the Supplier has underpaid an amount equal to or greater than five per cent (5%) of the Management Levy due during any Contract Year of this Dynamic Purchasing System Agreement and any Contract; and/or

18.10.2 a material Default has been committed by the Supplier;

then the Authority shall be entitled to terminate this Dynamic Purchasing System Agreement.

18.11 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, save as specified in Clause 18.9.

19. CHANGE

19.1 Variation Procedure

19.1.1 Subject to the provisions of this Clause 19 the Authority may, at its own instance or where in its sole and absolute discretion it decides to having been requested to do so by the Supplier, request a variation to this Dynamic Purchasing System Agreement provided always that such variation does not amount to a material change of this Dynamic Purchasing System Agreement within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".

19.1.2 The Authority may request a Variation by completing, signing and sending the Variation Form as set out in DPS Schedule 19 (Variation Form) to the Supplier giving sufficient information for the Supplier to assess the extent of the proposed Variation and any additional cost that may be incurred.

19.1.3 The Supplier shall respond to the Authority's request pursuant to Clause 19.1.2 within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the proposed Variation.

19.1.4 In the event that the Supplier is unable to agree to or provide the Variation the Authority may:

- (a) agree to continue to perform its obligations under this Dynamic Purchasing System Agreement without the Variation; or
- (b) terminate this Dynamic Purchasing System Agreement with immediate effect.

19.2 **Legislative Change**

19.2.1 The Supplier shall not be relieved of its obligations under this Dynamic Purchasing System Agreement as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Goods and/or Services is reasonably foreseeable at the DPS Commencement Date.

19.2.2 If a Specific Change in Law occurs or will occur during the DPS Period (other than as referred to in Clause 19.2.1(b)), the Supplier shall notify the Authority as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the Goods or this Dynamic Purchasing System Agreement.

19.2.3 Any relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 19.2.1(b)) shall be implemented in accordance with Clause 19.1(Variation Procedure).

E. MANAGEMENT LEVY, TAXATION AND VALUE FOR MONEY PROVISIONS

20. MANAGEMENT LEVY

20.1 In consideration of the establishment and award of this Dynamic Purchasing System Agreement and the management and administration by the Authority of the same, the Supplier agrees to pay to the Authority the Management Levy in accordance with this Clause 20.

20.2 The Authority shall be entitled to submit invoices to the Supplier in respect of the Management Levy due each Month based on the Management Information provided pursuant to DPS Schedule 9 (Management Information), and adjusted:

20.2.1 NOT USED

20.2.2 NOT USED

20.3 Unless otherwise agreed in writing, the Supplier shall pay by BACS (or by such other means as the Authority may from time to time reasonably require)) the amount stated in any invoice submitted under Clause 20.2 to such account as shall be stated in the invoice (or otherwise notified from time to time by the Authority to the Supplier) within thirty (30) calendar days of the date of issue of the invoice.

20.4 The Management Levy shall apply to the full Charges as specified in each and every Contract and shall not be varied as a result of any discount or any reduction in the Charges due to the application of any Service Credits (as defined in Annex 2 of DPS Schedule 4 (Template Order Form and Template Contract terms) and/or any other deductions made under any Contract.

20.5 NOT USED

- 20.6 Interest shall be payable on any late payments of the Management Levy under this Dynamic Purchasing System Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 20.7 The Supplier acknowledges and agrees that the Authority may at any time during the Dynamic Purchasing System Period and upon serving two months' written notice, introduce a new electronic system to monitor and collect the Management Levy (the "**System**") and upon receipt of the written notice the Supplier shall use its best endeavours to implement the System.
- 20.8 In the event that any new electronics system to monitor and collect is introduced, the Authority reserves the right to revert to a manual system to monitor and collect the Management Levy, upon providing two months' written notice to the Supplier.
- 20.9 The Authority reserves the right to increase the Management Levy at any time after the first Contract Year. The Management Levy will not increase by:
- 20.9.1 more than 0.5% in any one Contract Year;
 - 20.9.2 more than 1.5% in total over the DPS period.

21. PROMOTING TAX COMPLIANCE

- 21.1 This Clause 21 shall apply if the Charges payable under this Dynamic Purchasing System Agreement are or are likely to exceed five (5) million pounds during the Dynamic Purchasing System Period.
- 21.2 If, at any point during the Dynamic Purchasing System Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 21.2.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
 - 21.2.2 promptly provide to the Authority:
 - (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 21.3 In the event that the Supplier fails to comply with this Clause 21 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Dynamic Purchasing System Agreement for material Default.

22. BENCHMARKING – NOT USED

23. FINANCIAL DISTRESS – NOT USED

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

24. STAFF TRANSFER – NOT USED

25. SUPPLY CHAIN RIGHTS AND PROTECTION

25.1 **Appointment of Sub-Contractors**

- 25.1.1 The Authority has consented to the engagement of the Sub-Contractors listed in DPS Schedule 7 (Sub-Contractors).
- 25.1.2 Where during the Dynamic Purchasing System Period the Supplier wishes to enter into a new Sub-Contract or replace a Sub-Contractor, it must obtain the prior written consent of the Authority and the Contracting Authority with whom it has entered into a Contract and shall at the time of requesting such consent, provide the Authority with the information detailed in Clause 25.1.3. The decision of the Authority to consent or not will not be unreasonably withheld or delayed. The Authority and/or the Contracting Authority may reasonably withhold their consent to the appointment of a Sub-Contractor if either of them considers that:
- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to its interests;
 - (b) the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
 - (c) the proposed Sub-Contractor employs unfit persons.
- 25.1.3 The Supplier shall provide the Authority and the Contracting Authority with whom the Supplier has entered into a Contract with the following information in respect of the proposed Sub-Contractor:
- (a) the proposed Sub-Contractor's name, registered office and company registration number;
 - (b) the scope/description of any Goods and/or Services to be provided by the proposed Sub-Contractor;
 - (c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-Contract has been agreed on "arm's-length" terms; and
- 25.1.4 If requested by the Authority and/or the Contracting Authority with whom the Supplier has entered into a Contract, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Clause 25.1.3, the Supplier shall also provide:
- (a) a copy of the proposed Sub-Contract; and
 - (b) any further information reasonably requested by the Authority and/or the Contracting Authority with whom the Supplier has entered into a Contract.
- 25.1.5 The Supplier shall ensure that each new or replacement Sub-Contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Dynamic Purchasing System Agreement;

- (b) a right under CRTPA for the Authority to enforce any provisions under the Sub-Contract which confer a benefit upon the Authority;
- (c) a provision enabling the Authority to enforce the Sub-Contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Authority;
- (e) obligations no less onerous on the Sub-Contractor than those imposed on the Supplier under this Dynamic Purchasing System Agreement in respect of:
 - (i) the data protection requirements set out in Clause 27.4 (Protection of Personal Data);
 - (ii) the FOIA requirements set out in Clause 27.3 (Transparency and Freedom of Information);
 - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 28 (Publicity and Branding);
 - (iv) the keeping of records in respect of the goods and/or services being provided under the Sub-Contract, including the maintenance of Open Book Data; and
 - (v) the conduct of audits set out in Clause 18 (Records, Audit Access and Open Book Data);
- (f) provisions enabling the Supplier to terminate the Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 33 (Authority Termination Rights) and 35 (Consequences of Expiry or Termination) of this Dynamic Purchasing System Agreement;
- (g) a provision restricting the ability of the Sub-Contractor to Sub-Contract all or any part of the provision of the Goods and/or Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Authority;
- (h) NOT USED

25.2 **Supply Chain Protection**

25.2.1 The Supplier shall ensure that all Sub-Contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
- (b) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
- (c) conferring a right to the Authority and any Contracting Authority with whom the Supplier has entered a Contract to publish the

Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

- (d) giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and
- (e) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 25.2.1.

25.2.2 The Supplier shall ensure that all Sub-Contracts with Sub-Contractors who Process Cyber Essentials Data contain provisions no less onerous on the Sub-Contractors than those imposed on the Supplier under this Dynamic Purchasing System Agreement in respect of the Cyber Essentials Scheme under Clause 9.

25.2.3 The Supplier shall pay any undisputed sums which are due from the Supplier to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice.

25.2.4 Any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.

25.2.5 Notwithstanding any provision of Clauses 27.2 (Confidentiality) and 28 (Publicity and Branding) if the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).

25.3 **Termination of Sub-Contracts**

25.3.1 The Authority may require the Supplier to terminate:

- (a) a Sub-Contract where:
 - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in Clause 33 (Authority Termination Rights) except Clause 33.7 (Termination Without Cause); and/or
 - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Goods and/or Services or otherwise; and/or
- (b) a Sub-Contract where there is a Change of Control of the relevant Sub-Contractor, unless:

- (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
- (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

25.3.2 Where the Authority requires the Supplier to terminate a Sub-Contract or a Sub-Contract pursuant to Clause 25.3.1 above, the Supplier shall remain responsible for fulfilling all its obligations under this Dynamic Purchasing System Agreement including the provision of the Goods and/or Services.

25.4 Competitive Terms

25.4.1 If the Authority is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Goods and/or Services, then the Authority may:

- (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
- (b) subject to Clause 25.3 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

25.4.2 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Goods.

25.5 Retention of Legal Obligations

25.5.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 25, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

G. INTELLECTUAL PROPERTY AND INFORMATION

26. INTELLECTUAL PROPERTY RIGHTS

26.1 Allocation of title to IPR

26.1.1 Save as granted under this Dynamic Purchasing System Agreement, neither Party shall acquire any right, title or interest in or to the Intellectual Property Rights of the other Party.

26.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 26.1.1, it shall assign in writing such Intellectual Property Rights

as it has acquired to the other Party on the request of the other Party (whenever made).

26.1.3 Subject to Clause 26.1.4, neither Party shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.

26.1.4 Subject to full compliance with the Branding Guidance, the Supplier shall be entitled to use the Authority's logo exclusively in connection with the provision of the Goods and/or Services during the Dynamic Purchasing System Period and for no other purpose.

26.2 IPR Indemnity

26.2.1 The Supplier shall ensure and procure that the availability, provision and use of the Goods and/or Services and the performance of the Supplier's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.

26.2.2 The Supplier shall, during and after the Dynamic Purchasing System Period, on written demand, indemnify the Authority against all Losses incurred by, awarded against, or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

26.2.3 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:

(a) procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or

(b) replace or modify the relevant item with non-infringing substitutes provided that:

(i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

(ii) the replaced or modified item does not have an adverse effect on any other Goods and/or Services;

(iii) there is no additional cost to the Authority; and

(iv) the terms and conditions of this Dynamic Purchasing System Agreement shall apply to the replaced or modified Goods and/or Services.

26.2.4 If the Supplier elects to procure a licence in accordance with Clause 26.2.3(a) or to modify or replace an item pursuant to Clause 26.2.3(b), but this has not avoided or resolved the IPR Claim, then:

(a) the Authority may terminate this Dynamic Purchasing System Agreement by written notice with immediate effect; and

(b) without prejudice to the indemnity set out in Clause 26.2.2, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

27. PROVISION AND PROTECTION OF INFORMATION

27.1 Provision of Management Information

- 27.1.1 The Supplier shall, at no charge to the Authority, submit to the Authority complete and accurate Management Information in accordance with the provisions of DPS Schedule 9 (Management Information).
- 27.1.2 The Supplier grants the Authority a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to:
- (a) use and to share with any Other Contracting Authority and Relevant Person; and/or
 - (b) publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted),
- any Management Information supplied to the Authority for the Authority's normal operational activities including but not limited to administering this Dynamic Purchasing System Agreement and/or all Contracts, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.
- 27.1.3 The Authority shall in its absolute and sole discretion determine whether any Management Information is exempt from disclosure in accordance with the provisions of the FOIA.
- 27.1.4 The Authority may consult with the Supplier to help with its decision regarding any exemptions under Clause 27.1.3 but, for the purpose of this Dynamic Purchasing System Agreement, the Authority shall have the final decision in its absolute and sole discretion.

27.2 Confidentiality

- 27.2.1 For the purposes of this Clause 27.2, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 27.2.2 Except to the extent set out in this Clause 27.2 or where disclosure is expressly permitted elsewhere in this Dynamic Purchasing System Agreement, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Dynamic Purchasing System Agreement or without obtaining the Disclosing Party's prior written consent;
 - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Dynamic Purchasing System Agreement; and
 - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure

in any form of any of the Disclosing Party's Confidential Information.

27.2.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 27.3 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Dynamic Purchasing System Agreement;
 - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of its resources; or
 - (iii) the conduct of a Central Government Body review in respect of this Dynamic Purchasing System Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;
- (d) such information was in the possession of the Disclosing Party without obligation of confidentiality prior to its disclosure by the information owner;
- (e) such information was obtained from a third party without obligation of confidentiality;
- (f) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Dynamic Purchasing System Agreement or breach of a duty of confidentiality; and
- (g) the information is independently developed without access to the Disclosing Party's Confidential Information.

27.2.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

27.2.5 Subject to Clauses 27.2.2 and 27.2.3, the Supplier may only disclose the Confidential Information of the Authority on a confidential basis to:

- (a) Supplier Personnel who are directly involved in the provision of the Goods and/or Services and need to know the Confidential Information to enable the performance of the Supplier's

obligations under this Dynamic Purchasing System Agreement;
and

- (b) its professional advisers for the purposes of obtaining advice in relation to this Dynamic Purchasing System Agreement.

27.2.6 Where the Supplier discloses the Confidential Information of the Authority pursuant to Clause 27.2.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Dynamic Purchasing System Agreement by the persons to whom disclosure has been made.

27.2.7 The Authority may disclose the Confidential Information of the Supplier:

- (a) to any Central Government Body or Other Contracting Authority on the basis that the information may only be further disclosed to Central Government Bodies or Other Contracting Authorities;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 27.2.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Dynamic Purchasing System Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Dynamic Purchasing System Agreement; or
- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Authority,
- (g) and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 27.2.7.

27.2.8 For the avoidance of doubt, the Confidential Information that the Authority may disclose under Clause 27.2.7 shall include information relating to Contracts, including service levels, pricing information (which includes information on prices tendered in a Call for Competition Procedure, even where such a Call for Competition Procedure does not result in the award of a Contract) and the terms of any Contract may be shared with any Central Government Body or Other Contracting Authority from time to time.

27.2.9 Nothing in this Clause 27.2 shall prevent a Recipient from using any techniques, ideas or Know-How which the Recipient has gained during the performance of this Dynamic Purchasing System Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

27.2.10 In the event that the Supplier fails to comply with Clauses 27.2.2 to 27.2.5, the Authority reserves the right to terminate this Dynamic Purchasing System Agreement for material Default.

27.3 Transparency and Freedom of Information

27.3.1 The Parties acknowledge that

- (a) the Transparency Reports; and
- (b) the content of this Dynamic Purchasing System Agreement, including any changes to this Dynamic Purchasing System Agreement agreed from time to time, except for –
 - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority;

(together the “Transparency Information”) are not Confidential Information.

27.3.2 Notwithstanding any other provision of this Dynamic Purchasing System Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

27.3.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Schedule 22 (Transparency Reports).

27.3.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

27.3.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Dynamic Purchasing System Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

27.3.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to

Clause 27.2.7(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

27.3.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Dynamic Purchasing System Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Authority with a copy of all Information held on behalf of the Authority requested in the Request for Information which is in the Supplier's possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request for Information addressed to the Authority unless authorised in writing to do so by the Authority.

27.3.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Dynamic Purchasing System Agreement) for the purpose of this Dynamic Purchasing System Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

27.4 **Protection of Personal Data**

27.4.1 Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Dynamic Purchasing System Agreement, the Parties acknowledge that the Authority is the Data Controller and that the Supplier is the Data Processor.

27.4.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Dynamic Purchasing System Agreement;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or

unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;

- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Goods and/or Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Dynamic Purchasing System Agreement);
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (i) are aware of and comply with the Supplier's duties under this Clause 27.4.2 and Clause 27.2 (Confidentiality);
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Dynamic Purchasing System Agreement; and
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify the Authority within five (5) Working Days if it receives:
 - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request), a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Authority's obligations under the DPA;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made (as referred to at Clause 27.4.2(e), including by promptly providing:
 - (i) the Authority with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
 - (iii) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and

- (g) if requested by the Authority, provide a written description of the measures that the Supplier has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 27.4.2 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

27.4.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the DPS Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to anywhere outside the European Economic Area, the following provisions shall apply:

- (a) the Supplier shall propose a variation to the Authority which, if it is agreed by the Authority, shall be dealt with in accordance with Clause 19.1 (Variation Procedure) and Clauses 27.4.3(b) to 27.4.3(d);
- (b) the Supplier shall set out in its proposal to the Authority for a Variation, details of the following:
 - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
 - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
 - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
 - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with the DPA;
- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with the Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Dynamic Purchasing System Agreement or a separate data processing agreement between the Parties; and
 - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:

- (A) a direct data processing agreement with the Authority on such terms as may be required by the Authority; or
- (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Authority and the Supplier relating to the relevant Personal Data transfer,

and the Supplier acknowledges that in each case, this may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Authority deems necessary for the purpose of protecting Personal Data.

- 27.4.4 The Supplier shall use its reasonable endeavours to assist the Authority to comply with any obligations under the DPA and shall not perform its obligations under this Dynamic Purchasing System Agreement in such a way as to cause the Authority to breach any of the Authority's obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

28. PUBLICITY AND BRANDING

- 28.1 Subject to Clause 29 (Marketing), the Supplier shall not:

- 28.1.1 make any press announcements or publicise this Dynamic Purchasing System Agreement in any way; or
- 28.1.2 use the Authority's name or brand in any promotion or marketing or announcement of Orders,

without Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed).

- 28.2 Each Party acknowledges to the other that nothing in this Dynamic Purchasing System Agreement either expressly or by implication constitutes an approval and/or endorsement of any products or services of the other Party (including the Goods and/or Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval and/or endorsement.

- 28.3 The Authority shall be entitled to publicise this Dynamic Purchasing System Agreement in accordance with any legal obligation upon the Authority, including any examination of this Dynamic Purchasing System Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

29. MARKETING

- 29.1 The Supplier shall undertake marketing of this Dynamic Purchasing System Agreement and the Goods and/or Services on behalf of the Authority to Other Contracting Authorities in accordance with the provisions of DPS Schedule 11 (Marketing).

- 29.2 The Supplier shall obtain the Authority's Approval prior to publishing any content in relation to this Dynamic Purchasing System Agreement using any media, including on any electronic medium, and the Supplier will ensure that such content is regularly maintained and updated. In the event that the Supplier fails to maintain or update the

content, the Authority may give the Supplier notice to rectify the failure and if the failure is not rectified to the reasonable satisfaction of the Authority within one (1) Month of receipt of such notice, the Authority shall have the right to remove such content itself or require that the Supplier immediately arranges the removal of such content.

H. LIABILITY AND INSURANCE

30. LIABILITY

- 30.1 Neither Party excludes or limits its liability for:
 - 30.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
 - 30.1.2 bribery or Fraud by it or its employees; or
 - 30.1.3 any liability to the extent it cannot be excluded or limited by Law.
- 30.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clause 26.2 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.
- 30.3 Subject to Clauses 30.1 and 30.2, each Party's total aggregate liability in respect of all Losses incurred under or in connection with this Dynamic Purchasing System Agreement as a result of Defaults or Authority Cause (as the case may be) shall in no event exceed:
 - 30.3.1 in relation to any Default or Authority Cause (as the case may be) occurring from the DPS Commencement Date to the end of the first Contract Year, the sum equal to one hundred thousand pounds (£100,000);
 - 30.3.2 in relation to any Default or Authority Cause (as the case may be) occurring in each subsequent Contract Year following the end of the first Contract Year, that commences during the remainder of the Dynamic Purchasing System Period, the sum equal to one hundred thousand pounds (£100,000); and
 - in relation to any Default or Authority Cause occurring in each Contract Year that commences after the end of the Dynamic Purchasing System Period, the sum equal to one hundred thousand pounds (£100,000) in such contract year.
- 30.4 Subject to Clause 30.1, neither Party shall be liable to the other Party for any:
 - 30.4.1 indirect, special or consequential Loss;
 - 30.4.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 30.5 Subject to Clause 30.3, and notwithstanding Clause 30.4, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:
 - 30.5.1 any Management Levy which are due and payable to the Authority;

- 30.5.2 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- 30.5.3 any wasted expenditure or charges;
- 30.5.4 the additional cost of procuring Replacement Goods and/or Services for the remainder of the Dynamic Purchasing System Period, which shall include any incremental costs associated with such Replacement Goods and/or Services above those which would have been payable under this Dynamic Purchasing System Agreement;
- 30.5.5 any compensation or interest paid to a third party by the Authority;
- 30.5.6 any fine, penalty or costs incurred by the Authority pursuant to Law.
- 30.6 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Dynamic Purchasing System Agreement.
- 30.7 NOT USED
- 30.8 For the avoidance of doubt, the Parties acknowledge and agree that this Clause 30 shall not limit the Supplier's liability to a Contracting Authority under any Contract and the Supplier's liability under a Contract shall be as provided for in that Contract only.

31. INSURANCE

- 31.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Dynamic Purchasing System Agreement and any Contract, and shall procure that Subcontractors shall effect and maintain insurances in relation to the performance of their obligations under any Sub-Contract, in accordance with Schedule 14 (Insurance Requirements).
- 31.2 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under this Dynamic Purchasing System Agreement or any Contracts.

I. REMEDIES

32. AUTHORITY REMEDIES

- 32.1 Without prejudice to any other rights or remedies arising under this Dynamic Purchasing System Agreement, including under Clause 33.2 (Termination on Material Default), if the Supplier fails to achieve a KPI Target on two or more occasions within any twelve (12) Month rolling period, the Supplier acknowledges and agrees that the Authority shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:
 - 32.1.1 The Authority shall be entitled to require the Supplier, and the Supplier agrees to prepare and provide to the Authority, an Improvement Plan within ten (10) Working Days of a written request by the Authority for such Improvement Plan. Such Improvement Plan shall be subject to Approval and the Supplier will be required to implement any Approved Improvement Plan, as soon as reasonably practicable.
 - 32.1.2 The Authority shall be entitled to require the Supplier, and the Supplier agrees to attend, within a reasonable time one (1) or more meetings at

the request of the Authority in order to resolve the issues raised by the Authority in its notice to the Supplier requesting such meetings.

32.1.3 The Authority shall be entitled to serve an Improvement Notice on the Supplier and the Supplier shall implement such requirements for improvement as set out in the Improvement Notice.

32.1.4 In the event that the Authority has, in its absolute and sole discretion, invoked one or more of the remedies set out above and the Supplier either:

(a) fails to implement such requirements for improvement as set out in the Improvement Notice; and/or

(b) fails to implement an Improvement Plan Approved by the Authority;

then (without prejudice to any other rights and remedies of termination provided for in this Dynamic Purchasing System Agreement), the Authority shall be entitled to terminate this Dynamic Purchasing System Agreement for material Default.

J. TERMINATION AND SUSPENSION

33. AUTHORITY TERMINATION RIGHTS

33.1 Termination in Relation To Guarantee

33.1.1 Where the Authority has procured a DPS Guarantee from the Supplier under Clause 8.1 (Guarantee), the Authority may terminate this DPS Agreement by issuing a Termination Notice to the Supplier where:

- (a) the DPS Guarantor withdraws the DPS Guarantee for any reason whatsoever;
- (b) the DPS Guarantor is in breach or anticipatory breach of the DPS Guarantee;
- (c) an Insolvency Event occurs in respect of the DPS Guarantor;
- (d) the DPS Guarantee becomes invalid or unenforceable for any reason whatsoever; or
- (e) the Supplier fails to provide the documentation required by Clause 8.1 by the date so specified by the Authority;

and in each case the DPS Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Authority.

33.1.2 Where a Contracting Authority has procured a Contract Guarantee from the Supplier under Clause 8.2 (Guarantee), the Authority may terminate this DPS Agreement by issuing a Termination Notice to the Supplier where:

- (a) the Contract Guarantor withdraws the Contract Guarantee for any reason whatsoever;

- (b) the Contract Guarantor is in breach or anticipatory breach of the Contract Guarantee;
- (c) an Insolvency Event occurs in respect of the Contract Guarantor;
or
- (d) the Contract Guarantee becomes invalid or unenforceable for any reason whatsoever;
- (e) the Supplier fails to provide the documentation required by Clause 8.2 by the date so specified by the Contracting Authority;

and in each case the Contract Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Contracting Authority and/or Authority.

33.2 **Termination on Material Default**

33.2.1 The Authority may terminate this Dynamic Purchasing System Agreement for material Default by issuing a Termination Notice to the Supplier where:

- (a) the Supplier fails to accept a Contract pursuant to paragraph 6.2 of DPS Schedule 5 (Call for Competition Procedure);
- (b) a Contracting Authority terminates a Contract for the Supplier's breach of that Contract;
- (c) an Audit reveals that the Supplier has underpaid an amount equal to or greater than five per cent (5%) of the Management Levy due;
- (d) NOT USED
- (e) NOT USED
- (f) in the event of two or more failures by the Supplier to meet the KPI Targets whether the failures relate to the same or different KPI targets, in any rolling period of three (3) months;
- (g) the Authority expressly reserves the right to terminate this Dynamic Purchasing System Agreement for material Default including pursuant to:
 - (i) Clause 9.4 (Cyber Essentials Scheme Condition)
 - (ii) Clause 19.1.4(b) (Variation Procedure);
 - (iii) Clause 32.1.4 (Authority Remedies);
 - (iv) Clause 27.2.10 (Confidentiality);
 - (v) Clause 40.6.2 (Prevention of Fraud and Bribery);
 - (vi) Clause 36.1.2 (Compliance with the Law);
 - (vii) Clause 41.3 (Conflicts of Interest);
 - (viii) DPS Schedule 9 (Management Information); and/or
 - (ix) anywhere that is stated in this Dynamic Purchasing System Agreement that the Supplier by its act or omission will have committed a material Default;

- (h) the Supplier commits a material Default of any of the following Clauses or DPS Schedules:
 - (i) Clause 7 (Representations and Warranties) except Clause 7.2.6;
 - (ii) Clause 11 (Dynamic Purchasing System Agreement Performance);
 - (iii) NOT USED
 - (iv) Clause 18 (Records, Audit Access and Open Book Data);
 - (v) Clause 20 (Management Levy);
 - (vi) Clause 21 (Promoting Tax Compliance);
 - (vii) Clause 25.2 (Supply Chain Rights and Protection);
 - (viii) Clause 27.1 (Provision of Management Information);
 - (ix) Clause 27.3 (Transparency and Freedom of Information);
 - (x) Clause 27.4 (Protection of Personal Data); and/or
 - (xi) paragraph 1.2 of Part B of DPS Schedule 2 (Goods and/or Services and Key Performance Indicators);
- (i) the representation and warranty given by the Supplier pursuant to Clause 7.2.6 is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable;
- (j) the Supplier commits any material Default which is not, in the reasonable opinion of the Authority, capable of remedy; and/or
- (k) the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority within twenty (20) Working Days, or such other period as may be specified by the Authority, after issue of a written notice from the Authority to the Supplier specifying the remediable Default and requesting it to be remedied in accordance with any instructions of the Authority.

33.3 Termination in Relation to Financial Standing

33.3.1 The Authority may terminate this Dynamic Purchasing System Agreement by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Authority there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

- (a) adversely impacts on the Supplier's ability to supply the Goods and/or Services under this Dynamic Purchasing System Agreement; or
- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Goods and/or Services under this Dynamic Purchasing System Agreement;

33.4 Termination on Insolvency

33.4.1 The Authority may terminate this Dynamic Purchasing System Agreement by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

33.5 Termination on Change of Control

33.5.1 The Supplier shall notify the Authority immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.

33.5.2 The Supplier shall ensure that any notification made pursuant to Clause 33.5.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

33.5.3 The Authority may terminate this Dynamic Purchasing System Agreement under Clause 33.5 by issuing a Termination Notice to the Supplier within six (6) Months of:

(a) being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or

(b) where no notification has been made, the date that the Authority becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

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

33.6 Termination for breach of Regulations

33.6.1 The Authority may terminate this Dynamic Purchasing System Agreement by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).

33.7 Termination Without Cause

33.7.1 The Authority shall have the right to terminate this Dynamic Purchasing System Agreement with effect from at any time following one (1) months after the DPS Commencement Date by giving at least three (3) Months written notice to the Supplier.

33.8 Partial Termination

33.8.1 Where the Authority has the right to terminate this Dynamic Purchasing System Agreement, the Authority is entitled to terminate all or part of this Dynamic Purchasing System Agreement pursuant to this Clause 33.8 provided always that, if the Authority elects to terminate this Dynamic Purchasing System Agreement in part, the parts of this Dynamic Purchasing System Agreement not terminated or suspended can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Dynamic Purchasing System Agreement.

33.8.2 The Parties shall endeavour to agree the effect of any Variation necessitated by a partial termination in accordance with Clause 19.1 (Variation Procedure) including the effect that the partial termination

may have on the on the provision of any other Goods and/or Services and the Supplier shall not be entitled to reject the Variation.

34. SUSPENSION OF SUPPLIER'S APPOINTMENT

- 34.1 If the Authority is entitled to terminate this Dynamic Purchasing System Agreement pursuant to Clause 33 (Authority Termination Rights), the Authority may instead elect in its sole discretion to suspend the Supplier's ability to accept Orders under this Dynamic Purchasing System Agreement by giving notice in writing to the Supplier, and the Supplier agrees that it shall not be entitled to enter into any new Contract during the period specified in the Authority's notice.
- 34.2 Any suspension under Clause 34.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.
- 34.3 The Parties acknowledge that suspension shall not affect the Supplier's obligation to perform any existing Contracts concluded prior to the suspension notice.
- 34.4 If the Authority provides notice to the Supplier in accordance with this Clause 34.1, the Supplier's appointment under this Dynamic Purchasing System Agreement shall be suspended 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.
- 34.5 For the avoidance of doubt, no period of suspension under this Clause 34 shall result in an extension of the Dynamic Purchasing System Period.

35. CONSEQUENCES OF EXPIRY OR TERMINATION

- 35.1 Notwithstanding the service of a notice to terminate this Dynamic Purchasing System Agreement, the Supplier shall continue to fulfil its obligations under this Dynamic Purchasing System Agreement until the date of expiry or termination of this Dynamic Purchasing System Agreement or such other date as required under this Clause 35.
- 35.2 Termination or expiry of this Dynamic Purchasing System 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 the provisions of the Contract and the Supplier shall continue to pay any Management Levy due to the Authority in relation to such Contracts, notwithstanding the termination or expiry of this Dynamic Purchasing System Agreement.
- 35.3 If the Authority terminates this Dynamic Purchasing System Agreement under Clause 33.2 (Termination on Material Default) and then makes other arrangements for the supply of the Goods and/or Services to Contracting Authorities, the Supplier shall indemnify the Authority in full upon demand for the cost of procuring, implementing and operating any alternative or replacement goods and/or services to the Goods and/or Services and no further payments shall be payable by the Authority until the Authority has established and recovered from the Supplier the full amount of such cost.
- 35.4 Within ten (10) Working Days of the date of termination or expiry of this Dynamic Purchasing System Agreement, the Supplier shall return to the Authority any and all of the Authority's Confidential Information in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under this Dynamic Purchasing System Agreement or

under any Law, for a period of up to twelve (12) Months (or such other period as Approved by the Authority and is reasonably necessary for such compliance).

35.5 Termination or expiry of this Dynamic Purchasing System Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Dynamic Purchasing System Agreement prior to termination or expiry.

35.6 Termination or expiry of this Dynamic Purchasing System Agreement shall be without prejudice to the survival of any provision of this Dynamic Purchasing System Agreement which expressly (or by implication) is to be performed or observed notwithstanding termination or expiry of this Dynamic Purchasing System Agreement, including the provisions of:

35.6.1 Clauses 1 (Definitions and Interpretation), 7 (Representations and Warranties), 9 (Cyber Essentials Scheme Condition), 11 (Dynamic Purchasing System Agreement Performance), 18 (Records, Audit Access and Open Book Data), 20 (Management Levy), 26 (Intellectual Property Rights), 27.1 (Provision of Management Information), 27.2 (Confidentiality), 27.3 (Transparency), 27.3 (Transparency and Freedom of Information), 27.4 (Protection of Personal Data), 30 (Liability), 31 (Insurance), 35 (Consequences of Expiry or Termination), 36 (Compliance), 38 (Waiver and Cumulative Remedies), 40 (Prevention of Fraud and Bribery), 42 (Severance), 44 (Entire Agreement), 45 (Third Party Rights), 46 (Notices), 47 (Complaints Handling), 48 (Dispute Resolution) and 49 (Governing Law and Jurisdiction); and

35.6.2 DPS Schedules 2 (Goods and/or Services and Key Performance Indicators), 8 (DPS Management), 9 (Management Information), 10 (Annual Self Audit Certificate), 13 (Guarantee), 14 (Insurance Requirements).

K. MISCELLANEOUS AND GOVERNING LAW

36. COMPLIANCE

36.1 Compliance with Law

36.1.1 The Supplier shall comply with all applicable Law in connection with the performance of this Dynamic Purchasing System Agreement.

36.1.2 In the event that the Supplier or the Supplier Personnel fails to comply with Clause 36.1.1, this shall be deemed to be a material Default and the Authority reserves the right to terminate this Dynamic Purchasing System Agreement by giving notice in writing to the Supplier.

36.2 Equality and Diversity

36.2.1 The Supplier shall:

(a) perform its obligations under this Dynamic Purchasing System Agreement (including those in relation to the provision of the Goods and/or Services) in accordance with:

(i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and

(ii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;

(b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

36.3 Official Secrets Act and Finance Act

36.3.1 The Supplier shall comply with the provisions of:

(a) the Official Secrets Acts 1911 to 1989; and

(b) section 182 of the Finance Act 1989.

37. ASSIGNMENT AND NOVATION

37.1 The Supplier shall not assign, novate, or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Dynamic Purchasing System Agreement or any part of it without Approval.

37.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Dynamic Purchasing System Agreement or any part thereof to:

37.2.1 any Other Contracting Authority; or

37.2.2 any Central Government Body or other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or

37.2.3 any private sector body which substantially performs the functions of the Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 37.2.

37.3 A change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 37.4 affect the validity of this Dynamic Purchasing System Agreement and this Dynamic Purchasing System Agreement shall be binding on any successor body to the Authority.

37.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Dynamic Purchasing System Agreement to a body which is not a Contracting Authority or if a body which is not a Contracting Authority succeeds the Authority (both "**Transferee**" in the rest of this Clause) the right of termination of the Authority in Clause 33.4 (Termination on Insolvency) shall be available to the Supplier in the event of the insolvency of the Transferee (as if the references to Supplier in Clause 33.4 (Termination on Insolvency)) and to Supplier, Dynamic Purchasing System Guarantor or Contract Guarantor in the definition of Insolvency Event were references to the Transferee.

38. WAIVER AND CUMULATIVE REMEDIES

38.1 The rights and remedies under this Dynamic Purchasing System Agreement may be waived only by notice in accordance with Clause 46 (Notices) and in a manner that

expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Dynamic Purchasing System Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise thereof.

- 38.2 Unless otherwise provided in this Dynamic Purchasing System Agreement, rights and remedies under this Dynamic Purchasing System Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

39. RELATIONSHIP OF THE PARTIES

- 39.1 Except as expressly provided otherwise in this Dynamic Purchasing System Agreement, nothing in this Dynamic Purchasing System Agreement, nor any actions taken by the Parties pursuant to this Dynamic Purchasing System Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

40. PREVENTION OF FRAUD AND BRIBERY

- 40.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the DPS Commencement Date:

40.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

40.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- 40.2 The Supplier shall not during the Dynamic Purchasing System Period:

40.2.1 commit a Prohibited Act; and/or

40.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

- 40.3 The Supplier shall during the Dynamic Purchasing System Period:

40.3.1 establish, maintain and enforce policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

40.3.2 require that its Sub-Contractors establish, maintain and enforce the policies and procedures referred to in Clause 40.3.1;

40.3.3 keep appropriate records of its compliance with its obligations under Clause 40.3.1 and make such records available to the Authority on request;

40.3.4 if so required by the Authority, within twenty (20) Working Days of the DPS Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause 40.3 of all persons associated with the Supplier or its Sub-Contractors who are responsible for supplying the Goods and/or Services in connection with this Dynamic

Purchasing System Agreement. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and

- 40.3.5 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 40.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clauses 40.1, 40.2 and 40.3.2, or has reason to believe that it has or any of the Supplier Personnel has:
 - 40.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 40.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 40.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Dynamic Purchasing System Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Dynamic Purchasing System Agreement has committed or attempted to commit a Prohibited Act.
- 40.5 If the Supplier makes a notification to the Authority pursuant to Clause 40.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 18 (Records, Audit Access and Open Book Data).
- 40.6 If the Supplier breaches Clause 40.1, the Authority may by notice:
 - 40.6.1 require the Supplier to remove from the performance of this Dynamic Purchasing System Agreement any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
 - 40.6.2 immediately terminate this Dynamic Purchasing System Agreement for material Default.
- 40.7 Any notice served by the Authority under Clause 40.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Dynamic Purchasing System Agreement shall terminate).

41. CONFLICTS OF INTEREST

- 41.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor the Supplier Personnel are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the Supplier Personnel and the duties owed to the Authority and Other Contracting Authorities under the provisions of this Dynamic Purchasing System Agreement or any Contract.

41.2 The Supplier shall promptly notify and provide full particulars to the Authority or the relevant Other Contracting Authority if such conflict referred to in Clause 41.1 arises or may reasonably be foreseen as arising.

41.3 The Authority reserves the right to terminate this Dynamic Purchasing System Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Dynamic Purchasing System Agreement or any Contract. The action of the Authority pursuant to this Clause 41.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

42. SEVERANCE

42.1 If any provision of this Dynamic Purchasing System Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Dynamic Purchasing System Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Dynamic Purchasing System Agreement shall not be affected.

42.2 In the event that any deemed deletion under Clause 42.1 is so fundamental as to prevent the accomplishment of the purpose of this Dynamic Purchasing System Agreement or materially alters the balance of risks and rewards in this Dynamic Purchasing System Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Dynamic Purchasing System Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Dynamic Purchasing System Agreement and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

42.3 If the Parties are unable to resolve any Dispute arising under this Clause 42 within twenty (20) Working Days of the date of the notice given pursuant to Clause 42.2, this Dynamic Purchasing System Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Dynamic Purchasing System Agreement is terminated pursuant to this Clause 42.3.

43. FURTHER ASSURANCES

43.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Dynamic Purchasing System Agreement.

44. ENTIRE AGREEMENT

44.1 This Dynamic Purchasing System Agreement constitutes the entire agreement between the Parties in respect of the subject matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

44.2 Neither Party has been given, nor entered into this Dynamic Purchasing System Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Dynamic Purchasing System Agreement.

- 44.3 Nothing in this Clause 44 shall exclude any liability in respect of misrepresentations made fraudulently.

45. THIRD PARTY RIGHTS

- 45.1 The provisions of:

45.1.1 Clauses: 4 (Scope of Dynamic Purchasing System Agreement), (Call for Competition Procedure), 6 (Assistance in Related Procurements), 7 (Representations and Warranties), 13 (Guarantee), 16 (Contract Performance Under Dynamic Purchasing System Agreement Performance), 18 (Records, Audit Access and Open Book Data), 27.4 (Protection of Personal Data), 31 (Insurance), 36.2 (Equality and Diversity) and 45 (Third Party Rights); and

45.1.2 DPS Schedules 5 (Call for Competition Procedure), 13 (Guarantee), 14 (Insurance Requirements)

(together “**Third Party Provisions**”) confer benefits on persons named in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

- 45.2 Subject to Clause 45.1, a person who is not Party to this Dynamic Purchasing System Agreement has no right to enforce any term of this Dynamic Purchasing System Agreement under the CRTPA but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA.

- 45.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without Approval, which may, if given, be given on and subject to such terms as the Authority may determine.

- 45.4 Any amendments or modifications to this Dynamic Purchasing System Agreement may be made, and any rights created under Clause 45.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

- 45.5 The Authority may act as agent and trustee for each Third Party Beneficiary and/or enforce on behalf of that Third Party Beneficiary any Third Party Provision and/or recover any Loss suffered by that Third Party Beneficiary in connection with a breach of any Third Party Provision.

46. NOTICES

- 46.1 Except as otherwise expressly provided within this Dynamic Purchasing System Agreement, any notices issued under this Dynamic Purchasing System Agreement must be in writing. For the purpose of this Clause 46, an e-mail is accepted as being “in writing”.

- 46.2 Subject to Clause 46.3, the following table sets out the method by which notices may be served under this Dynamic Purchasing System Agreement and the respective deemed time and proof of service:

Manner of delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clause 46.3)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any

		error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

46.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 46.2 within twenty four (24) hours of transmission of the email:

46.3.1 any Termination Notice under Clause 33 (Authority Termination Rights), including in respect of partial termination;

46.3.2 any notice in respect of:

- (a) Suspension of Supplier's appointment (Clause 34)
- (b) Waiver (Clause 38);
- (c) Default or Authority Cause; and

46.3.3 any Dispute Notice.

46.4 Failure to send any original notice in accordance with Clause 46.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 46.2) or, if earlier, the time of response or acknowledgement by the receiving Party to the email attaching the notice.

46.5 This Clause 46 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under DPS Schedule 18 (Dispute Resolution Procedure)).

46.6 For the purposes of this Clause 46, the address of each Party shall be:

46.6.1 For the Authority:

Crown Commercial Service
9th Floor
The Capital
Old Hall Street

Liverpool
L3 9PP

For the attention of: CCS

46.6.2 For the Supplier:

As stated within the RM3814 Vehicle Conversions SQ.

46.7 Either Party may change its address for service by serving a notice in accordance with this Clause 46.

46.8 This Clause 46 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure)

47. COMPLAINTS HANDLING

47.1 Either Party shall notify the other Party of any Complaints made by Other Contracting Authorities, which are not resolved by operation of the Supplier's usual complaints handling procedure within five (5) Working Days of becoming aware of that Complaint and, if the Supplier is the Party providing the notice, such notice shall contain full details of the Supplier's plans to resolve such Complaint.

47.2 Without prejudice to any rights and remedies that a complainant may have at Law (including under this Dynamic Purchasing System Agreement and/or a Contract), and without prejudice to any obligation of the Supplier to take remedial action under the provisions of this Dynamic Purchasing System Agreement and/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.

47.3 Within two (2) Working Days of a request by the Authority, the Supplier shall provide full details of a Complaint to the Authority, including details of steps taken to achieve its resolution.

48. DISPUTE RESOLUTION

48.1 The Parties shall resolve Disputes arising out of or in connection with this Dynamic Purchasing System Agreement in accordance with the Dispute Resolution Procedure.

48.2 The Supplier shall continue to provide the Goods in accordance with the terms of this Dynamic Purchasing System Agreement until a Dispute has been resolved.

49. GOVERNING LAW AND JURISDICTION

49.1 This Dynamic Purchasing System Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

49.2 Subject to Clause 48 (Dispute Resolution) and DPS Schedule 18 (Dispute Resolution Procedure) (including the Authority's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Dynamic Purchasing System Agreement or its subject matter or formation.

DPS SCHEDULE 1: DEFINITIONS

1. In accordance with Clause 1.1 (Definitions), in this Dynamic Purchasing System Agreement including its Recitals the following expressions shall have the following meanings:

"Affiliates"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Approval"	means the prior written consent of the Authority and "Approve" and "Approved" shall be construed accordingly;
"Audit"	means an audit carried out pursuant to Clause 18 (Records, Audit Access and Open Book Data);
"Audit Report"	means a report summarising the testing completed and the actions arising following an Audit;
"Auditor"	means the Authority, and/or Other Contracting Authority who is a party to a Contract, and/or the National Audit Office and/or any auditor appointed by the Audit Commission, and /or the representatives of any of them;
"Authority"	means THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
"Authority Cause"	means any breach of the obligations of the Authority (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Authority in connection with or in relation to this Dynamic Purchasing System Agreement or the subject matter of this Dynamic Purchasing System Agreement and in respect of which the Authority is liable to the Supplier;
"Authority Personal Data"	means any Personal Data supplied for the purposes of or in connection with this Dynamic Purchasing System Agreement by the Authority to the Supplier;
"Authority Representative"	means the representative appointed by the Authority from time to time in relation to this Dynamic Purchasing System Agreement;
"Authority's Confidential Information"	means all Authority Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know How, personnel, and suppliers of the Authority and/or Other Contracting Authorities, including all IPR, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably to be

	considered to be confidential;
"Branding Guidance"	means the Authority's guidance in relation to the use of branding available at https://www.gov.uk/guidance/g-cloud-suppliers-guide
"Call for Competition Procedure"	means the process for awarding a Contract pursuant to Clause (Call for Competition Procedure) and DPS Schedule 5 (Call for Competition Procedure);
"Contract"	means a legally binding agreement (entered into pursuant to the provisions of this Dynamic Purchasing System Agreement) for the provision of the Goods and/or Services made between a Contracting Authority and the Supplier pursuant to DPS Schedule 5 (Call for Competition Procedure);
"Contract Guarantee"	means a deed of guarantee in favour of a Contracting Authority in the form set out in DPS Schedule 13 (Guarantee) and granted pursuant to Clause 4 of the Template Contract terms;
"Contract Guarantor"	means the person acceptable to a Contracting Authority to give a Contract Guarantee;
"CEDR"	means the Centre for Effective Dispute Resolution;
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
"Change in Law"	means any change in Law which impacts on the supply of the Goods and/or Services and performance of the Template Contract Terms which comes into force after the DPS Commencement Date;
"Change of Control"	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Charges"	means the charges raised under or in connection with a Contract from time to time;
"Comparable Supply"	means the supply of Goods and/or Services to another customer of the Supplier that are the same or similar to the Goods and/or Services;
"Complaint"	means any formal written complaint raised by a Contracting Authority in relation to the performance of this Dynamic Purchasing System Agreement or any Contract in

	accordance with Clause 47 (Complaints Handling);
"Confidential Information"	means the Authority's Confidential Information and/or the Supplier's Confidential Information, as the context requires;
"Contract Year"	means a consecutive period of twelve (12) Months commencing on the DPS Commencement Date or each anniversary thereof;
"Contracting Authorities"	means the bodies listed in the OJEU Notice and "Contracting Authority" shall be construed accordingly;
"Control"	means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;
"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Crown Body"	means any department, office or executive agency of the Crown;
"CRTPA"	means the Contracts (Rights of Third Parties) Act 1999;
"Cyber Essentials Scheme"	means the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats. Details of the Cyber Essentials Scheme can be found here: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview
"Cyber Essentials Scheme Basic Certificate"	means the certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;
"Cyber Essentials Scheme Data"	means sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme;
"Data Controller"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Processor"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Protection Legislation or "DPA""	means the Data Protection Act 1998, as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by

	the Information Commissioner or relevant Government department in relation to such legislation;
"Data Subject"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Subject Access Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
"Default"	means any breach of the obligations of the Supplier (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Supplier or the Supplier Personnel in connection with or in relation to this Dynamic Purchasing System Agreement or the subject matter of this Dynamic Purchasing System Agreement and in respect of which the Supplier is liable to the Authority;
"Disclosing Party"	means a Party which discloses or makes available directly or indirectly its Confidential Information to the Recipient;
"Dispute"	means any dispute, difference or question of interpretation arising out of or in connection with this Dynamic Purchasing System Agreement, including any dispute, difference or question of interpretation relating to the Goods and/or Services, failure to agree in accordance with the procedure for variations in Clause 16.1(Variation Procedure) or any matter where this Dynamic Purchasing System Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in DPS Schedule 18 (Dispute Resolution);
"DOTAS"	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
"DPA"	means the Data Protection Act 1998 as amended from time to time;

"Due Diligence Information"	means any information supplied to the Supplier by or on behalf of the Authority prior to the DPS Commencement Date;
"Dynamic Purchasing System" or "DPS"	means the arrangements established by the Authority for the provision of the Goods to Contracting Authorities by suppliers (including the Supplier) pursuant to the OJEU Notice;
"Dynamic Purchasing System Agreement"	means this agreement consisting of the Clauses together with the DPS Schedules and any appendices and annexes to the same;
Dynamic Purchasing System Period"	means the period from the DPS Commencement Date until the expiry (as set out in Clause 10) or earlier termination of this Dynamic Purchasing System Agreement;
"DPS Schedules"	means the schedules to this Dynamic Purchasing System Agreement;
"DPS Suppliers"	means the suppliers (including the Supplier) admitted under this Dynamic Purchasing System Agreement or agreements on the same or similar terms to this Dynamic Purchasing System Agreement as part of the DPS;
"Environmental Information Regulations or EIRs"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
"Equivalent Goods and/or Services"	means goods and/or services which the Supplier can supply which are the same or similar to the Goods and/or Services;
"FOIA"	means the Freedom of Information Act 2000 as amended from time to time 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;
"Fraud"	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
"Competition Award Criteria"	means the award criteria set out in Part B of DPS Schedule 6 (Award Criteria);
"Competition Procedure"	means the Call for Competition procedure described in paragraph 2 of DPS Schedule 5 (Call for Competition Procedure);
"General Anti-Abuse Rule"	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to

	counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"General Change in Law"	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Goods"	means the goods described in DPS Schedule 2 (Goods and/or Services and Key Performance Indicators) which the Supplier shall make available to Contracting Authorities;
"Goods and/or Services Requirements"	means the requirements of the Authority or any other Contracting Authority (as appropriate) for the Goods and/or Services from time to time;
"Government"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"Holding Company"	has the meaning given to it in section 1159 of the Companies Act 2006;
"Improvement Plan"	means the plan required by the Authority from the Supplier which shall detail how the Supplier will improve the provision of the Goods and/or Services pursuant to Clause 32.1.1 (Authority Remedies);
"Improvement Notice"	means the notice issued by the Authority to the Supplier pursuant to Clause 32.1.3 (Authority Remedies) which will detail how the Supplier shall improve the provision of the Goods and/or Services;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;
"Insolvency Event"	means, in respect of the Supplier or Dynamic Purchasing System Guarantor or Contract Guarantor (as applicable): <ul style="list-style-type: none"> a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or b) a shareholders' meeting is convened for the purpose

of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

- c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- h) where the Supplier or Dynamic Purchasing System Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
- i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;

**"Intellectual
Property Rights"
or "IPR"**

means:

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- c) all other rights having equivalent or similar effect in any country or jurisdiction;

"Sub-Contract"

means each Sub-Contract with a Sub-Contractor;

"Sub-Contractor"	means any Sub-Contractor which is listed in DPS Schedule 7 (Sub-Contractors), that in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Goods and/or Services;
"IPR Claim"	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Dynamic Purchasing System Agreement;
"Key Performance Indicators" or "KPIs"	means the performance measurements and targets set out in Part B of DPS Schedule 2 (Goods and/or Services and Key Performance Indicators);
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the other Party's possession before the DPS Commencement Date;
"KPI Target"	means the acceptable performance level for a KPI as set out in relation to each KPI;
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
"Legacy Goods and/or Services"	means goods and/or services similar to the New Goods and/or Services and/or goods and/or services which interface with or are intended to interface with or be replaced by the New Goods and/or Services;
"Losses"	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation on otherwise and "Loss" shall be interpreted accordingly;
"Man Day"	means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Man Hours"	means the hours spent by the Supplier Personnel properly working on the provision of the Goods and/or Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
"Management"	means the sum payable by the Supplier to the Authority

Levy"	being an amount equal to (0.5%) of all Charges for the Goods and/or Services invoiced to the Contracting Authorities by the Supplier (net of VAT) in each Month throughout the Dynamic Purchasing System Period and thereafter until the expiry or earlier termination of all Contracts entered pursuant to this Dynamic Purchasing System Agreement;
"Management Information" or "MI"	means the management information specified in DPS Schedule 9 (Management Information);
"MI Failure"	means when an MI report: <ul style="list-style-type: none"> a) contains any material errors or material omissions or a missing mandatory field; or b) is submitted using an incorrect MI reporting Template; or
"Minimum Standards of Reliability"	means the minimum standards of reliability as set out in the OJEU Notice;
"MI Report"	means a report containing Management Information submitted to the Authority in accordance with DPS Schedule 9 (Management Information);
"MI Reporting Template"	means the form of report set out in the Annex to DPS Schedule 9 (Management Information) setting out the information the Supplier is required to supply to the Authority;
"Ministry of Justice Code"	means the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 as amended from time to time;
"MISO"	means 'Management Information System Online'. An online portal located at https://miso.ccs.cabinetoffice.gov.uk provided by the Authority for collection and receipt of Management Information;
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;
"New Goods and/or Services"	means goods and/or services which a Contracting Authority wishes to procure from a third party which are the same or similar to the Goods and/or Services;
"Nil Return"	has the meaning given to it in paragraph 3.3 of DPS Schedule 9 (Management Information);
"Occasion of Tax Non –Compliance"	means where: <ul style="list-style-type: none"> a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> i) a Relevant Tax Authority successfully challenging

the Supplier under the General Anti-Abuse Rule or the Halifax abuse principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax abuse principle;

- ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
- b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the DPS Commencement Date or to a civil penalty for fraud or evasion;

"OJEU Notice"

has the meaning given to it in Recital A to this Dynamic Purchasing System Agreement;

"Open Book Data"

means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the Dynamic Purchasing System Period and term of any Contracts, including details and all assumptions relating to:

- a) the Supplier's Costs broken down against each Good and/or Service and/or deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all goods and/or services;
- b) operating expenditure relating to the provision of the Goods and/or Services including an analysis showing:
 - i) the unit costs and quantity of Goods and any other consumables and bought-in goods and services;
 - ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
 - iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin;
- c) Overheads;
- d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- e) the Supplier Profit achieved over the Dynamic

	Purchasing System Period and term of any Contracts and on an annual basis;
	<ul style="list-style-type: none"> f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier; g) an explanation of the type and value of risk and contingencies associated with the provision of the Goods and/or Services, including the amount of money attributed to each risk and/or contingency; and h) the actual Costs profile for each Service Period under any Contracts;
"Order"	means an order for the provision of the Goods and/or Services placed by a Contracting Authority with the Supplier under a Contract;
"Other Contracting Authorities"	means all Contracting Authorities except the Authority and "Other Contracting Authority" shall be construed accordingly;
"Overhead"	means those amounts which are intended to recover a proportion of the Supplier's or the Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";
"Party"	means the Authority or the Supplier and "Parties" shall mean both of them;
"Personal Data"	has the meaning given to it in the Data Protection Act 1998 as amended from time to time;
"SQ"	has the meaning given to it in Recital B of this Dynamic Purchasing System Agreement;
"SQ Response"	has the meaning given to it in Recital B of this Dynamic Purchasing System Agreement;
"Processing"	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Dynamic Purchasing System Agreement, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
"Prohibited Act"	<p>means any of the following:</p> <ul style="list-style-type: none"> a) to directly or indirectly offer, promise or give any person working for or engaged by a Contracting Authority or any other public body a financial or other advantage to: <ul style="list-style-type: none"> 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; or
c)	committing any offence:
	i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
	ii) under legislation or common law concerning fraudulent acts; or
	iii) defrauding, attempting to defraud or conspiring to defraud a Contracting Authority or other public body; or
	iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
"Recipient"	mean the Party which receives or obtains directly or indirectly Confidential Information from the Disclosing Party;
"Regulations"	means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 and/or the Procurement (Scotland) Regulations 2016 (as the context requires) as amended from time to time;
"Relevant Person"	means any employee, agent, servant, or representative of the Authority, or of any Other Contracting Authority or other public body;
"Relevant Requirements"	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Relevant Supplier"	means a third party bidding to provide New Goods and/or Services;
"Replacement Goods and/or Services"	means any goods and/or services which are substantially similar to any of the Goods and/or Services and which are received in substitution for the Goods and/or Services following the expiry or termination of this Dynamic Purchasing System Agreement;
"Replacement Supplier"	means any third party provider of Replacement Goods and/or Services appointed by or at the direction of the

	Authority from time to time;
"Reporting Date"	means the 7th day of each Month following the Month to which the relevant Management Information relates, or such other date as may be agreed between the Parties;
"Request for Information"	means a request for information relating to this Dynamic Purchasing System Agreement or the provision of the Goods and/or Services or an apparent request for such information under the FOIA or the EIRs;
"Restricted Countries"	means a country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;
"Self Audit Certificate"	means the certificate in the form as set out in DPS Schedule 10 (Annual Self Audit Certificate) to be provided to the Authority in accordance with Clause 18 (Records, Audit Access and Open Book Data);
"Service Period"	has the meaning given to it in DPS Schedule 4 (Template Order Form and Template Contract Terms) as refined by a Contracting Authority in a Contract between that Contracting Authority and the Supplier;
"Services"	means the services described in DPS Schedule 2 (Goods and Key Performance Indicators) which the Supplier shall make available to Contracting Authorities;
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
"Standards"	means: <ul style="list-style-type: none"> a) any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; b) any standards detailed in the specification in DPS Schedule 2 (Goods and/or Services and Key Performance Indicators); c) any Standards detailed by a Contracting Authority in a Contract following a Call for Competition Procedure; d) any relevant Government codes of practice and guidance applicable from time to time.
"Statement of Requirements"	means a statement issued by the Authority or any Other Contracting Authority detailing its Goods and/or Services Requirements issued in accordance with the Call for

	Competition Procedure;
"Sub-Contract"	<p>means any contract or agreement (or proposed contract or agreement) to which a third party:</p> <p>(a) provides the Goods and/or Services (or any part of them);</p> <p>(b) provides facilities or services necessary for the provision of the Goods and/or Services (or any part of them); and/or</p> <p>(c) is responsible for the management, direction or control of the provision of the Goods and/or Services (or any part of them);</p>
"Sub-Contractor"	means any person other than the Supplier who is a party to a Sub-Contract and the servants or agents of that person;
"Supplier"	means the person, firm or company stated in the preamble to this Dynamic Purchasing System Agreement;
"Supplier Action Plan"	means a document, maintained by the Authority, capturing information about the relationship between the Parties including, but not limited to strategic objectives, actions, initiatives, communication channels, risks and supplier performance;
"Supplier Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of its obligations under this Dynamic Purchasing System Agreement or any Contracts;
"Supplier Profit"	means, in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions (as defined in Contract Schedule 1 (Definitions)) and total Costs (in nominal cash flow terms) in respect of any Contracts for the relevant period;
"Supplier Profit Margin"	means, in relation to a period, the Supplier Profit for the relevant period divided by the total Charges over the same period in respect of any Contracts and expressed as a percentage;
"Supplier Representative"	means the representative appointed by the Supplier from time to time in relation to this Dynamic Purchasing System Agreement;
"Supplier's Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
"Template"	means the template terms and conditions in Annex 2 to DPS Schedule 4 (Template Order Form and Template

Contract Terms"	Contract terms);
"Template Order Form"	means the template form in Annex 1 to DPS Schedule 4 (Template Order Form and Template Contract terms);
"Termination Notice"	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive;
"Variation"	has the meaning given to it in Clause 19.1.1 (Variation Procedure);
"Variation Form"	means the form that will be completed and signed by the Parties to effect a Variation which shall be in the form set out in DPS Schedule 19 (Variation Form);
"Variation Procedure"	means the procedure for carrying out a Variation as set out in Clause 19.1 (Variation Procedure);
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Working Days"	means any day other than a Saturday, Sunday or public holiday in England and Wales.

DPS SCHEDULE 2: GOODS AND/OR SERVICES AND KEY PERFORMANCE INDICATORS

PART A – GOODS AND/OR SERVICES

1. GENERAL

- 1.1 The purpose of this Part A of DPS Schedule 2 (Goods and/or Services and Key Performance Indicators) is to lay down the characteristics of the Goods and/or Services that the Supplier will be required to make available to all Contracting Authorities under this Dynamic Purchasing System Agreement (including, if applicable, in each Lot) together with any specific Standards applicable to the Goods and/or Services.
- 1.2 The Goods and/or Services and any Standards set out in paragraph 2 below may be refined (to the extent permitted and set out in DPS Schedule 5 (Call for Competition Procedure)) by a Contracting Authority during a Call for Competition Procedure to reflect its Goods and/or Services Requirements for entering a particular Contract.

2. SPECIFICATION

N.B. The Specification can be viewed in the Customer Needs document which forms part of the RM3814 Vehicle Conversions bid pack. The Specification will be inserted in to this DPS Schedule 2: Good and/or Services and Key Performance Indicators following ‘appointment’ to the DPS only.

PART B – KEY PERFORMANCE INDICATORS

1. GENERAL

- 1.1 The purpose of this Part B is to set out the KPIs by which the Supplier's overall performance under this Dynamic Purchasing System Agreement shall be monitored and managed. The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Dynamic Purchasing System Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier in accordance with Clause 19.1 (Variation Procedure).
- 1.2 The Supplier shall comply with all its obligations related to KPIs set out in this Dynamic Purchasing System Agreement including DPS Schedule 8 (DPS Management) and shall use all reasonable endeavours to meet the KPI Targets identified in the table below.
- 1.3 The KPIs from which performance by the Supplier of this Dynamic Purchasing System Agreement will be reported against are set out below:

Key Performance Indicator (KPI)	KPI Target	Measured by
1. DPS MANAGEMENT		
1.1 MI returns: All MI returns, reporting spend under the DPS, to be returned to CCS; MI can be submitted up to and including the 7th day of each month	100%	Confirmation of receipt and time of receipt by the Authority (as evidenced within the Authority's data warehouse (MISO) system)
1.2 All undisputed invoices to be paid within 30 calendar days of issue	100%	Confirmation of receipt and time of receipt by the Authority (as evidenced within the Authority's CODA system)
1.3 Supplier self-audit certificate (DPS Schedule 10) to be issued to the Authority in accordance with the Dynamic Purchasing System Agreement	100%	Confirmation of receipt and time of receipt by the Authority
1.4 Actions identified in an Audit Report to be delivered by the dates set out in the Audit Report	100%	Confirmation by the Authority of completion of the actions by the dates identified in the

		Audit Report
1.5 Supplier to report to CCS annually on all competitions in which they have participated; report to include competition date, customer, brief description and whether supplier was successful or not.	100%	Confirmation of receipt by the Authority
1.6 Supplier to maintain accurate contact information for both the Authority and Contracting Authority.	100%	Confirmation by Supplier that they have kept the Authority up to date with any key contact personal changes. Confirmation by the Authority that no issues have arisen resulting from inaccurate/out of date Supplier contact information

DPS SCHEDULE 3: DPS PRICES AND CHARGING STRUCTURE

1. The Dynamic Purchasing System Prices and Charging Structure shall be determined by the Contacting Authority at Call for Competition stage.

ANNEX 1 – NOT USED

ANNEX 2 – NOT USED

ANNEX 3 – NOT USED

DPS SCHEDULE 4: TEMPLATE ORDER FORM AND TEMPLATE CONTRACT TERMS

N.B. The Order Form and Contract Terms can be viewed as part of the RM3814 Vehicle Conversions bid pack and will be inserted in to this DPS Schedule 4: Template Order Form and Template Contract Terms following 'appointment' to the DPS only.

ANNEX 2: NOT USED

DPS SCHEDULE 5: CALL FOR COMPETITION PROCEDURE

1. AWARD PROCEDURE

- 1.1 If the Authority or any Other Contracting Authority decides to source the Goods and/or Services through this Dynamic Purchasing System Agreement then it will award its Goods and/or Services Requirements in accordance with the procedure in this DPS Schedule 5 (Call for Competition Procedure) and the requirements of the Regulations and the Guidance. For the purposes of this DPS Schedule 5, “**Guidance**” shall mean any guidance issued or updated by the Authority from time to time in relation to the Regulations.

2. CALL FOR COMPETITION PROCEDURE

Contracting Authority’s Obligations

- 2.1 Any Contracting Authority awarding a Contract under this Dynamic Purchasing System Agreement must do so through the Call for Competition Procedure set out below, The Contracting Authority shall:
- 2.1.1 develop a Statement of Requirements;
 - 2.1.2 amend or refine the Template Contract Form and Template Contract Terms to reflect its Statement of Requirements only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
 - 2.1.3 invite tenders by conducting a Call for Competition Procedure for its Statement of Requirements in accordance with the Regulations and Guidance and in particular:
 - (a) if an Electronic Reverse Auction (as defined in paragraph 3 below) is to be held, the Contracting Authority shall notify the DPS Suppliers identified in accordance with paragraph 2.1.1 and shall conduct the Call for Competition Procedure in accordance with the procedures set out in paragraph 3.3; or
 - (b) if an Electronic Reverse Auction is not used, the Contracting Authority shall:
 - (i) invite the DPS Suppliers to submit a tender in writing for each proposed Contract to be awarded by giving written notice by email to the relevant Supplier Representative of each DPS Supplier;
 - (ii) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the proposed Contract and the time needed to submit tenders; and
 - (iii) keep each tender confidential until the time limit set out for the return of tenders has expired.
 - 2.1.4 apply the Competition Award Criteria to the DPS Suppliers' compliant tenders submitted through the Call for Competition Procedure as the basis of its decision to award a Contract for its Statement of Requirements;

- 2.1.5 on the basis set out above, award its Contract to the successful DPS Supplier in accordance with paragraph 6 which Contract shall:
- (a) state the Goods and/or Services Requirements;
 - (b) state the tender submitted by the successful DPS Supplier;
 - (c) state the charges payable for the Goods and/or Services Requirements in accordance with the tender submitted by the successful DPS Supplier; and
 - (d) incorporate the Template Contract Form and Template Contract Terms (as may be amended or refined by the Contracting Authority in accordance with paragraph 2.1.2 above) applicable to the Goods and/or Services,
- 2.1.6 provide unsuccessful DPS Suppliers with written feedback in relation to the reasons why their tenders were unsuccessful.

The Supplier's Obligations

2.2 The Supplier shall in writing, by the time and date specified by the Contracting Authority following an invitation to tender pursuant to paragraph 2.1.3 above, provide the Contracting Authority with either:

- 2.2.1 a statement to the effect that it does not wish to tender in relation to the relevant Statement of Requirements; or
- 2.2.2 the full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Supplier submits such a tender, it should include, as a minimum:
 - (a) an email response subject line to comprise unique reference number and Supplier name, so as to clearly identify the Supplier;
 - (b) a brief summary, in the email (followed by a confirmation letter), stating that the Supplier is bidding for the Statement of Requirements;
 - (c) a proposal covering the Goods and/or Services Requirements;
- 2.2.3 The Supplier agrees that:
 - (a) all tenders submitted by the Supplier in relation to a Call for Competition Procedure held pursuant to this paragraph 2 shall remain open for acceptance by the Contracting Authority for ninety (90) Working Days (or such other period specified in the invitation to tender issued by the relevant Contracting Authority in accordance with the Call for Competition Procedure); and
 - (b) all tenders submitted by the Supplier are made and will be made in good faith and that the Supplier has not fixed or adjusted and will not fix or adjust the price of the tender by or in accordance with any agreement or arrangement with any other person. The Supplier certifies that it has not and undertakes that it will not:
 - (i) communicate to any person other than the person inviting these tenders the amount or approximate amount of the tender, except where the disclosure, in confidence, of the

approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and

- (ii) enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.

3. E-AUCTIONS

- 3.1 The Contracting Authority shall be entitled to formulate its Statement of Requirements in accordance with paragraph 2 above and invite the Supplier to a Call for Competition Procedure including a reverse auction in accordance with the rules laid down by the Contracting Authority and the Regulations.
- 3.2 The Supplier acknowledges that Contracting Authorities may wish to undertake an electronic reverse auction, where DPS Suppliers compete in real time by bidding as the auction unfolds ("**Electronic Reverse Auction**").
- 3.3 Before undertaking an Electronic Reverse Auction, the relevant Contracting Authority will make an initial full evaluation of all tenders received in response to its Statement of Requirements. The Contracting Authority will then invite to the Electronic Reverse Auction only those tenders that are admissible in accordance with the Regulations. The invitation shall be accompanied by the outcome of the full initial evaluation of the relevant tenders.
- 3.4 The Contracting Authority will inform the DPS Suppliers of the specification for the Electronic Reverse Auction which shall include:
 - 3.4.1 the information to be provided at auction, which must be expressed in figures or percentages of the specified quantifiable features;
 - 3.4.2 the mathematical formula to be used to determine automatic ranking of bids on the basis of new prices and/or new values submitted;
 - 3.4.3 any limits on the values which may be submitted;
 - 3.4.4 a description of any information which will be made available to DPS Suppliers in the course of the Electronic Reverse Auction, and when it will be made available to them;
 - 3.4.5 the conditions under which DPS Suppliers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
 - 3.4.6 relevant information concerning the electronic equipment used and the arrangements and technical specification for connection;
 - 3.4.7 subject to paragraph 3.5, the date and time of the start of the Electronic Reverse Auction; and
 - 3.4.8 details of when and how the Electronic Reverse Auction will close.
- 3.5 The Electronic Reverse Auction may not start sooner than two (2) Working Days after the date on which the specification for the Electronic Reverse Auction has been issued.
- 3.6 Throughout each phase of the Electronic Reverse Auction the Contracting Authority will communicate to all DPS Suppliers sufficient information to enable them to ascertain their relative ranking.

3.7 The Supplier acknowledges and agrees that:

- 3.7.1 the Contracting Authority and its officers, servants, agents, group companies, assignees and customers (including the Authority) do not guarantee that its access to the Electronic Reverse Auction will be uninterrupted or error-free;
- 3.7.2 its access to the Electronic Reverse Auction may occasionally be restricted to allow for repairs or maintenance; and
- 3.7.3 it will comply with all such rules that may be imposed by the Contracting Authority in relation to the operation of the Electronic Reverse Auction.

3.8 The Contracting Authority will close the Electronic Reverse Auction on the basis of:

- 3.8.1 a date and time fixed in advance;
- 3.8.2 when no new prices or values meeting the minimum differences required pursuant to paragraph 3.4.5 have been received within the prescribed elapsed time period; or
- 3.8.3 when all the phases have been completed.

4. NO AWARD

4.1 Notwithstanding the fact that the Contracting Authority has followed a procedure as set out above in clause 2 (Call for Competition Procedure), the Contracting Authority shall be entitled at all times to decline to make an award for its Goods and/or Services Requirements. Nothing in this Dynamic Purchasing System Agreement shall oblige any Contracting Authority to award any Contract.

5. RESPONSIBILITY FOR AWARDS

5.1 The Supplier acknowledges that each Contracting Authority is independently responsible for the conduct of its award of Contracts under this Dynamic Purchasing System Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:

- 5.1.1 the conduct of Other Contracting Authorities in relation to this Dynamic Purchasing System Agreement; or
- 5.1.2 the performance or non-performance of any Contracts between the Supplier and Other Contracting Authorities entered into pursuant to this Dynamic Purchasing System Agreement.

6. CONTRACT AWARD PROCEDURE

6.1 Subject to paragraphs 1 to 5 above, a Contracting Authority may award a Contract with the Supplier by sending (including electronically) a signed order form substantially in the form (as may be amended or refined by the Contracting Authority in accordance with paragraph 2.1.2 above) of the Template Order Form set out in DPS Schedule 4 (Template Order Form and Template Contract Terms). The Parties agree that any document or communication (including any document or communication in the apparent form of a Contract) which is not as described in this paragraph 6 shall not constitute a Contract under this Dynamic Purchasing System Agreement.

6.2 On receipt of an order form as described in paragraph 6.1 from a Contracting Authority the Supplier shall accept the Contract by promptly signing and returning

(including by electronic means) a copy of the order form to the Contracting Authority concerned.

- 6.3 On receipt of the signed order form from the Supplier, the Contracting Authority shall send (including by electronic means) a written notice of receipt to the Supplier within two (2) Working Days and a Contract shall be formed.

DPS SCHEDULE 6: AWARD CRITERIA

1. GENERAL

- 1.1 This DPS Schedule 6 is designed to assist Contracting Authorities seeking to award a Contract through a Competition Procedure in accordance with the Call for Competition Procedure.
- 1.2 A Contract shall be awarded on the basis of most economically advantageous tender ("MEAT") from the point of view of the Contracting Authority.
- 1.3 This DPS Schedule 6 includes details of the evaluation criteria and any weightings that will be applied to that criteria.

PART A: NOT USED

PART B – CALL FOR COMPETITION

1. The following criteria shall be applied to the Goods and/or Services set out in the Suppliers' compliant tenders submitted through the Competition Procedure:

CRITERIA NUMBER	CRITERIA - RANKED IN ORDER OF IMPORTANCE	PERCENTAGE WEIGHTINGS (OR RANK ORDER OF IMPORTANCE WHERE APPLICABLE) - TO BE SET BY THE CONTRACTING BODY CONDUCTING THE COMPETITION
1	PRICE (LIFE CYCLE COSTS, COST EFFECTIVENESS & PRICE; PRICE AND RUNNING COSTS)	0-100%
2	TECHNICAL MERIT; COVERAGE, NETWORK CAPACITY AND PERFORMANCE AS SPECIFIED IN RELEVANT SERVICE LEVELS QUALITY (INCLUDING DELIVERY TIME, SALES SERVICE, GOOD VALUE, ACCESSORIES, SERVICE FITNESS FOR PURPOSE)	0-100%

DPS SCHEDULE 7: SUB-CONTRACTORS

1. In accordance with Clause 25.1 (Appointment of Sub-Contractors), the Supplier is entitled to sub-contract its obligations under this Dynamic Purchasing System Agreement and any Contracts entered into pursuant to this Dynamic Purchasing System Agreement, to the Sub-Contractors listed as part of your Selection Questionnaire.

DPS SCHEDULE 8: DPS MANAGEMENT

1. INTRODUCTION

1.1 The following definitions shall apply in addition to the definitions contained in the DPS Schedule 1 (Definitions):

"Supplier DPS Manager"	has the meaning given to it in paragraph 2.1.1 of this DPS Schedule 8; and
"Supplier Review Meetings"	has the meaning given to it in paragraph 2.2.1 of this DPS Schedule 8.

1.2 The successful delivery of this DPS Agreement will rely on the ability of the Supplier and the Authority to develop DPS relationships DPS Period.

1.3 This DPS Schedule 8 outlines the general structures and management activities that the Parties shall follow during the DPS Period.

2. DPS MANAGEMENT

2.1 DPS Management Structure:

2.1.1 The Supplier shall provide a suitably qualified nominated contact (the **"Supplier DPS Manager"**) who will take overall responsibility for delivering the Goods and/or Services required within this DPS Agreement, as well as a suitably qualified deputy to act in their absence.

2.1.2 The Supplier shall put in place a structure to manage the DPS in accordance with DPS Schedule 2 (Goods and/or Services and Key Performance Indicators).

2.2 Supplier Review Meetings

2.2.1 Proportionate review meetings will take place at the Authority's premises where appropriate throughout the DPS Period and thereafter until the DPS Termination or Expiry Date (**"Supplier Review Meetings"**).

2.2.2 The exact timings and frequencies of such Supplier Meetings will be determined by the Authority

2.2.3 The purpose of the Supplier Meetings will be to review the Supplier's performance under this DPS Agreement.

2.2.4 The Supplier Review Meetings shall be attended, as a minimum, by the Authority Representative(s) and the Supplier DPS Manager.

3. KEY PERFORMANCE INDICATORS

3.1 The KPIs applicable to this DPS Agreement are set out in DPS Schedule 2 (Goods and/or Services and Key Performance Indicators).

3.2 The Supplier shall establish processes to monitor its performance against the agreed KPIs. The Supplier shall at all times ensure compliance with the standards set by the KPIs.

3.3 The Authority shall review progress against these KPIs to evaluate the effectiveness and efficiency of which the Supplier performs its obligations to fulfil this DPS Agreement.

- 3.4 The Supplier's achievement of KPIs shall be reviewed during the Supplier Review Meetings, in accordance with paragraph 2.2 above, and the review and ongoing monitoring of KPIs will form a key part of the DPS management process as outlined in this DPS Schedule 8.
- 3.5 The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the DPS Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier.
- 3.6 The Authority reserves the right to use and publish the performance of the Supplier against the KPIs without restriction.

4. EFFICIENCY TRACKING PERFORMANCE MEASURES

- 4.1 The Supplier shall cooperate in good faith with the Authority to develop efficiency tracking performance measures for this DPS Agreement. This shall include but is not limited to:
 - 4.1.1 tracking reductions in product volumes and product costs, in order to demonstrate that Contracting Bodies are consuming less and buying more smartly;
 - 4.1.2 developing additional KPIs to ensure that the DPS Agreement supports the emerging target operating model across central government (particularly in line with centralised sourcing and category management, procurement delivery centres and payment processing systems and shared service centres).
- 4.2 The list in paragraph 4.1 is not exhaustive and may be developed during the DPS Period.
- 4.3 The metrics that are to be implemented to measure efficiency shall be developed and agreed between the Authority and the Supplier. Such metrics shall be incorporated into the list of KPIs set out in DPS Schedule 2 (Goods and/or Services and Key Performance Indicators).
- 4.4 The ongoing progress and development of the efficiency tracking performance measures shall be reported through DPS management activities as outlined in this DPS Schedule 8.

5. ESCALATION PROCEDURE

- 5.1 In the event that the Authority and the Supplier are unable to agree the performance score for any KPI during a Supplier Review Meeting, the disputed score shall be recorded and the matter shall be referred to the Authority Representative and the Supplier Representative in order to determine the best course of action to resolve the matter (which may involve organising an ad-hoc meeting to discuss the performance issue specifically).
- 5.2 In cases where the Authority Representative and the Supplier Representative fail to reach a solution within a reasonable period of time, the matter shall be dealt with in accordance with the procedure set out in Clause 48 (Dispute Resolution).

DPS SCHEDULE 9: MANAGEMENT INFORMATION

1. GENERAL REQUIREMENTS

- 1.1 The Supplier shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to the Authority in accordance with the provisions of this DPS Schedule 9.
- 1.2 The Supplier shall also supply such Management Information as may be required by a Contracting Authority in accordance with the terms of a Contract.

2. MANAGEMENT INFORMATION AND FORMAT

- 2.1 The Supplier agrees to provide timely, full, accurate and complete MI Reports to the Authority which incorporates the data, in the correct format, required by the MI Reporting Template. The initial MI Reporting Template is set out in the Annex to this DPS Schedule 9.
- 2.2 The Authority may from time to time make changes to the MI Reporting Template including to the data required or format of the report and issue a replacement version of the MI Reporting Template to the Supplier. The Authority shall give notice in writing of any such change to the MI Reporting Template and shall specify the date from which the replacement MI Reporting Template must be used for future MI Reports which date shall be at least thirty (30) calendar days following the date of the notice.
- 2.3 If the MI Reporting Template is amended by the Authority at any time, then the Supplier agrees to provide all future MI Reports in accordance with the most recent MI Reporting Template issued by the Authority.
- 2.4 The Authority may provide the Supplier with supplemental guidance for completing the MI Reporting Template or submitting MI Reports from time to time which may for example indicate which fields are mandatory and which are optional. The Supplier agrees to complete the Monthly MI Report in accordance with any such guidance.
- 2.5 The Supplier may not make any amendment to the current MI Reporting Template without the prior Approval of the Authority.
- 2.6 The Authority shall have the right from time to time (on reasonable written notice) to amend the nature of the Management Information which the Supplier is required to supply to the Authority.

3. FREQUENCY AND COVERAGE

- 3.1 All MI Reports must be completed by the Supplier using the MI Reporting Template and returned to the Authority on or prior to the Reporting Date each month in which there is spend to report, during the Dynamic Purchasing System Period and thereafter, until all transactions relating to Contracts have permanently ceased.
- 3.2 The MI Report should be used (among other things) to report work invoiced in the previous monthly period, regardless of when the order was taken and work completed. Each invoice issued by the Supplier must be reported only once when the invoice is raised.
- 3.3 The Supplier is not obliged to report MI to the Authority if there are no invoices to report from the previous monthly period.
- 3.4 The Supplier must inform the Authority of any errors or corrections to the Management Information:

- 3.4.1 in the next MI Report due immediately following discovery of the error by the Supplier; or
- 3.4.2 as a result of the Authority querying any data contained in an MI Report.

4. SUBMISSION OF THE MONTHLY MI REPORT

- 4.1 The completed MI Report shall be completed electronically and returned to the Authority by uploading the electronic MI Report computer file to MISO in accordance with the instructions provided in MISO, or any subsequent replacement electronic system.
- 4.2 The Authority reserves the right (acting reasonably) to specify that the MI Report be submitted by the Supplier using an alternative communication to that specified in paragraph 4.1 above such as email. The Supplier agrees to comply with any such instructions provided they do not materially increase the burden on the Supplier.

5. DEFECTIVE MANAGEMENT INFORMATION

- 5.1 The Supplier acknowledges that it is essential that the Authority receives timely and accurate Management Information pursuant to this Dynamic Purchasing System Agreement because Management Information is used by the Authority to inform strategic decision making and allows it to calculate the Management Levy.
- 5.2 Following an MI Failure the Authority may issue reminders to the Supplier or require the Supplier to rectify defects in the MI Report provided to the Authority. The Supplier shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

Meetings

- 5.3 The Supplier agrees to attend meetings between the Parties in person to discuss the circumstances of any MI Failure(s) at the request of the Authority (without prejudice to any other rights the Authority may have). If the Authority requests such a meeting the Supplier shall propose measures to ensure that the MI Failures are rectified and do not occur in the future. The Parties shall document these measures and continue to monitor the Supplier's performance.

ANNEX 1: MI REPORTING TEMPLATE

**The MI Reporting Template will be inserted/ and or made available following
'appointment' to the DPS only.**

DPS SCHEDULE 10: ANNUAL SELF AUDIT CERTIFICATE

[To be signed by Head of Internal Audit, Finance Director or company's external auditor]

[Guidance Note: Please seek guidance from the CCS audit team in relation to this point]

Dear Sirs

In accordance with the Dynamic Purchasing System Agreement entered into on [insert DPS Commencement Date dd/mm/yyyy] between [insert name of Supplier] and the Authority, we confirm the following:

1. In our opinion based on the testing undertaken [name of Supplier] has in place suitable systems for identifying and recording the transactions taking place under the provisions of the above Dynamic Purchasing System Agreement.
2. We have tested the systems for identifying and reporting on DPS activity and found them to be operating satisfactorily.
3. We have tested a sample of [] [insert number of sample transactions tested] Orders and related invoices during our audit for the financial year ended [insert financial year] and confirm that they are correct and in accordance with the terms and conditions of the Dynamic Purchasing System Agreement.
4. We have tested from the order processing and invoicing systems a sample of [] [Insert number of sample transactions tested] public sector orders placed outside the Dynamic Purchasing System Agreement during our audit for the financial year ended [insert financial year] and confirm they have been identified correctly as orders placed outside the Dynamic Purchasing System Agreement, an appropriate and legitimately tendered procurement route has been used to place those orders, and those orders should not otherwise have been routed via centralised and mandated procurement processes executed by the Authority.
5. We have also attached an Audit Report which provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken.

[Guidance Note: see Clause 18 (Records, Audit Access and Open Book Data) for details of what is required]

Name:.....

Signed:.....

Head of Internal Audit/ Finance Director/ External Audit firm (delete as applicable)

Date:.....

Professional Qualification held by Signatory:.....

Note to Suppliers: where CCS identifies independently that data accuracy supporting this certificate is flawed we will consider action on a case by case basis, and in some cases where the issues identified are clearly systemic we will consider whether this

behaviour goes beyond poor commercial practice and will seek further guidance from the GLD.

DPS SCHEDULE 11: MARKETING

1. INTRODUCTION

- 1.1 This DPS Schedule 11 describes the activities that the Supplier will carry out as part of its ongoing commitment to the marketing of the Goods and/or Services to Contracting Authorities.

2. MARKETING

- 2.1.1 Marketing Contact - NOT USED

3. AUTHORITY PUBLICATIONS

- 3.1 The Authority will periodically update and revise marketing materials. The Supplier shall supply current information for inclusion in such marketing materials when required by the Authority.
- 3.2 Such information shall be provided in the form of a completed template, supplied by the Authority together with the instruction for completion and the date for its return.
- 3.3 Failure to comply with the provisions of paragraphs 3.1 and 3.2 may result in the Supplier's exclusion from the use of such marketing materials.

4. SUPPLIER PUBLICATIONS

- 4.1 Any marketing materials in relation to this Dynamic Purchasing System Agreement that the Supplier produces must comply in all respects with the Branding Guidance. The Supplier will periodically update and revise such marketing materials.
- 4.2 The Supplier shall be responsible for keeping under review the content of any information which appears on the Supplier's website and which relates to this Dynamic Purchasing System Agreement and ensuring that such information is kept up to date at all times.

DPS SCHEDULE 12:
CONTINUOUS IMPROVEMENT AND BENCHMARKING – NOT USED

DPS SCHEDULE 13: GUARANTEE

[Guidance Note: this is a draft form of guarantee which can be used to procure either a Dynamic Purchasing System Guarantee or a Contract Guarantee, and so it will need to be amended to reflect the Beneficiary's requirements. See Clause 8 of the Dynamic Purchasing System Agreement and Clause 4 of the Template Contract Terms.]

[INSERT THE NAME OF THE GUARANTOR]

- AND -

[INSERT THE NAME OF THE BENEFICIARY]

DEED OF GUARANTEE

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20[]

BETWEEN:

- (1) [Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("Guarantor"); in favour of
- (2) [The Authority] [Insert name of Contracting Authority who is Party to the Guaranteed Agreement] whose principal office is at [] ("Beneficiary")

[Guidance note: Where this deed of guarantee is used to procure a Dynamic Purchasing System Guarantee in favour of the Authority, this paragraph numbered (2) above will set out the details of the Authority. Where it is used to procure a Contract Guarantee in favour of a Contracting Authority this paragraph numbered (2) above will set out the details of the relevant Contracting Authority]

WHEREAS:

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (B) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;

- 1.2 the words and phrases below shall have the following meanings:

[Guidance Note: Insert and/or settle Definitions, including from the following list, as appropriate to either Dynamic Purchasing System Guarantee or Contract Guarantee]

["Authority"]	has the meaning given to it in the Dynamic Purchasing System Agreement;
["Beneficiary"]	means [the Authority] [insert name of the Contracting Authority with whom the Supplier enters into a Contract] and "Beneficiaries" shall be construed

	accordingly;]
["Contract"	has the meaning given to it in the Dynamic Purchasing System Agreement;]
["Dynamic Purchasing System Agreement"	means the Dynamic Purchasing System Agreement for the Goods and/or Services dated on or about the date hereof made between the Authority and the Supplier;]
["Goods"	has the meaning given to it in the Dynamic Purchasing System Agreement;]
["Guaranteed Agreement"	means [the Dynamic Purchasing System Agreement] [the Contract] made between the Beneficiary and the Supplier on [insert date];]
"Guaranteed Obligations"	means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;
["Services"	has the meaning given to it in the Dynamic Purchasing System Agreement;]

- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

2. GUARANTEE AND INDEMNITY

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
- 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
 - 2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3. OBLIGATION TO ENTER INTO A NEW CONTRACT

- 3.1 If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute

agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4. DEMANDS AND NOTICES

4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

4.1.1 [Address of the Guarantor in England and Wales]

4.1.2 [Facsimile Number]

4.1.3 For the Attention of [insert details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

4.2.1 if delivered by hand, at the time of delivery; or

4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5. BENEFICIARY'S PROTECTIONS

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on

the part of the Beneficiary in exercising its rights under this Deed of Guarantee;

- 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
 - 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
 - 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6. GUARANTOR INTENT

- 6.1 Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

7. RIGHTS OF SUBROGATION

- 7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- 7.1.1 of subrogation and indemnity;
 - 7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
 - 7.1.3 to prove in the liquidation or insolvency of the Supplier,
- only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8. DEFERRAL OF RIGHTS

- 8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

- 8.1.1 exercise any rights it may have to be indemnified by the Supplier;
- 8.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;
- 8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;
- 8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
- 8.1.5 claim any set-off or counterclaim against the Supplier;

- 8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9. REPRESENTATIONS AND WARRANTIES

9.1 The Guarantor hereby represents and warrants to the Beneficiary that:

- 9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
 - (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- 9.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 9.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10. PAYMENTS AND SET-OFF

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11. GUARANTOR'S ACKNOWLEDGEMENT

- 11.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

12. ASSIGNMENT

- 12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
- 12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13. SEVERANCE

- 13.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

14. THIRD PARTY RIGHTS

- 14.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

15. GOVERNING LAW

- 15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

- 15.5 [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in

England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

[Guidance Note: Include the above provision when dealing with the appointment of English process agent by a non English incorporated Guarantor]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by **[Insert/print names]**

Director

Director/Secretary

DPS SCHEDULE 14: INSURANCE REQUIREMENTS

1. OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to the Authority under this Dynamic Purchasing System Agreement, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule 14 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the DPS Commencement Date.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Goods and/or Services and for which the Supplier is legally liable.

2. GENERAL OBLIGATIONS

- 2.1 Without limiting the other provisions of this Dynamic Purchasing System Agreement, the Supplier shall:
 - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Goods and/or Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
 - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3. FAILURE TO INSURE

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4. EVIDENCE OF POLICIES

4.1 The Supplier shall upon the DPS Commencement Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this DPS Schedule 14. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.

5. AGGREGATE LIMIT OF INDEMNITY

5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":

5.1.1 if a claim or claims which do not relate to this Dynamic Purchasing System Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to the Authority:

- (a) details of the policy concerned; and
- (b) its proposed solution for maintaining the minimum limit of indemnity specified; and

5.1.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Dynamic Purchasing System Agreement are paid by insurers, the Supplier shall:

- (a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Dynamic Purchasing System Agreement; or
- (b) if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

6. CANCELLATION

6.1 The Supplier shall notify the Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

7. INSURANCE CLAIMS

7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Goods and/or Services and/or this Dynamic Purchasing System Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Goods and/or Services or this Dynamic Purchasing System Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

- 7.2 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess one thousand (£1000.00) pounds relating to or arising out of the provision of the Goods and/or Services or this Dynamic Purchasing System Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Dynamic Purchasing System Agreement or otherwise.

ANNEX 1: REQUIRED INSURANCES

PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE

1. INSURED

1.1 The Supplier

2. INTEREST

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

2.1.1 death or bodily injury to or sickness, illness or disease contracted by any person;

2.1.2 loss of or damage to property;

happening during the period of insurance (as specified in Paragraph 5 of this Annex 1 to this Schedule 14) and arising out of or in connection with the provision of the Goods and/or Services and in connection with this Dynamic Purchasing System Agreement.

3. LIMIT OF INDEMNITY

3.1 Not less than [£sum to be determined by the Contracting Authority] in respect of any one occurrence, the number of occurrences being unlimited, but [£sum to be determined by the Contracting Authority] any one occurrence and in the aggregate per annum in respect of products and pollution liability.

4. TERRITORIAL LIMITS

4.1.1 United Kingdom

5. PERIOD OF INSURANCE

5.1 From the DPS Commencement Date for the Dynamic Purchasing System Period and renewable on an annual basis unless agreed otherwise by the Authority in writing.

6. COVER FEATURES AND EXTENSIONS

6.1 Indemnity to principals clause.

7. PRINCIPAL EXCLUSIONS

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

8. MAXIMUM DEDUCTIBLE THRESHOLD

8.1 Not to exceed **£ threshold to be agreed with Supplier** for each and every third party property damage claim (personal injury claims to be paid in full).

PART B: PROFESSIONAL INDEMNITY INSURANCE

1. INSURED

1.1 The Supplier

2. INTEREST

2.1 To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the Period of Insurance by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Goods and/or Services.

3. LIMIT OF INDEMNITY

3.1 Not less than [£sum to be determined by the Contracting Authority] in respect of any one claim and in the aggregate per annum.

4. TERRITORIAL LIMITS

4.1 United Kingdom

5. PERIOD OF INSURANCE

5.1 From the date of this Dynamic Purchasing System Agreement and renewable on an annual basis unless agreed otherwise by the Authority in writing (a) throughout the Dynamic Purchasing System Period or until earlier termination of this Dynamic Purchasing System Agreement and (b) for a period of 6 years thereafter.

6. COVER FEATURES AND EXTENSIONS

6.1 Retroactive cover to apply to any claims made policy wording in respect of this Dynamic Purchasing System Agreement or retroactive date to be no later than the DPS Commencement Date.

7. PRINCIPAL EXCLUSIONS

7.1 War and related perils

7.2 Nuclear and radioactive risks

8. MAXIMUM DEDUCTIBLE THRESHOLD

8.1 Not to exceed [£ threshold to be agreed with Supplier] each and every claim.

PART C: UNITED KINGDOM COMPULSORY INSURANCES

1. GENERAL

- 1.1 The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.

DPS SCHEDULE 15: STAFF TRANSFER – NOT USED

DPS SCHEDULE 16: FINANCIAL DISTRESS – NOT USED

ANNEX 1: NOT USED

ANNEX 2: NOT USED

DPS SCHEDULE 17: COMMERCIALLY SENSITIVE INFORMATION – NOT USED

DPS SCHEDULE 18: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

1.1 In this DPS Schedule 18, the following definitions shall apply:

"CEDR"	means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"Counter Notice"	has the meaning given to it in paragraph 6.2;
"Exception"	means a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Dynamic Purchasing System Agreement or in the supply of the Goods and/or Services;
"Expedited Dispute Timetable"	means the accelerated timetable for the resolution of disputes as set out in paragraph 2.6;
"Expert"	means the person appointed by the Parties in accordance with paragraph 5.2 of this DPS Schedule 18;
"Extraordinary Meeting"	a meeting, attended in person or over a conference call, held by the Parties in an attempt to resolve the Dispute in good faith in accordance with paragraphs 2.5 and 2.6 of this DPS Schedule 18;
"Mediator"	means the independent third party appointed in accordance with paragraph 4.2 of this DPS Schedule 18; and
"Senior Officers"	are senior officials of the Authority and Supplier that have been instructed by the Authority Representative and Supplier Representative respectively to resolve the Dispute by commercial negotiation.

2. INTRODUCTION

2.1 The Parties shall seek to resolve a Dispute:

- 2.1.1 first in good faith (as prescribed in paragraphs 2.4 to 2.8 of this DPS Schedule 18);
- 2.1.2 where the Dispute has not been resolved by good faith, the Parties shall attempt to resolve the Dispute by commercial negotiation (as prescribed in paragraph 3 of this DPS Schedule 18);
- 2.1.3 where the Dispute has not been resolved in good faith and commercial negotiation has been unsuccessful in resolving the Dispute, then either Party may serve a Dispute Notice and shall attempt to resolve the Dispute through mediation (as prescribed in paragraph 4 of this DPS Schedule 18); and

- 2.1.4 if mediation is not agreed by the Parties, the Parties may proceed to arbitration (as prescribed in paragraph 6 of this DPS Schedule 18) or litigation (in accordance with Clause 49 of this Dynamic Purchasing System Agreement (Governing Law and Jurisdiction)).
- 2.2 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this DPS Schedule 18) where specified under the provisions of this Dynamic Purchasing System Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 (Expert Determination) of this DPS Schedule 18.
- 2.3 Save in relation to paragraph 4.5, the Parties shall bear their own legal costs in resolving Disputes under this DPS Schedule 18.

Good faith discussions

- 2.4 Pursuant to paragraph 2.1.1 of this DPS Schedule 18, if any Dispute arises the Authority Representative and the Supplier Representative shall attempt first to resolve the Dispute in good faith, which may include (without limitation) either Party holding an Extraordinary Meeting.
- 2.5 Either Party may hold an Extraordinary Meeting by serving written notice. The written notice must give the receiving party at least five (5) Working Days notice of when the Extraordinary Meeting is to take place.
- 2.6 The Authority Representative and Supplier Representative shall attend the Extraordinary Meeting. The key personnel of the Parties may also attend the Extraordinary Meeting.
- 2.7 The representatives of the Parties attending the Extraordinary Meeting shall use their best endeavours to resolve the Dispute.
- 2.8 If the Dispute is not resolved at the Extraordinary Meeting then the Parties may attempt to hold additional Extraordinary Meetings in an attempt to resolve the Dispute.
- 2.9 If:
- 2.9.1 the Extraordinary Meetings are unsuccessful in resolving the Dispute; or
 - 2.9.2 the Parties agree that good faith discussions shall not resolve the dispute; or
 - 2.9.3 the Dispute has not been resolved through good faith discussions within thirty (30) Working Days from when they first started,
- the Parties shall attempt to resolve the Dispute by commercial negotiation.

3. COMMERCIAL NEGOTIATIONS

- 3.1 Where the Parties have been unable to resolve the Dispute in good faith under paragraphs 2.4 to 2.8 of this DPS Schedule 18, pursuant to paragraph 2.1.2, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between Senior Officers.
- 3.2 Senior Officers shall resolve the Dispute as soon as possible and in any event thirty (30) Working Days from the date Parties agree good faith discussions were deemed unsuccessful.
- 3.3 If Senior Officers:

3.3.1 are of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution; or

3.3.2 fail to resolve the Dispute in the timelines under paragraph 3.2 of this DPS Schedule 18,

commercial negotiations shall be deemed unsuccessful and either Party may serve a Dispute Notice in accordance with paragraphs 3.4 and 3.5 of this DPS Schedule 18.

Dispute Notice

3.4 The Dispute Notice shall set out:

3.4.1 the material particulars of the Dispute;

3.4.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

3.4.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 7 of this DPS Schedule 18, the reason why.

3.5 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Dynamic Purchasing System Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

4. MEDIATION

4.1 Pursuant to paragraph 2.1.3 of this DPS Schedule 18, if a Dispute Notice is served, the Parties shall attempt to resolve the Dispute by way of mediation and where mediation is not agreed, the Parties may proceed to arbitration or litigation in accordance with this DPS Schedule 18.

4.2 Where the Parties agree to mediation, the Parties may follow the CEDR's Model Mediation Procedure which is current at the time the Dispute Notice is served (or such other version as the Parties may agree) or a mediation procedure that is agreed between the Parties.

4.3 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Dispute Notice then either Party may apply to CEDR to nominate the Mediator.

4.4 If neither Party applies to CEDR to nominate the Mediator or an application to CEDR is unsuccessful under paragraph 4.2 of this DPS Schedule 18, either Party may proceed to:

4.4.1 hold further discussions between Senior Officers; or

4.4.2 an Expert determination, as prescribed in paragraph 5 of this DPS Schedule 18; or

4.4.3 arbitration, as prescribed in paragraph 6 of this DPS Schedule 18; or

4.4.4 litigation in accordance with Clause 49 of this Dynamic Purchasing System Agreement (Governing Law and Jurisdiction).

4.5 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce

for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

- 4.6 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the procedure for variations under Clause 16.1 (Variation Procedure) where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.
- 4.7 The costs of any mediation procedure used to resolve the Dispute under this paragraph 4 of this DPS Schedule 18 shall be shared equally between the Parties.

5. EXPERT DETERMINATION

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Goods and/or Services or otherwise relates to a technical matter of an accounting or financing nature (as the Parties may agree), either Party may request (such request shall not be unreasonably withheld or delayed by the Parties) by written notice to the other that the Dispute is referred to an Expert for determination.

- 5.2 Where the Parties agree to an expert determination, the Expert shall:

5.2.1 be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the relevant professional body; and

5.2.2 act on the following basis:

5.2.2.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;

5.2.2.2 the Expert's determination shall (in the absence of a material failure by either Party to follow the agreed procedures) be final and binding on the Parties;

5.2.2.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his/her appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;

5.2.2.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;

5.2.2.5 the process shall be conducted in private and shall be confidential; and

5.2.2.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

6. ARBITRATION

6.1 Either of the Parties may, at any time before court proceedings are commenced and after the Parties have attempted to resolve the Dispute in good faith, by commercial negotiation, mediation and Expert determination (if applicable), refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this DPS Schedule 18. The Parties are not obliged to pursue arbitration but may choose to do so in resolving the Dispute.

6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 or be subject to the jurisdiction of the courts in accordance with Clause 49 (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

6.3 If:

6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 shall apply;

6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 49 (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;

6.3.3 the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in paragraph 6.2, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 or commence court proceedings in the courts in accordance with Clause 49 (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.

6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3, the Parties hereby confirm that:

6.4.1 all disputes, issues or claims arising out of or in connection with this Dynamic Purchasing System Agreement (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to paragraphs 6.4.5 and 6.4.6);

6.4.2 the arbitration shall be administered by the LCIA;

6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Dynamic Purchasing System Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are

commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

6.4.5 the arbitration proceedings shall take place in London and in the English language; and

6.4.6 the seat of the arbitration shall be London.

7. EXPEDITED DISPUTE TIMETABLE

7.1 In exceptional circumstances where the use of the times in this DPS Schedule 18 would be considered unreasonable by the Parties, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.

7.2 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 7.1 of this DPS Schedule 18 or is otherwise specified under the provisions of this Dynamic Purchasing System Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs of this DPS Schedule 18:

7.2.1 in paragraph 2.8, fourteen (14) Working Days;

7.2.2 in paragraph 3.2, ten (10) Working Days;

7.2.3 in paragraph 4.2, ten (10) Working Days;

7.2.4 in paragraph 5.2, five (5) Working Days; and

7.2.5 in paragraph 6.2, ten (10) Working Days.

7.3 If at any point it becomes clear that an applicable deadline under paragraph 7.2 of this DPS Schedule 18 cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the relevant deadline.

7.4 If, pursuant to paragraph 7.2 of this DPS Schedule 18, the Parties fail to agree within two (2) Working Days after the relevant deadline has passed, the Authority may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable paragraphs under paragraph 7.2 (or no less than two (2) Working Days in the case of Paragraph 5.2 of this DPS Schedule 18).

7.5 Any agreed extension under paragraph 7.2 of this DPS Schedule 18 shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

8. URGENT RELIEF

8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

- 8.1.1 for interim or interlocutory remedies in relation to this Dynamic Purchasing System Agreement or infringement by the other Party of that Party's Intellectual Property Rights; or
- 8.1.2 where compliance with paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period; or
- 8.1.3 if the Parties fail to resolve the Dispute following good faith discussions and commercial negotiations and mediation (where it is agreed between the Parties) is unsuccessful within 60 working days or such period as may be agreed by the Parties then any Dispute between the Parties may be referred to the Courts.

DPS SCHEDULE 19: VARIATION FORM

Variation Form No:

.....

BETWEEN:

[insert name of Authority] ("the Authority")

and

[insert name of Supplier] ("the Supplier")

1. This Dynamic Purchasing System Agreement is varied as follows:

[Guidance Note: Refer to Clause 19.1 and insert details of the Variation]

2. This Variation must be agreed and signed by both Parties and shall only be effective from the date it is signed by the Authority.
3. Words and expressions in this Variation shall have the meanings given to them in the Dynamic Purchasing System Agreement.
4. The Dynamic Purchasing System Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Authority

Signature

Date

Name (in Capitals)

Address

.....
Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

DPS SCHEDULE 20: CONDUCT OF CLAIMS

1. INDEMNITIES

- 1.1 This Schedule shall apply to the conduct by a Party from whom an indemnity is sought under this Dynamic Purchasing System Agreement or any Contract (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Dynamic Purchasing System Agreement or any Contract (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 1.5, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim, and the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
- 1.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - 1.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - 1.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - 1.4.4 the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Dynamic Purchasing System Agreement or any Contract if:
- 1.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
 - 1.5.2 the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or

- 1.5.3 the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2. RECOVERY OF SUMS

- 2.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever the lesser is of:

- 2.1.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
- 2.1.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

3. MITIGATION

- 3.1 Each of the Authority or Contracting Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.
















DPS SCHEDULE 21: TENDER - NOT USED

DPS SCHEDULE 22: TRANSPARENCY REPORTS

GENERAL

- 1.1 Within a period (to be agreed with Supplier) the Supplier shall submit to the Authority for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in Annex 1 of this Schedule 22 below.
- 1.2 If the Authority rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. This process shall be repeated until the Parties have agreed versions of each Transparency Report.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1 of this Schedule 22 below.
- 1.4 Any dispute in connection with the preparation and/or approval of Transparency Reports shall be resolved in accordance with the Dispute Resolution Procedure.
- 1.5 The requirements in this Schedule 22 are in addition to any other reporting requirements set out in this DPS Agreement.

ANNEX 1: LIST OF TRANSPARENCY REPORTS

Title of Report	Content	Format	Frequency
[Headline Service performance]			
[Charges]			
[Sub-Contractors]			
[Technical]			
[Performance management arrangements]			

ANNEX 1: NOT USED