

COMMUNITY HEALTH PARTNERSHIPS LIMITED

DYNAMIC PURCHASING SYSTEM

for the provision of various Consultancy Services

TERMS AND CONDITIONS

Reference T1-7201-DPS-Consultancy Services -Establish-V1

1. BACKGROUND

- 1.1 Following an advertisement in the UK Find a Tender Service dated 8 July 2024 (the “**Contract Notice**”) and a competitive procurement process undertaken in accordance with the Public Contracts Regulations 2015, Community Health Partnerships Limited (the “**Client**”) has established a Dynamic Purchasing System for the provision of Consultancy Services (the “**DPS**”).
- 1.2 The Client has established the DPS to enable the Client and Authorised Users to enter into Call Off Contracts with the DPS Consultants for the provision of Consultancy Services as and when required during the DPS Term. The DPS comprises of twelve (12) Categories.
- 1.3 These DPS Terms and Conditions set out the terms on which the DPS will operate.
- 1.4 The Client does not guarantee that the DPS Consultants will be awarded Call Off Contracts for any particular value or type of services under the DPS.

2. DEFINITIONS AND INTERPRETATION

Definitions

- 2.1 In these DPS Terms and Conditions, the following expressions shall have the following meanings:

“Admittance Criteria”

means the criteria that Consultants were required to satisfy in order to be appointed to the various Categories of the DPS, as more particularly set out in the procurement documents issued by the Client for the DPS;

“Authorised User”

means any of the following:

- (i) any entity within the same group of companies as the Client from time to time (a “**Client Group Member**”);
- (ii) any entity or joint venture company that the Client or any other Client Group Member holds an interest in from time to time;
- (iii) any Health or Social Care Provider in the United Kingdom who the Client has given access to the DPS;

“Call Off Contract”

means any of the following contracts as selected by the Client or the Authorised User making the call off:

- (ii) a contract incorporating the CHP Terms of Business as annexed at Schedule 1, subject to such further

	<p>amendments as may be agreed between the Client or the Authorised User making the call off and the DPS Consultant; or</p> <p>(i) as set out in any Tender document, which is deemed more appropriate for the type of Service being tendered, as may be agreed between the Client or the Authorised User making the call off and the DPS Consultant;</p>
“Categories”	means the Categories of the DPS set out in the Contract Notice;
“Competition”	means the procedure outlined in Clauses 5.2 to 5.6;
“Contract Notice”	has the meaning given to it in Clause 1.1;
“Data Protection Legislation”	means the Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, the General Data Protection Regulation (EU) 2016/679 (as varied by the Data Protection Act 2018), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 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 and any additions, updates thereof;
“DPS”	has the meaning given to it in Clause 1.1;
“DPS Consultants”	means the Consultants appointed to the DPS from time to time, and “DPS Consultant” shall mean any one of them;
“DPS Manager”	has the meaning given in Clause 4.4;
“DPS Objectives”	has the meaning given in Clause 4.1;
“DPS Representative”	has the meaning given in Clause 4.2;
“DPS Term”	means the term of the DPS which shall expire on 27 October 2029;

“DPS Terms and Conditions”	means these terms and conditions;
“EIR”	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations;
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
“Health Provider”	means any provider of health and social care including, without limitation, DHSC owned companies, any part of the NHS, local authorities and Arms Length Management Organisations;
“Information”	has the meaning given under section 84 of the FOIA;
“KPIs”	means any key performance indicators incorporated in the Call Off Contracts;
“KPI Failure Notice”	has the meaning given in Clause 6.2;
“Management Levy”	means the levy added to the cost of any Call-Off Contract, in accordance with the provisions set out in Schedule 4;
“Notice of Suspension”	has the meaning given in Clause 26.3.2;
“Parties”	means the Client and the DPS Consultant and “Party” shall be construed accordingly;
“Purchase Order”	means a purchase order in the form set out in Schedule 2 (or such other form as the Client may from time to time prescribe);
“Relevant Authority”	means any court with competent jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;
“Request for Information”	means a request for information or an apparent request under the Code of Practice on Access to Government

Information, FOIA or the EIR;

“Services”

means the services to be carried out by the DPS Consultant pursuant to a Call Off Contract as more particularly described in the relevant Call Off Contract;

“Supply Chain”

means any and all persons engaged by the DPS Consultant, the Client or an Authorised User (as appropriate) in connection with a Call Off Contract with which the DPS Consultant, the Client or Authorised User (as appropriate) is involved;

“Working Days”

means any day on which banks are generally open for business (other than Saturdays, Sundays or public holidays);

- 2.2 References to Clauses and schedules are references to Clauses of and schedules to these DPS Terms and Conditions.
- 2.3 The provisions of the schedules are incorporated in these DPS Terms and Conditions.
- 2.4 Reference to the singular includes the plural and vice versa and references to any gender includes both genders.
- 2.5 References to a person includes any individual, firm, unincorporated association or body corporate.
- 2.6 The headings in these DPS Terms and Conditions are included for ease of reference only and shall not affect the interpretation or construction of these DPS Terms and Conditions.
- 2.7 Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consolidation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.
- 2.8 A reference to specific standards, codes of practice, guidelines, rules and/or schemes shall be construed as including all amendments, modifications, supplements, re-drafts and/or substitutes.

3. COMMENCEMENT, APPOINTMENT AND DURATION

- 3.1 The DPS Consultant's appointment shall be governed by these DPS Terms and Conditions and any relevant Call Off Contract. The DPS Consultant shall when requested by the Client or an Authorised User following the selection process set out in Clause 5 enter into a Call Off Contract for the carrying out of the relevant Services.
- 3.2 Subject to earlier termination in accordance with these DPS Terms and Conditions, the DPS shall continue for the duration of the DPS Term.
- 3.3 Notwithstanding any other provision of these DPS Terms and Conditions to the contrary, neither the Client nor any Authorised User is obliged to enter into any Call Off Contracts with the DPS Consultant under the DPS during the DPS Term and, for the avoidance of doubt, neither the Client nor any Authorised User shall be liable for any loss of profits,

loss of contracts or other costs or losses suffered or incurred by the DPS Consultant as a result of the DPS Consultant not being awarded one or more Call Off Contracts under the DPS during the DPS Term.

4. DPS OBJECTIVES

4.1 The DPS Objectives are as follows:

- 4.1.1 team-working and consideration for others, including quality and diversity considerations where appropriate;
- 4.1.2 improvements in environmental performance, sustainability and reductions in environmental impact;
- 4.1.3 high levels of client satisfaction;
- 4.1.4 the development and implementation of training programmes and apprenticeships;
- 4.1.5 supporting local sustainability and community initiatives;
- 4.1.6 the avoidance of disputes;
- 4.1.7 the timely and fair payment of all suppliers and sub-contractors by the DPS Consultants;
- 4.1.8 the Client's and the Authorised Users' satisfaction with the performance of the DPS Consultants;
- 4.1.9 to work in a spirit of continuous improvement to continually improve value for money, quality and best value; and
- 4.1.10 to consider and adopt any efficiency initiatives the Client or any Authorised Users may bring to the attention of DPS Consultants.

4.2 On or before its appointment to the DPS the DPS Consultant shall appoint a representative to act as its representative in connection with the DPS ("**DPS Representative**") and shall provide the Client with the name and contact details of this individual.

4.3 The DPS Consultant shall keep the Client informed of any change in the identity of its DPS Representative from time to time.

4.4 On or before the appointment of the DPS Consultant to the DPS the Client shall provide the DPS Consultant with the name and contact details of the individual who will manage the DPS on the Client's behalf (the "**DPS Manager**").

4.5 The Client shall keep the DPS Consultant informed of any change in the identity of the DPS Manager from time to time.

5. COMPETITIONS AND AWARD OF CALL OFF CONTRACTS

5.1 The Parties acknowledge that where the Client or an Authorised User wishes to award a Call Off Contract under the DPS the selection of a DPS Consultant from a Lot shall be made by the Client or Authorised User by way of a Competition conducted in accordance with the provisions of this Clause 5.

- 5.2 The Client or the Authorised User shall identify the Lot it wishes to award a Call Off Contract under and shall, without prejudice to Clause 27.3.2, invite all DPS Consultants appointed to that Lot to take part in the Competition for the Call Off Contract.
- 5.3 The invitation to take part in the Competition shall:
- 5.3.1 be issued in writing electronically;
 - 5.3.2 specify a deadline for responding to the invitation to take part in the Competition, such deadline to be no less than ten (10) days from the date of issue of the invitation (unless the Client or the Authorised User agree a shorter time frame with all of the DPS Consultants that have been invited to take part in the Competition);
 - 5.3.3 set out the evaluation criteria on which tenders submitted pursuant to the Competition will be assessed (which shall be determined by the Client or Authorised User issuing the invitation having regard to the requirements of the Call Off Contract in question, and which may be a combination of price and qualitative criteria, or price criteria only); and
 - 5.3.4 contain a copy of the form of Call Off Contract to be entered into with the successful DPS Consultant.
- 5.4 When invited by the Client or Authorised User to take part in a Competition, the DPS Consultant may either submit a written proposal or decline the invitation to take part.
- 5.5 The DPS Consultant shall be responsible for any costs it incurs in participating in a Competition and acknowledges and agrees that neither the Client nor any Authorised User shall have any liability for such costs under any circumstances.
- 5.6 The Client or Authorised User shall evaluate all proposals received on the basis of the evaluation criteria set out in the invitation and will inform all DPS Consultants invited to take part in the Competition of the outcome of that evaluation.
- 5.7 If the DPS Consultant is selected to carry out a Call Off Contract following a Competition the Client or Authorised User may issue a Call Off Contract to the DPS Consultant for acceptance. If the DPS Consultant does not confirm its acceptance of the Call Off Contract within three (3) Working Days of receipt of the same (or within such longer period as the Client or Authorised User may specify) the DPS Consultant shall be deemed to have declined the offer to enter into the Call Off Contract and the Client or Authorised User may (in its absolute discretion):
- 5.7.1 offer the Call Off Contract to the next highest scoring DPS Consultant in the Competition;
 - 5.7.2 recommence the Competition for the Call Off Contract; or
 - 5.7.3 abandon the award of the Call Off Contract altogether.
- 5.8 The DPS Consultant acknowledges that where the Call Off Contract is to take the form of a contract incorporating the CHP Terms and Conditions for Small Services Orders set out in Part 1 of Schedule 1 (as referred to in paragraph (ii) of the definition of "Call Off Contract" in Clause 2.1), the Client shall award such Call Off Contract via the issue of a Purchase Order to the DPS Consultant.

- 5.9 Once appointed to carry out Services under a Call Off Contract, the DPS Consultant shall provide those Services in accordance with the terms of the Call Off Contract.

Inconsistency between terms of a Call Off Contract and these DPS Terms and Conditions

- 5.10 The terms of these DPS Terms and Conditions will supplement and complement the terms of any Call Off Contract. However, in the event of any conflict or discrepancy between the terms of a Call Off Contract and the terms of these DPS Terms and Conditions the terms of the relevant Call Off Contract will prevail.

6. KPI PERFORMANCE REVIEW

- 6.1 The Client shall review the DPS Consultant's performance of Call Off Contracts against the KPIs in accordance with the provisions of Schedule 3. The DPS Consultant shall at all times use reasonable skill and care to achieve the KPIs.

- 6.2 If the Consultant fails to meet any of the KPIs the Client may, without prejudice to the Client's other rights and remedies under the Call Off Contract or otherwise, operate the provisions of Schedule 3 and issue the DPS Consultant with a "**KPI Failure Notice**". The KPI Failure Notice shall:

6.2.1 state whether the DPS Consultant has received either a "Yellow" card or a "Red" card (as each are described in Schedule 3);

6.2.2 if a "Yellow" card, state the date by which the DPS Consultant must issue an action plan to improve service delivery, for agreement by the Client; and

6.2.3 if a "Red" card, state that the DPS Consultant shall be suspended from participating in further Competitions for a twelve (12) month period.

- 6.3 The Client reserves the right to further develop and amend the evaluation processes set out within Schedule 3 throughout the DPS Term with the agreement of all DPS Consultants.

7. PRICING

- 7.1 The price payable to the DPS Consultant for the carrying out of Services pursuant to Call Off Contracts will be as set out in the Call Off Contract in question (having been established as part of the Competition for the Call Off Contract).

- 7.2 Additionally, any Call Off Contract will be subject to a Management Levy, in accordance with the provisions set out in Schedule 4 (Management Levy.)

8. CONTINUOUS IMPROVEMENT AND CO-OPERATION

Commitment to seek Continuous Improvement

- 8.1 Throughout the DPS Term the DPS Consultant shall seek to achieve continuous improvement in the quality of the Services that it is required to carry out under Call Off Contracts awarded to it.

- 8.2 The Parties shall consider and seek to agree such incentives, additional to those described in these DPS Terms and Conditions, as may be appropriate to encourage the DPS Consultant to maximise its efforts pursuant to these DPS Terms and Conditions and any Call Off Contract awarded to it.

Meetings and Annual Review Forum

- 8.3 The DPS Consultant shall attend all meetings as may be necessary for the proper carrying out of the Call Off Contracts.
- 8.4 Without prejudice to the generality of Clause 8.3, on annual basis the Client may convene a meeting with such Authorised Users and DPS Consultants as the Client may specify by giving such persons not less than five (5) Working Days' notice in writing to:
 - 8.4.1 share experience and lessons learnt from completed Call Off Contracts;
 - 8.4.2 review any KPIs collated and analysed;
 - 8.4.3 identify areas of success or areas for improvement in the successful carrying out of the Services and the achievement of the DPS Objectives;
 - 8.4.4 share knowledge and experience in the pursuit of continuous improvement of the Services;
 - 8.4.5 discuss comments on the forms of Call Off Contract to identify any problem areas and, if non substantial, proposals to address such issues; and
 - 8.4.6 publish details of the workload of each DPS Consultant to ensure transparency of information.

No Delay

- 8.5 In all matters relating to the Services, including without limitation any required notice, request, submission, decision, consent, approval, comment, valuation, agreement, opinion, instruction and other communication and activity the DPS Consultant shall act reasonably and without delay.

9. INFORMATION SHARING

- 9.1 Subject to Clause 9.3, the DPS Consultant shall at all times keep the Client and Authorised Users fully and promptly informed in relation to the carrying out of the Services and shall provide the Client and Authorised Users from time to time with all such information in this connection as they may require.
- 9.2 Subject to Clause 9.3, if the DPS Consultant has in its possession any knowledge or information that is or would be of assistance to the Client or an Authorised User in connection with a Call Off Contract, then the DPS Consultant shall promptly volunteer and share such knowledge or information with the Client or Authorised User without the need to be asked for such knowledge or information and irrespective of whether the DPS Consultant is contractually obliged to share such knowledge or information under any Call Off Contract that may have been entered into under the DPS.
- 9.3 The DPS Consultant shall not be required to volunteer or share knowledge or information pursuant to Clause 9.1 or 9.2 which the DPS Consultant is legally and/or contractually prohibited from disclosing.

10. SUPPLY CHAIN MANAGEMENT

- 10.1 The DPS Consultant shall in carrying out its obligations under these DPS Terms and Conditions and any Call Off Contract:

- 10.1.1 adhere to and co operate in achieving the DPS Objectives;
 - 10.1.2 use its reasonable endeavours to ensure that all members of its Supply Chain adhere to and co operate in achieving the DPS Objectives; and
 - 10.1.3 work co operatively with the members of the Client's and the Authorised Users' Supply Chains with a view to achieving the DPS Objectives.
- 10.2 The DPS Consultant shall procure that the payment terms of any of its contracts with third party contractors and suppliers (where such third party contractors and suppliers are delivering any part of the Services to be delivered by the DPS Consultant pursuant to a Call Off Contract) require payment to be made by the DPS Consultant to such third parties within thirty (30) calendar days.

11. HEALTH AND SAFETY

The Parties shall work together and individually within their agreed roles, responsibilities and expertise and in accordance with these DPS Terms and Conditions to achieve the highest possible standards of health and safety in all activities forming part of the Services.

12. TRAINING

The DPS Consultant shall implement such employment, training and social value initiatives as may be agreed with the Client from time to time during the DPS Term, and in doing so shall take into account the recommendations of relevant current best practice guidance in developing appropriate action plans for the benefit of the Client's staff as a means to achieve transfer of skills.

13. ASSIGNMENT AND SUBCONTRACTING

- 13.1 The DPS Consultant shall not assign, transfer or subcontract any rights and/or obligations under these DPS Terms and Conditions to any party without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed). If the Client gives its consent under this Clause, the Parties shall enter into all necessary documentation to give effect to such assignment or transfer.
- 13.2 The Client and the Authorised Users may at any time assign, novate, charge or transfer their interest in these DPS Terms and Conditions and/or any rights arising under it to any party on written notice to the DPS Consultant without the consent of the DPS Consultant being required and the DPS Consultant shall enter into all necessary documentation to give effect to such assignment, novation, charge or transfer.

14. TERMINATION

The Client's Right to Terminate

- 14.1 If the DPS Consultant:
 - 14.1.1 commits a material breach of the terms of these DPS Terms and Conditions or any Call Off Contract; or
 - 14.1.2 ceases to carry on its business, becomes insolvent, or has a liquidator, trustee in bankruptcy, receiver, manager, administrator or administrative receiver appointed in respect of its assets or (where the DPS Consultant is a partnership) those of any partner of the firm, or suffers any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident,

the Client may terminate the appointment of the DPS Consultant under one or more Category by notice in writing having immediate effect.

- 14.2 Without affecting any other right or remedy available to it, the Client may terminate the DPS Consultant's appointment under one or more Category at any time, by giving written notice of termination to the DPS Consultant, that termination taking effect on the date of receipt of notice by the DPS Consultant or any later date as may be specified in the notice, if:

14.2.1 the DPS and/or these DPS Terms and Conditions has been subject to a substantial modification for the purposes of regulation 72 of the Public Contracts Regulations 2015 (the "**PCR 2015**") which would have required a new procurement procedure in accordance with regulation 72(9) of the PCR 2015; or

14.2.2 the DPS Consultant has, at the date of its appointment to the DPS, been in one of the situations referred to in regulation 57(1) of the PCR 2015, including as a result of the application of regulation 57(2) of the PCR 2015, and should therefore have been excluded from the procurement procedure for the DPS.

DPS Consultant's Right to Terminate

- 14.3 The DPS Consultant may terminate its appointment under one more Category following any material breach of these DPS Terms and Conditions by the Client which is notified in writing to the Client by the DPS Consultant and is not remedied by the Client within fifteen (15) Working Days of such notice, or in the event of the Client ceasing to carry on its business.

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- 14.4 The termination of the DPS Consultant's appointment under one or more Category shall not automatically terminate any Call Off Contract entered into at or before the date of termination.
- 14.5 Termination of the appointment of the DPS Consultant under one more Category shall not affect the mutual rights and obligations of the Parties accrued at the date of termination and the ongoing rights and obligations of the Parties as stated in these DPS Terms and Conditions.
- 14.6 Any Call Off Contract entered into during the DPS Term shall continue in full force and effect until its respective termination date, notwithstanding the termination or expiry of the DPS.

Obligations on Termination or Expiry

- 14.7 Within thirty (30) Working Days of the end of the DPS Term or its earlier termination in accordance with this Clause 14, the DPS Consultant shall return or destroy at the request of the Client any data, personal information relating to the Client or its personnel or confidential information belonging to the Client in the DPS Consultant's possession, power or control, either in its then current format or in a format nominated by the Client (in which event the Client will reimburse the DPS Consultant's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Client, save that the DPS Consultant may keep one copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under the DPS Terms and Conditions, or such period as is necessary for such compliance.

15. PROBLEM SOLVING, DISPUTE AVOIDANCE AND RESOLUTION

- 15.1 As soon as the DPS Consultant, the Client or an Authorised User becomes aware of any difference or dispute with another arising under these DPS Terms and Conditions which does not fall to be dealt with under a Call Off Contract, they shall give notice to the other relevant party.
- 15.2 The relevant parties will endeavour to resolve any difference or dispute by direct negotiation in good faith and each such party will give serious consideration to a request by the other to refer a difference or dispute to mediation.
- 15.3 If any difference or dispute is not resolved in accordance with Clause 15.2 and provided that neither party has by reason of that difference or dispute exercised a right of termination under Clause 14, then such dispute may be referred to conciliation or to mediation or to any other form of alternative dispute resolution as the parties may agree.
- 15.4 The procedures under Clause 15.1, 15.2 and 15.3 are without prejudice to a party's right to refer any difference or dispute to adjudication.
- 15.5 Any difference or dispute may be referred by a party to the courts of England and Wales.
- 15.6 For the avoidance of doubt, any dispute between the Client, the DPS Consultant or an Authorised User arising under a Call Off Contract shall be dealt with in accordance with the dispute resolution provisions of such Call Off Contract.

16. NOTICES

Any notice, request, instruction or other documentation to be given under these DPS Terms and Conditions shall be delivered or sent by first class post or by electronic mail to the registered address of the recipient party (or to such other address as that party may have notified the other relevant party for this purpose) and any such notice or other document shall be deemed to have been served, (if delivered) at the time of delivery or (if sent by post) upon the expiration of 48 hours after posting and (if sent by electronic mail) upon transmission unless a notice of non-delivery is received within 2 hours after transmission.

17. CONFIDENTIALITY

- 17.1 Subject to Clauses 9 and 18, the Parties shall keep secret and not disclose and shall procure that their employees and any sub-contractors keep secret and do not disclose any information of a confidential nature obtained by them by reason of the DPS or these DPS Terms and Conditions. This obligation shall not apply to information:
 - 17.1.1 which is in the public domain or is trivial or cannot reasonably be considered to be confidential; or
 - 17.1.2 which the Client is required to disclose as a matter of law or in discharge of its obligations of public accountability and freedom of information.
- 17.2 The DPS Consultant agrees that the Client may supply information to the Authorised Users who wish, or may wish to enter into a Call Off Contract with the DPS Consultant.
- 17.3 The DPS Consultant undertakes to make no reference in any advertising or other promotional material to the DPS or these DPS Terms and Conditions without the prior written consent of the Client.

18. FREEDOM OF INFORMATION

- 18.1 The DPS Consultant acknowledges that the Client and the Authorised Users may be (or, during the DPS Term, become) subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Client or the Authorised User concerned to enable it to comply with its information disclosure obligations.
- 18.2 The DPS Consultant shall and shall procure that its sub-contractors shall:
- 18.2.1 transfer to the Client or the Authorised User all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 18.2.2 provide the Client or the Authorised User with a copy of all Information in its possession, or power in the form that the Client or the Authorised User requires within five (5) Working Days (or such other period as the Client or the Authorised User may specify) of the Client's or the Authorised User's request; and
 - 18.2.3 provide all necessary assistance as is reasonably requested by the Client or the Authorised User to enable the Client or the Authorised User to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 18.3 The Client or the Authorised User concerned shall be responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
- 18.4 In no event shall the DPS Consultant respond directly to a Request for Information unless expressly authorised to do so by the Client or the relevant Authorised User.
- 18.5 The DPS Consultant acknowledges that the Client and the Authorised Users may, acting in accordance with the applicable code of practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the DPS Consultant or despite having taken the DPS Consultant's views into account.
- 18.6 The DPS Consultant shall ensure that all Information is retained for disclosure and shall permit the Client and the Authorised Users to inspect such records as requested from time to time.

19. NO AGENCY, PARTNERSHIP OR JOINT VENTURE

Nothing contained in these DPS Terms and Conditions shall be construed as creating an agency, partnership or joint venture relationship between the Client, the DPS Consultant and the Authorised Users.

20. APPLICABLE LAW

These DPS Terms and Conditions shall be governed by the laws of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

21. RIGHTS-OF THIRD PARTIES

Save for any right conferred by these DPS Terms and Conditions on an Authorised User, the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to these DPS Terms and Conditions and accordingly the Parties do not intend any third party (other than an Authorised User) to have any right in respect of these DPS Terms and

Conditions by virtue of that Act. For the avoidance of doubt, the Parties may vary the terms of these DPS Terms and Conditions by written agreement without the consent of the Authorised Users.

22. SEVERANCE

- 22.1 Any Clause or provision of these DPS Terms and Conditions which is held to be illegal or unenforceable (in whole or in part) under any enactment or rule of law shall no longer form part of these DPS Terms and Conditions.
- 22.2 In the event that a Clause or provision (or part of a Clause or part of a provision) is excluded under Clause 22.1 above the validity and enforceability of the remainder of these DPS Terms and Conditions shall not be affected.

23. SURVIVAL OF CERTAIN CLAUSES

The provisions of Clauses 2, 17, 18, 20, 22 and 24 (and without limitation to the foregoing, any other provision of these DPS Terms and Conditions which by its terms is to be performed or observed notwithstanding termination or expiry or which is either expressed to, or by implication is intended to survive termination or expiry) shall survive the termination or expiry of these DPS Terms and Conditions.

24. DATA PROTECTION

- 24.1 The DPS Consultant hereby agrees that the Client may hold computer records and files relating to the DPS Consultant and the Staff. These may include, but are not limited to, the DPS Consultant's bank details, and remuneration details. The Client requires this information for administration and management purposes. The DPS Consultant's right of access to this data is as prescribed by law.
- 24.2 The DPS Consultant hereby agrees that the Client may process personal data relating to the DPS Consultant and the Staff for administration and management purposes, and may, when necessary for those purposes, make appropriate data available to its advisors, its customers, to regulatory authorities and as required by law. The Client to confirm to the DPS Consultant where any data is being shared.
- 24.3 The DPS Consultant shall adhere to the requirements of the Data Protection Act 2018 and the Client's procedures and protocols on confidentiality and shall, during the DPS Term and at all times thereafter, treat the Client's business in the strictest confidence.
- 24.4 Where the DPS Consultant is Processing Personal Data under or in connection with these DPS Terms and Conditions, the DPS Consultant must, in particular, but without limitation:
- (a) only Process such Personal Data as is necessary to perform its obligations under these DPS Terms and Conditions, and only in accordance with any instructions given by the Client under these DPS Terms and Conditions;
 - (b) put in place appropriate technical and organisational measures against any unauthorised or unlawful Processing of that Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the specific requirements of this clause, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data is affected by unauthorised or unlawful Processing or by its loss, damage or destruction;

- (c) take reasonable steps to ensure the reliability of staff who have access to Personal Data and ensure that those Staff are aware of and trained in the policies and procedures identified in this clause, and
 - (d) not cause or allow personal data to be transferred outside the United Kingdom without the prior consent of the Client.
 - (e) Where any Personal Data is Processed by any subcontractor of the DPS Consultant in connection with these DPS Terms and Conditions, the DPS Consultant shall procure that such subcontractor shall comply with the relevant obligations set out in this clause, as if such subcontractor were the DPS Consultant.
- 24.5 The DPS Consultant agrees to destroy any data gathered during the work at the end of the contract and/or upon the request of the Client.

25. GENERAL OBLIGATIONS & WARRANTIES

- 25.1 The DPS Consultant warrants (and where relevant undertakes) to the Client that:
- 25.1.1 it has full power and authority and all necessary consents to enter into and to perform its obligations under these DPS Terms and Conditions and any other agreements to which it is a party and which are to be entered into under or in connection with the DPS or these DPS Terms and Conditions;
 - 25.1.2 no litigation, arbitration, adjudication, dispute or administrative proceeding has been commenced, is pending or to its knowledge is threatened against the DPS Consultant, and no judgment or award has been given or made or is pending against it, which:
 - (i) in any way questions its power or authority to enter into or perform its obligations under these DPS Terms and Conditions or any other agreements to which it is a party and which are to be entered into under or in connection with the DPS or these DPS Terms and Conditions; or
 - (ii) may have a material adverse effect on its ability to perform its obligations under these DPS Terms and Conditions or any other agreements to which it is a party and which are to be entered into under or in connection with the DPS or these DPS Terms and Conditions;
 - 25.1.3 all information, representations and other matters of fact communicated in writing to the Client or to its agents, advisers or employees, by or on behalf of the DPS Consultant, in selection process or tender submission, or otherwise in respect of the DPS, were when given and remain, as at the date of the DPS Consultant's appointment to the DPS, true, complete and accurate in all material respects (save to the extent that they have been superseded by subsequent communications in writing to the Client or the relevant agents, advisers or employees); and
 - 25.1.4 every consent, authorisation, certificate, licence, or approval of, or registration with, or declaration to, any Relevant Authority required to authorise, or required in connection with the execution, delivery, validity, enforceability or admissibility in evidence of, these DPS Terms and Conditions or the performance by the DPS Consultant of its obligations under these DPS Terms and Conditions has been or will within any applicable period be obtained or made and is, or will when obtained be, in full force and effect, and there has been no material default in the observance of the conditions or restrictions (if any) imposed in, or in connection with, any of them.

- 25.2 The rights and remedies of the Client in relation to any misrepresentation or breach of warranty (or other provision of these DPS Terms and Conditions) on the part of the DPS Consultant shall not be prejudiced by any investigation by or on behalf of the Client into the affairs of the DPS Consultant, by the performance of these DPS Terms and Conditions or by any other act or thing which may be done or omitted to be done by the Client under these DPS Terms and Conditions and which would or might, but for this Clause 25.2, prejudice such rights and remedies.

26. CONFIRMATION OF ADMITTANCE CRITERIA

- 26.1 In accordance with Regulation 34(25) of the Public Contracts Regulations 2015 the Client may, at any time during the DPS Term, request the DPS Consultant to re-confirm that it continues to satisfy the Admittance Criteria for the Lot(s) of the DPS to which it is appointed.
- 26.2 The DPS Consultant shall provide the Client with a written response to any request made by the Client under Clause 26.1 within ten (10) Working Days of the date of the request.
- 26.3 If the DPS Consultant fails to provide the Client with written confirmation that it continues to satisfy the Admittance Criteria for one or more of the Category of the DPS to which it is appointed within the ten (10) Working Day timescale referred to in Clause 26.2 the Client may either, at its absolute discretion:
- 26.3.1 terminate the DPS Consultant's appointment to the Lot(s) in question by notice in writing having immediate effect; or
- 26.3.2 issue the DPS Consultant with a **"Notice of Suspension"** specifying that the DPS Consultant shall be suspended from participating in any Competitions under the Lot(s) in question until such time as the DPS Consultant has provided the Client with confirmation that it satisfies the Admittance Criteria for such Lot(s), and the DPS Consultant shall be so suspended.

27. NO PARTNERSHIP AND TAX LIABILITIES

- 27.1 It is hereby declared that it is the intention of the parties that nothing in these DPS Terms and Conditions shall render the DPS Consultant or its Staff, an employee, worker, agent or partner of the Client and the DPS Consultant shall not hold themselves out as such and that neither the DPS Consultant nor the Staff shall be entitled to any pension, bonus or other fringe benefits from the Client.
- 27.2 The parties agree that the DPS Consultant shall be responsible for all income tax liabilities and National Insurance or similar contributions in respect of its provision of the Services.
- 27.3 The Client may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the DPS Consultant.
- 27.4 The Client may require any DPS Consultants to complete additional documentation in respect of UK government taxation at any point over the DPS Term.

Tax Status

- 27.5 In order to protect itself against any liability arising from the incorrect tax treatment of DPS Consultants, the Client has adopted the Government's CEST ('Check Employment Status for Tax') assessment tool. The results of that assessment, carried out by the

Client along with information from the DPS Consultant, will be the tax treatment that the Client will adopt for any work carried by the DPS Consultant.

- 27.6 All DPS Consultants wishing to be paid outside of IR35 will be required to assist the Client in a CEST assessment process before the contract commences. This can be carried out via an online meeting. The DPS Consultants will be required to confirm the details they have given to the Client for the assessment are correct.
- 27.7 The DPS Consultant agrees to update the Client promptly on any changes, during the DPS Term, which would affect and amend their CEST assessment and will be required to retake the assessment.
- 27.8 The Client reserves the right to amend the tax treatment of any contractual payments if it becomes aware of a change in circumstances which renders the current tax treatment void.
- 27.9 The DPS Consultant agrees to reimburse the Client for any tax charges raised on the Client arising out of the DPS Consultant's supply of incorrect information in the CEST assessment or failure to notify the Client of any relevant changes that may affect the assessment or their tax status.

28. CONFLICTS OF INTEREST

- 28.1 The DPS Consultant reserves the right to work for or on behalf of other clients outside of the Term stipulated by these DPS Terms and Conditions.
- 28.2 The DPS Consultant shall not undertake any activity or be involved with any other business or potential business which in any way will or may constitute a conflict of interest with the performance of the Services.
- 28.3 The DPS Consultant shall prior to and/or during the continuance of these DPS Terms and Conditions declare to the Client immediately upon becoming aware of it:
 - (a) Any pre-existing agreements, positions, responsibilities, engagements or other interests that may conflict with the DPS Consultant's obligations under these DPS Terms and Conditions or the interests of the Client;
 - (b) Any future agreements, positions, responsibilities, engagements or other interests that the DPS Consultant is proposing to enter or take on during the course of its Appointment which may conflict with the DPS Consultant's obligations or interests of the Client.
 - (c) In the case of paragraph (b) above, the Client and the DPS Consultant will, prior to the DPS Consultant entering into any such agreement, position, responsibility, engagement or other interest, consider and agree how such potential conflict will be managed. The Parties will comply with any policy (if any) the Client may have from time to time in respect of managing the potential conflict and which the Client will provide the DPS Consultant on request.
- 28.4 Failure by the DPS Consultant to comply with this Clause shall constitute a breach of the DPS Terms and Conditions entitling the Client to immediately terminate the appointment of the DPS Consultant, under one or more Category, in accordance with Clause 14.

29. INTELLECTUAL PROPERTY (IP)

- 29.1 The DPS Consultant confirms and agrees that all Intellectual Property Rights in and to the IP Materials, deliverables, and any other output developed by the DPS Consultant in the course of performing the Services (including all present and future copyright, and copyright revivals and extensions) shall be owned by the Client. The DPS Consultant hereby assigns with full title guarantee by way of present and future assignment any Intellectual Property Rights they may have in and to such IP Materials, deliverables, and other outputs. This assignment shall take effect upon the creation of each of the Intellectual Property Rights. The Client shall ensure that all Staff assign any Intellectual Property they have in and to such IP Materials, deliverables and other outputs to give effect to this clause and that such Staff absolutely and irrevocably waive their moral right in relation to such IP Materials, deliverables, and other outputs.
- 29.2 The DPS Consultant agrees to sign all documents and do all other acts which the Client requests (at the Client's expense) to enable the Client to enjoy the full benefit of this Clause. This includes joining in any application which may be made by the Client in the Client's sole name for registration of any Intellectual Property Right (such as a patent, trade mark or registered design).
- 29.3 The DPS Consultant waives all moral rights in IP Materials so far as the DPS Consultant may lawfully do so in favour of the Client and for the avoidance of doubt this waiver shall extend to the licensees and successors in title to the copyright in the said IP Materials.
- 29.4 The DPS Consultant shall immediately transfer to the Client all IP Materials in its possession or under its control when these DPS Terms and Conditions expire or terminate for any reason, or at any time when the Client requests transfer. No copies or other record of any IP Materials may be retained by the Provider except with the prior written consent of the Client.
- 29.5 The DPS Consultant grants to the Client a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use, modify, adapt or enhance any Intellectual Property Rights that the DPS Consultant owned or developed prior to the beginning of the DPS Term and which the Client reasonably requires in order to exercise its rights and take the benefit of the DPS Terms and Conditions including the Services.
- 29.6 Subject to the express provisions of these DPS Terms and Conditions (including as to confidentiality), nothing in these DPS Terms and Conditions shall prevent the DPS Consultant from using the general skill and know-how it acquires during the Term of these DPS Terms and Conditions, in the normal course of its business. This Clause shall survive expiry of these DPS Terms and Conditions, or its termination for any reason.

30. RETURN OF COMPANY PROPERTY

- 30.1 On the termination of these DPS Terms and Conditions (for whatever reason and howsoever caused) the DPS Consultant will promptly deliver up to the Client:
- (a) all lists of customers, working papers, correspondence, documents, and other property whether in printed or electronic form (including all IP Material) including any copies belonging to the DPS Consultant which may be in its possession or under its control.
 - (b) any equipment or assets owned by the Client including, without limitation, any information and communications technology equipment and any other items.

31. LIABILITY AND INSURANCE

- 31.1 Nothing in these DPS Terms and Conditions shall exclude or restrict the liability of the DPS Consultant:
- (a) for death or personal injury resulting from its negligence;
 - (b) for fraud or fraudulent misrepresentation; or
 - (c) in any other circumstances where liability may not be limited or excluded under any applicable law
- 31.2 The DPS Consultant shall be liable for any loss or damage suffered by the Client where such loss or damage is caused by the above and capped to the value of the minimum insurance values stated in the Admittance Criteria.
- 31.3 The Client shall indemnify the DPS Consultant against any claim, loss or damage (including legal costs) arising out of or in connection with the DPS Consultant's provision of the Services provided that the said claim, loss or damage did not result from the negligence or wilful default of the DPS Consultant. The DPS Consultant will notify the Client if it becomes aware of any claims which might give rise to liability under this Clause and will consult the Client in relation to the defence or settlement of any such claim.
- 31.4 The DPS Consultant shall be liable for any loss, damage or injury to any party resulting from its acts or omission and the acts or omissions of its Staff.
- 31.5 The DPS Consultant shall ensure that provision of adequate employer's liability insurance, public liability insurance, professional indemnity insurance and other suitable policies of insurance in respect of the performance of the Services and its Staff during the Services and shall provide evidence of such insurance coverage to the Client upon request. Where applicable, the required minimum cover per claim shall be set out in the Admittance Criteria.
- 31.6 The DPS Consultant shall be liable for any defects arising in relation to the performance of the Services and shall rectify at its own cost such defects as may be capable of remedy within a reasonable period from notification of such defects by the Client.
- 31.7 The DPS Consultant shall be liable for any defects arising in relation to the performance of the Services and shall rectify at its own cost such defects as may be capable of remedy within a reasonable period from notification of such defects by the Client.

32. POLICY REQUIREMENTS

- 32.1 The Client requires the DPS Consultant to have, and adhere to, policies equal to the Client's:
- (a) Equal Opportunities Policy
 - (b) Anti-Harassment Policy
 - (c) Standards of Business with respect to the acceptance of gifts and hospitality
 - (d) Data Protection Policy
 - (e) Fraud and Bribery Policy
 - (f) IT Security Policy

SCHEDULE 1

CALL OFF CONTRACTS

Community Health Partnerships Limited – Terms of Business

Note to bidders: Please refer to separate document.

SCHEDULE 2

FORM OF PURCHASE ORDER

Note to bidders: Please refer to separate document

SCHEDULE 3

KPI PERFORMANCE REVIEW

Note to bidders: Please refer to separate document

SCHEDULE 4

MANAGEMENT LEVY

Note to bidders: Please refer to separate document