

DATED

DYNAMIC PURCHASING AGREEMENT FOR THE PROVISION OF

GROUND MAINTENANCE SERVICES

between

LANCASHIRE COUNTY COUNCIL

and

[SERVICE PROVIDER]

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THIS AGREEMENT is dated as at the date when the Service Provider is accepted onto the Lead Authority's DPS for grounds maintenance services.

PARTIES

- (1) **LANCASHIRE COUNTY COUNCIL** whose principal place of business is at PO Box 78, County Hall, Preston, Lancashire PR1 8XJ (the **Lead Authority**); and
- (2) the entity which as a sole trader, partnership or with another trading status has its principal place of business (or as a limited company has its company number and registered office) as set out in Part 1 of the standard selection questionnaire submitted to the Lead Authority and selected by the Lead Authority to be an eligible service provider to join the Lead Authority's DPS for grounds maintenance services (the **Service Provider**).

BACKGROUND

- (A) The Lead Authority has agreed to establish an electronic purchasing system allowing for Placing Authorities to purchase grounds maintenance services at schools within Lancashire. The Placing Authorities have authorised the Lead Authority to enter into and manage this DPS Agreement on their behalf and the Placing Authorities will use the DPS to award Contracts during the Term.
- (B) The Lead Authority placed a Find a Tender Notice with the Lead Authority reference [REDACTED] seeking expressions of interest from potential service providers for the provision of Services to Placing Authorities under a DPS.
- (C) The Lead Authority shall seek the appointment of eligible service providers, known as DPS Providers (of which the Service Provider is one), to perform ground maintenance services for each of a series of separate requirements which may be awarded by following a mini-competition (between eligible service providers appointed to the Lead Authority's DPS).
- (D) The Service Provider represented to the Lead Authority that it is capable of delivering the Services in accordance with the requirements as set out in the Invitation to Participate and, in particular, the Service Provider made representations to the Lead Authority in the Request to Participate in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- (E) On the basis of the Service Provider's Request to Participate, the Lead Authority selected the Service Provider to enter an Agreement along with a number of other DPS Providers appointed to the DPS in parallel to provide Services to the Placing Authorities from time to time on a call-off basis.
- (F) This Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Service Provider under this Agreement.

AGREED TERMS

1. Definitions and interpretation

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

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

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

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

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

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

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

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

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

Bill of Quantities: means the specific requirements for each Placing Authority (to complement the general specification information included in the ITP and Request to Participate) which applies to a mini-competition for Services under the DPS.

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

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

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

Commencement Date: means the date when the Service Provider is accepted onto the Lead Authority's DPS for grounds maintenance services.

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

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

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

Contract Acceptance Form: means a document setting out details of the Services and Price in the form set out in **Error! Reference source not found.** (Contract Acceptance Form) or as otherwise agreed in accordance with Clause 4.6 (Award Procedures).

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

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

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

Dispute: means as defined in Clause 21.1 (Dispute resolution).

Dispute Notice: means as defined in Clause 21.1 (Dispute resolution).

DPA: means the Data Protection Act 2018.

DPS: means dynamic purchasing system, an electronic system being used to select DPS Providers to deliver the Placing Authorities grounds maintenance services set out in this Agreement and in accordance with the procedure set out at Regulation 34 of the Regulations.

DPS Providers: means the Service Provider and other service providers appointed as providers under agreements similar to this Agreement through the Lead Authority's DPS for grounds maintenance services.

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

Find a Tender Notice: means the contract notice published on www.find-tender.service.gov.uk.

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

Guidance: means any guidance issued or updated by the UK government from time to time in relation to the Regulations.

Holding Company: shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

Information: has the meaning given under section 84 of the FOIA.

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

Invitation to Participate or ITP: means the Service Provider's request to participate in the Lead Authority's DPS for grounds maintenance services.

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

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

Month: means a calendar month.

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

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

Party: means the Lead Authority and/or the Service Provider.

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

Placing Authority: means an organisation whose name appears in Schedule 3 who is entitled to enter into a Contract with the Service Provider under this DPS. For the avoidance of doubt, this includes the Lead Authority.

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

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Lead Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Lead Authority; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Lead Authority.

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

Regulatory Bodies: means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Lead Authority.

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

Request to Participate or RTP: means the most recent selection questionnaire submitted by the Service Provider electronically via the Lead Authority's tendering system seeking to participate as a

DPS Provider in response to the Lead Authority's ITP in the Lead Authority's DPS for grounds maintenance services.

Required Insurances: means as defined in Clause **Error! Reference source not found.** (Insurance).

Services: means the services detailed in Part 1 of Schedule 1 (Services).

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

Staff: means all persons employed by the Service Provider together with the Service Provider's servants, agents, suppliers and subcontractors used in the performance of its obligations under this Agreement or any Contracts.

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

Sub-Contractor: means the contractors or service providers that enter into a Subcontract with the Service Provider.

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

Term: means the period commencing on the Commencement Date and ending on [REDACTED] subject to extension pursuant to clause 2.2 or on earlier termination of this Agreement or otherwise lawfully terminated.

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

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

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

Year: means a calendar year.

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

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

- (f) headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- (g) the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement shall include the Schedules;
- (h) references in this Agreement to any Clause or sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or sub-Clause or Schedule to this Agreement so numbered;
- (i) references in this Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Agreement so numbered; and
- (j) reference to a Clause is a reference to the whole of that Clause unless stated otherwise.

1.3 This Agreement will supplement and complement the provisions of any Contract. In the event of a conflict or discrepancy between this Agreement and the Contract, the Parties will have full regard to the principles set out in Clause 1.4 with a view to resolving that conflict or discrepancy. Where a conflict or discrepancy between this Agreement and any Contract cannot be resolved by reference to those principles the order of priority shall be as set out in Clause 5.2 (Contract performance and precedence of documents).

1.4 This Agreement provides a mechanism for the Services to be called off from the Service Provider by a Placing Authority and a supplemental set of provisions designed to encourage the Lead Authority and the Service Provider to work with each other in an open, co-operative and collaborative manner and in a spirit of mutual trust and respect. The Parties will at all times endorse and support collaborative behaviour.

2. Term of Agreement

2.1 This Agreement shall take effect on the Commencement Date and shall expire automatically at midnight on [REDACTED], unless it is otherwise terminated in accordance with the provisions of this Agreement, or otherwise lawfully terminated.

2.2 The Lead Authority may in its absolute discretion extend the Term beyond the initial four year period for a further period of [REDACTED] months thereafter. The Lead Authority shall provide no less than 3 months' notice to the Service Provider and other DPS Providers that it wishes to extend the Term.

2.3 The Service Provider shall bear the cost of ensuring that the Services shall comply with all applicable Law.

3. Scope of Agreement

3.1 The Lead Authority appoints the Service Provider as a DPS Provider of the Services and the Service Provider shall be eligible to be awarded Contracts by Placing Authorities for such Services during the Term.

3.2 The Placing Authorities may in its absolute discretion and from time to time during the Term request the Lead Authority to order Services from the Service Provider in accordance with the ordering and award procedure set out in Clause 4 (Award Procedures) on its behalf. Subject to Clause 3.2, if there is a conflict between Clause 4 (Award Procedures) and the Regulations, the Regulations shall take precedence.

- 3.3 If and to the extent that any Services under this Agreement are required:
- (a) the Lead Authority shall comply with the ordering procedure in Clause 4 (Award Procedures) when ordering on the Placing Authority's behalf; and
 - (b) the relevant Placing Authority shall enter into a Contract with a Service Provider for these Services whose terms are materially in accordance with the Call-off Terms and Conditions.
- 3.4 The Service Provider acknowledges that, in entering this Agreement, no form of exclusivity or volume guarantee has been granted by any Placing Authority for the Services and that the Placing Authorities are at all times entitled to:
- (a) enter into other contracts and arrangements with other DPS Providers for the provision of any or all of the Services; or
 - (b) enter into other contracts and arrangements with other service providers for the provision of services which are the same as or similar to the Services.

4. Award procedures

- 4.1 The Parties acknowledge that the Lead Authority shall award Contracts on the Placing Authorities behalf and in accordance with the terms laid down in this Agreement and particularly in accordance with the relevant Invitation to Tender and Schedule 2 (Award Criteria) to this Agreement.
- 4.2 The Parties acknowledge that the award of any Services to the Service Provider shall be as Services by mini-competition between DPS Providers and where the Service Provider is successful according to Clause 4.3.
- 4.3 Where a Placing Authority wishes to request Services under this Agreement using a mini competition, the Lead Authority shall:
- (a) identify the geographic area that its Services requirements fall into;
 - (b) identify the DPS Providers capable of performing the Contract for the Services requirements;
 - (c) conduct a mini-competition seeking a Tender from eligible, invited DPS Providers by issuing an Invitation to Tender document setting out the Placing Authority's requirements and a deadline by which the Tender must be submitted;
 - (d) evaluate all Tender submissions received by the Invitation to Tender deadline in accordance with the Award Criteria set out in the Invitation to Tender;
 - (e) (on conclusion of the Tender submission evaluation process) award a Contract to the DPS Provider submitting the most economically advantageous Tender on the basis of the Award Criteria specified in the Invitation to Tender;
 - (f) prepare and send to the successful DPS Provider a Contract Acceptance Form incorporating the Call-off Terms and Conditions (by reference) following which the DPS Provider is required within two (2) Working Days of receipt to respond electronically to the Placing Authority to either:
 - (i) accept the invitation to deliver the specification set out in the Invitation to Tender and offer to enter into the Contract with the Placing Authority; or

- (ii) notify the Placing Authority that it declines to deliver the specification set out in the Invitation to Tender and shall not enter into the Contract (whereby the Contract offer from the Service Provider shall lapse and the Lead Authority may then send the Contract to the next DPS Provider that has submitted the next most economically advantageous Tender (and so on until all DPS Providers decline and the Placing Authority has to procure such Services)),

provided that if a DPS Provider does not respond to the Contract Acceptance Form and commences performance of the Services then the DPS Provider is deemed to have accepted the invitation and offered to enter into the Contract; and

(g) where:

- (i) on receipt of the DPS Provider's response to the Contract Acceptance Form (where the DPS Provider has accepted the invitation and offered to enter into the Contract); or
- (ii) the DPS Provider does not respond to the Contract Acceptance Form within two (2) Working Days of receipt and commences performance of the Services,

the Placing Authority is deemed to have accepted the DPS Provider's offer to enter into the Contract; and

(h) the DPS Provider shall provide the Services in accordance with the terms of the Contract.

4.4 The Service Provider agrees that each Tender submitted by the Service Provider in relation to a mini-competition for Services held pursuant to this Clause 4 shall remain open for acceptance for thirty (30) days from the specified commencement date for such Services (or such other period specified in the Invitation to Tender issued by the Placing Authority in accordance with this Clause 4).

4.5 Notwithstanding the fact that the Lead Authority has followed the procedure set out above in this Clause 4 for Services, Placing Authorities may cancel, postpone, delay or end the procedure without awarding a Contract for Services or awarding a Contract. Nothing in this Agreement shall oblige the Placing Authority award any Contract for Services and (subject to Clause **Error! Reference source not found.**) no DPS Provider shall be entitled to any exclusive arrangement for the delivery of Services to the Placing Authority.

4.6 Subject to Clauses **Error! Reference source not found.** to 4.5 above, a Contract may be placed with the Service Provider by the Lead Authority serving a Contract Acceptance Form in writing in substantially the form described in **Error! Reference source not found.** (Contract Acceptance Form) or such similar or analogous form agreed with the Service Provider including systems of ordering involving fax, e-mail or other online solutions.

4.7 If the Service Provider modifies or imposes conditions on the fulfilment of a Contract (or Contract Acceptance Form) the Lead Authority may either:

- (a) reissue the Contract incorporating the modifications or conditions in a new Invitation to Tender; or
- (b) treat the Service Provider's response as notification of its inability to fulfil the specification and the provisions of Clause 4.3(f)(ii) shall apply.

4.8 The Parties acknowledge and agree that the issue of an Invitation to Tender is an "invitation to treat" by the Placing Authority. Accordingly, the DPS Provider shall electronically submit its Tender as its

offer to the Placing Authority on the terms of the Contract (being the Contract Acceptance Form and Call-off Terms and Conditions). The Placing Authority shall signal its acceptance of the DPS Provider's offer and the formation of a Contract by requesting the Lead Authority to issue a Contract Acceptance Form to the Service Provider.

5. Contract performance and precedence of documents

5.1 The Service Provider shall perform all Contracts entered into with a Placing Authority in accordance with:

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

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

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

6. Prices for Services

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

6.2 The Placing Authority shall pay the charges to the Service Provider in accordance with the provisions set out in the relevant Contract. The charges applicable for the Services will be determined at Contract award stage.

6.3 The Service Provider shall invoice the Placing Authority for payment of the charges in accordance with the relevant Contract.

6.4 (Unless otherwise specified in the Contract) the Placing Authority shall pay the charges which have become payable to the Service Provider in accordance with clause 11 (Payment) of the Call-off Terms and Conditions.

6.5 The prices offered by the Service Provider for Contracts to the Placing Authority for Services shall, subject to Clause **Error! Reference source not found.** (Award Procedures), be tendered in accordance with the requirements of the mini-competition held pursuant to Clause 4 (Award Procedures) and Schedule 2 (Award Criteria).

7. Warranties and representations

7.1 The Service Provider warrants and represents to the Lead Authority that:

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

8. Service pre-requisites

8.1 The Service Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Agreement and any Contract.

8.2 As at the date of this Agreement the Lead Authority and the Service Provider do not envisage that a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) will apply in relation to the provision of the Services under any Contract. However, where a relevant transfer applies then the terms of Schedule 8 of the relevant Contract shall apply.

9. Representatives

- 9.1 The Lead Authority's initial Authorised Representative is: Andrew Murphy, Contracts Manager- Design and Construction, designandconstruction@lancashire.gov.uk, 01772 531691
- 9.2 The Service Provider's initial Authorised Representative is the person whose contact details are as shown in the "Contact Details" box as set out in Part 1 of the Request to Participate.

10. Records and audit access

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

11. Confidentiality

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

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

12. Insurance

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

- 12.1.1 public liability insurance with a limit of indemnity of not less than £5,000,000 (FIVE MILLION POUNDS) in relation to any one claim arising out of each and every event without limit on the number of claims in any one year or other period;
- 12.1.2 employer's liability insurance with a limit of indemnity of not less than £5,000,000 (FIVE MILLION POUNDS);
- 12.1.3 product liability insurance with a limit of indemnity of not less than £1,000,000 (ONE MILLION POUNDS STERLING) in relation to any one claim or series of claims.

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

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

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

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

13. Data Protection

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

14. Freedom of information

- 14.1 The Service Provider acknowledges that the Lead Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Lead Authority (at the Service Provider's expense) to enable the Lead Authority to comply with these information disclosure requirements.
- 14.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
- (a) transfer any Request for Information to the Lead Authority as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
 - (b) provide the Lead Authority with a copy of all Information in its possession or power in the form that the Lead Authority requires within five (5) Working Days (or such other period as the Lead Authority may specify) of the Lead Authority requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Lead Authority to enable the Lead Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 14.3 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Lead Authority.
- 14.4 The Service Provider acknowledges that the Lead Authority may (acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004) (Code)) be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- (a) without consulting with the Service Provider; or
 - (b) following consultation with the Service Provider and having taken its views into account,

provided always that where Clause 14.4(a) applies the Lead Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advance notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

- 14.5 The Service Provider shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Lead Authority to inspect such records as requested from time to time.
- 14.6 The Service Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Lead Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 14.3.

15. Publicity

- 15.1 Unless otherwise directed by the Lead Authority, the Service Provider shall not make any press announcements or publicise this Agreement in any way without the Lead Authority's prior written consent.
- 15.2 The Lead Authority shall be entitled to publicise this Agreement in accordance with any legal obligation on the Lead Authority, including any examination of this Agreement by the Auditor or otherwise.
- 15.3 The Service Provider shall not do anything that may damage the reputation of the Lead Authority or bring the Lead Authority into disrepute.

16. NOT USED

17. Termination

Termination on Default

- 17.1 The Lead Authority may terminate this Agreement by serving written notice on the Service Provider with effect from the date specified in such notice:
- (a) where the Service Provider commits a material breach of this Agreement and:
 - (i) the Service Provider has not remedied the material breach to the satisfaction of the Lead Authority within ten (10) Working Days, or such other longer period as may be specified by the Lead Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or
 - (ii) the material breach is not, in the reasonable opinion of the Lead Authority, capable of remedy; or
 - (b) where a Placing Authority terminates a Contract awarded to the Service Provider under this Agreement as a consequence of Default by the Service Provider.
- 17.2 For the purposes of Clause 17.1(a), material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Lead Authority would otherwise derive from:
- (a) a substantial portion of this Agreement; or

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

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

Termination on insolvency and Change of Control

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

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

- (k) any warranty given by the Service Provider in Clause 7 of this Agreement is found to be untrue or misleading.

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

- (a) (where the Service Provider is not an individual) being notified that a Change of Control has occurred;
- (b) (where the Service Provider is not an individual) where no notification has been made, the date that the Lead Authority becomes aware of the Change of Control;
- (c) (where the Service Provider is an individual) being notified that the Service Provider's business has been acquired by a third party; or
- (d) (where the Service Provider is an individual) where no notification has been made, the date that the Lead Authority becomes aware of the Service Provider's business being acquired by a third party,

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

Termination by Lead Authority for convenience

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

Termination on mandatory grounds

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

- (a) where the Agreement has been subject to a substantial modification which will include any change in the Agreement irrespective of the monetary value and which meets one (1) or more of the following conditions:
 - (i) materially alters the character of the Agreement;
 - (ii) would have allowed other potential service providers to participate in the procurement procedure other than those initially selected or allowed for the acceptance of a tender other than that originally accepted;
 - (iii) attracted additional service providers in the procurement procedure; or
 - (iv) the modification changes the economic balance of the Agreement in favour of the Service Provider in a manner which was not provided for in the original agreement;

- (v) the modification extends the scope of the Agreement considerably; or
 - (vi) a new service provider replaces the Service Provider other than where the change arises from a clear and precise unequivocal review clause or the exercising of an option which outlines the scope and nature of the possible modification as well as the conditions under which the option can be exercised and that the option exercised does not alter the overall nature of the Agreement or following a universal or partial succession into the position of the Service Provider following corporate restructuring such as a takeover, merger, acquisition or insolvency and provided that this does not entail other substantial modifications and where the purpose of the modification is not aimed at circumventing procurement Law;
- (b) where post-award of the Agreement it is discovered that the Service Provider should have been excluded from the procurement procedure on certain mandatory exclusion grounds for a breach of Regulation 57 of the Regulations. These exclusion grounds are where the Service Provider has been convicted of any of the offences that are detailed in Regulation 57 of the Regulations; or
 - (c) where the Court of Justice of the European Union has declared the Agreement was awarded in “serious infringement” of the Lead Authority’s obligations under European Union law and Directive 2014/24/EU in infringement proceedings brought by the European Commission against the Member State concerned under Article 258 TFEU.

Termination by the Service Provider for convenience

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

18. Suspension of Service Provider's appointment

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

19. Consequences of termination and expiry

- 19.1 Notwithstanding the service of a notice to terminate the Agreement, the Service Provider shall continue to fulfil its obligations under the Agreement until the date of expiry or termination of the Agreement or such other date as required under this Clause 19.
- 19.2 Unless expressly stated to the contrary, the service of a notice to terminate the Agreement shall not operate as a notice to terminate any Contract made under the Agreement. Termination or expiry of the Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 19.3 Within thirty (30) Working Days of the date of termination or expiry of the Agreement, the Service Provider shall return or destroy at the request of the Lead Authority any data, personal information relating to the Lead Authority or its personnel or Confidential Information belonging to the Lead Authority in the Service Provider's possession, power or control, either in its then current format or in

a format nominated by the Lead Authority (in which event the Lead Authority will reimburse the Service Provider's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Lead Authority, save that it may keep one (1) copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Agreement, or such period as is necessary for such compliance.

- 19.4 Termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Agreement before termination or expiry.
- 19.5 The provisions of Clauses 7 (Warranties and Representations), 10 (Records and Audit Access), 11 (Confidentiality), 12 (Insurance), 13 (Data Protection), 14 (Freedom of Information), 15 (Publicity), 17 (Termination), 19 (Consequences of Termination and Expiry), 22 (Prevention of Bribery), 23 (Subcontracting and assignment) and 31 (Governing Law and Jurisdiction), shall survive the termination or expiry of the Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

20. Complaints handling and resolution

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

21. Dispute resolution

- 21.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (a Dispute) then except as expressly provided in this Agreement or in the Call-off Terms and Conditions, the Parties shall follow the procedure set out in this Clause 21:
- (a) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Representatives of the Lead Authority and the Service Provider shall attempt in good faith to resolve the Dispute;
 - (b) if the Representatives of the Lead Authority and the Service Provider are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to [REDACTED] of the Lead Authority and a more senior representative of the Service Provider than the Service Provider's Representative who shall attempt in good faith to resolve it; and
 - (c) if the [REDACTED] of the Lead Authority and the more senior representative of the Service Provider are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, where relevant the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing (ADR Notice) to the other Party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve.

21.2 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under Clause 31 (Governing law and jurisdiction) which Clause 31 shall apply at all times.

22. Prevention of bribery

22.1 The Service Provider:

- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Agreement and any Contract made under it commit a Prohibited Act; and
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Lead Authority, or that an agreement has been reached to that effect, in connection with the execution of this Agreement or any Contract, excluding any arrangement of which full details have been disclosed in writing to the Lead Authority before execution of this Agreement.

22.2 The Service Provider shall:

- (a) if requested, provide the Lead Authority with any reasonable assistance, at the Lead Authority's reasonable cost, to enable the Lead Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- (b) within thirty (30) days of the Commencement Date, and annually thereafter, certify to the Lead Authority in writing (such certification to be signed by an officer of the Service Provider) compliance with this Clause 22 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Service Provider shall provide such supporting evidence of compliance as the Lead Authority may reasonably request.

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

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

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

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

22.7 Any notice of termination under Clause 22.6 must specify:

- (a) the nature of the Prohibited Act;

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

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

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

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

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

23. Subcontracting and assignment

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

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

24. Variations to Agreement

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

25. Third party rights

25.1 Except as provided in this Agreement, a person who is not a Party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

25.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

26. Severance

26.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 26.1 shall not affect the validity and enforceability of the rest of this Agreement.

26.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

27. Rights and remedies

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

28. Waiver

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

29. Entire agreement

29.1 This Agreement, the schedules and the documents annexed to it or otherwise referred to in it and the ITP and all schedules and the documents annexed to it and otherwise referred to in it contain the whole agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the Parties relating to that subject matter, provided that nothing in this Clause 29 shall operate to exclude any liability for fraud.

29.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

30. Notices

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

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

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

(a) for the Authority:

Authority's Representative: Andrew Murphy

Address: Lancashire County Council, Design and Construction Service, County Hall,
Preston, PR1 8RE

For the attention of: Contracts Manager

Tel: 01772 531691

E-mail: designandconstruction@lancashire.gov.uk

- (b) for the Service Provider the person whose contact details are as shown in the "Contact Details" box as set out in Part 1 of the Request to Participate.

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

31. Governing law and jurisdiction

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

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

This Agreement has been entered into on the date when the Service Provider is accepted onto the Lead Authority's DPS for grounds maintenance services.

Schedule 1

Services

Part 1 Specification

Please see separate document (which also forms Schedule 1 (General Specification) to the Call-off Terms and Conditions).

Part 2

Service Provider's Request to Participate

(Part 4 (Service Provider's Request to Participate) of Schedule 1 (Services is a separate document to be incorporated by reference from the Request to Participate).

Schedule 2

Award Criteria

Please refer to ITP Schedule 2 – Evaluation Criteria – Selection and Award

Schedule 3

Placing Authorities

The DPS will include

<http://www.education.gov.uk/edubase/home.xhtml>

<http://www.fire-service.co.uk/information/ukfrs>

<https://www.police.uk/contact/force-websites/>

- Educational Establishments in the North West of England, maintained by the Department for Children, Schools and Families including Schools, Universities and Colleges but not Independent Schools.
- Fire and Rescue Service Establishments in the North West of England
- Police Forces in the North West of England

Schedule 4

Contract Acceptance Form

Please see separate document

Schedule 5

Call-off Terms and Conditions

Please see separate document.

Schedule 6

Variation Procedure

1. INTRODUCTION

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

2. PROCEDURE FOR PROPOSING A VARIATION

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

3. OBJECTIONS TO A VARIATION

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

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

4. VARIATIONS THAT ARE NOT PERMITTED

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

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