

London Borough of Haringey

ACCESS AGREEMENT

DATED THE

DAY OF

2025

BETWEEN

(1) The Mayor and Burgesses of the London Borough of Haringey

AND

(2) insert name of organisation

**For the London Construction Programme Dynamic
Purchasing Systems**

- **For the provision Construction, Estates and
Property Professional Services.**
- **Minor Works**

This agreement is made this day of 2025

Between:

- (1) **The Mayor and Burgesses of the London Borough of Haringey** whose principal place of business is at River Park House, 225 High Road, London N22 8HQ (the **Council**); and
 - (2) **[Insert name]** of **[insert address]** (the **LCP Member**)
- (each a "**Party**" and together the "**Parties**")

Background:

- (A) The Council, as the lead authority, has established Dynamic Purchasing Systems (DPS) for the procurement of Construction, Estates and Property Professional Services and for Minor Works. They have contracted with a number of external Service Providers / Contractors who wish to provide services as a part of the DPS (the **overarching DPS Agreement**).
- (B) The DPS Agreements include provision for other approved LCP Members to contract with the Service Providers / Contractors on the terms and conditions of the Call Off Contracts so that such public bodies can access the Services / Works provided by the Service Providers / Contractors.
- (C) The Council requires that any LCP Member who wishes to use the DPS Agreements and Call-Off the Services / Works under the DPS Agreements, enters into this agreement (being this Access Agreement) to regulate its relationship with the Council.
- (D) This agreement is an Access Agreement for the purpose of calling off Services / Works under the DPS Agreements.
- (E) The Council acknowledges that the LCP Member is not under any obligation to award any Call Off Contracts under the DPS Agreements.

IT IS HEREBY AGREED:

1 INTERPRETATIONS

- 1.1 This Access Agreement is supplemental to the DPS Agreements. Any terms, which are not separately defined herein, shall be construed in accordance with the definitions set out in the DPS Agreements.
- 1.2 The following terms and expressions shall have the meanings ascribed:

"Access Agreement" means any agreement entered into between the Council and any public sector organisation referred to within the Contract Notice which governs the terms and conditions upon which such organisations may access the DPS as an LCP Member.

"Call Off Contract" means a legally binding agreement for the provision of any of the services or works made between the LCP Member and any Service Provider / Contractor in accordance with a Call Off as more particularly described in the relevant DPS Agreement.

"Charges" means the charges payable by the LCP Member to the Service Provider / Contractor for the provisions of the Services / Works under Call Off Contracts awarded to the Service Provider / Contractor as calculated in accordance with Clause 9.

"Contractor" means a Contractor who has entered into a DPS Agreement with the LCP

"Council" means The London Borough of Haringey acting as the Lead Authority for The London Construction Programme.

"Default" means any material breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any material default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of (i) this Access Agreement and in respect of which such Party is liable to the other or (ii) any DPS Agreement or (iii) any Call off Contracts the case may be;

"DPS" means the dynamic purchasing system established and managed by the Council on behalf of LCP Members for the provision of Minor Works and Construction, Estates and Property Professional Services.

"DPS Operating Guides" means "DPS Entry and Operation Guide Part 1 – DPS Overview, Entry Criteria and Evaluation Methodology" and "DPS Entry and Operation Guide Part 2 – Requirements Process and DPS Management" (as amended from time to time).

"Fee" means the fee and any charges payable by the LCP Member to the Council. The fee applicable will be in accordance with Clause 10 of this Agreement.

"Fully Indemnify" means fully indemnified on an on-demand basis from and held blameless against all actions, costs, claims, demands, expenses, liability, losses, damages, proceedings, charges and expenses whatsoever in respect of the matter referred to.

"LCP" means the London Construction Programme.

"LCP Member" means any of the public sector organisations referred to within the Contract Notice that are members of the London Construction Programme

"LCP DPS Portal" means the web-based software developed in conjunction with Axians or such other technology as may be agreed between the parties.

"LCP Member Pack" means a pack of information provided to the LCP Member by the LCP in order to facilitate its use of the DPS Agreements.

"Management Information Reports" means information reports created by the Council and/or the LCP that detail information regarding any Call Off Contracts and which inform strategic decision in relation to the DPS.

"Onboarded" means the process of approval of service providers / contractors for admission to the DPS via the evaluation of the Entry Submissions received from service providers / contractors to ensure these fulfil the Selection Criteria for delivery of the Services / Works.

"Services" means any of the services to be performed by a Service Provider under a Call Off Contract for the LCP Member.

"Service Provider" means a supplier who has entered into a DPS Agreement with the LCP.

"Software Licence" means the licence between The LCP, and the LCP Member as set out in Schedule 2.

"Tender" means a request issued by the LCP Member from time to time identifying specific Services / Works for which the LCP Member is seeking to award a Call off Contract and which may include terms and conditions applicable to the provision of those Services or works which supplement the terms and conditions set out in the relevant DPS Agreement.

"Tender Procedures" means the ordering procedures required to be followed by the LCP Member under any particular DPS Agreement and the DPS Operating Guides in order for the LCP Member to award a Call off Contract.

"Works" means any of the works to be performed by a Contractor under a Call Off Contract for the LCP Member.

1.3 As used in this Access Agreement:

- (a) the masculine includes the feminine and the neuter; and
- (b) the singular includes the plural and vice versa.

1.4 A reference to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or similar instrument as amended by any subsequent statute, enactment, order, regulation, or similar instrument or as contained in any subsequent re-enactment thereof.

1.5 Headings are included in this Access Agreement for ease of reference only and shall not affect the interpretation or construction of this Access Agreement.

1.6 References to Clauses, Schedules and Appendices are, unless otherwise provided, references to Clauses of and Schedules and Appendices to this Access Agreement.

1.7 In the event and to the extent only of any conflict between the Clauses and the Schedules, the Clauses shall prevail.

1.8 Except where otherwise stated, references to Clauses and Schedules are to clauses of and schedules to this Access Agreement.

2. SCOPE OF THIS AGREEMENT

- 2.1 Subject to the terms of this Access Agreement and the DPS Agreements, the LCP Member is entitled (but not required) at any time during the term of the Access Agreement to enter into Call Off Contracts pursuant to the terms of any DPS Agreement in accordance with the arrangements referred to in Clause 8.

3. INDEMNITY

- 3.1 Subject to Clause 3.9 below, the LCP Member acknowledges and agrees to Fully Indemnify the Council against all actions, claims, costs, losses, expenses incurred directly or indirectly, additional operational and administrative costs and expenses and/or expenditure or charges and damages brought against or suffered by the Council arising out of this Access Agreement or under the DPS Agreements, except where such actions, claims, costs, expenses and damages are brought against or suffered by the Council due to the negligence of the Council.
- 3.2 The LCP Member agrees and acknowledges that where the Council is found liable for any actions, claims, costs, expenses incurred directly or indirectly, additional operational and administrative costs and damages brought against or suffered by it that arise in part due to negligence, Default, fraud, or breach of contract by the LCP Member then the LCP Member shall Fully Indemnify the Council in respect of that part of the actions, claims, costs, expenses and damages which they have caused or are responsible for.
- 3.3 Neither Party excludes or limits liability to the other Party for death or personal injury or for any liability which occurs as a result of its fraudulent actions arising under this Access Agreement.
- 3.4 Subject always to Clause 3.3 in no event shall the Council be liable to the LCP Member for:
- (a) loss of profits, business, revenue, goodwill, or anticipated savings; and/or
 - (b) indirect or consequential loss or damage.
- 3.5 The LCP Member acknowledges that the Council shall not have any liability, either under this Access Agreement or otherwise, in respect of the provision of Services / Works by any Service Provider / Contractor to the LCP Member.
- 3.6 The LCP Member acknowledges that the Council shall not have any liability, either under this Agreement or otherwise, in respect of the suitability of the terms of the Call Off Contracts or the suitability of the Service Providers / Contractors to perform the Services or Works and that the LCP Member shall have satisfied itself of such suitability. For the avoidance of doubt the LCP Member shall be responsible for considering whether they wish to request any means of proof (pursuant to Regulation 34(25) and or 34(26) of the Public Contract Regulations 2015) from the Service Provider / Contractor when they submit a Requirement to ensure that the Service Provider / Contractor is suitable for the specific Services / Works required in relation to that Requirement, and for the avoidance of doubt, the Council shall not be responsible for any act or omission on the part of the LCP Member in terms of securing such proof.
- 3.7 The LCP Member shall be responsible for reporting any issues to the Council that it may identify when utilising the DPS, in respect of a Service Provider / Contractor's ability to perform the Services / Works.

- 3.8 The LCP Member expressly acknowledges that it has entered into this Access Agreement freely and with full knowledge of its terms and in particular the provisions of this Clause 3.
- 3.9 The Parties expressly agree that should any limitation or provision contained in this Clause 3 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.
- 3.10 The Parties shall take all reasonable steps to mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Access Agreement and shall take all reasonable steps to minimise and mitigate any effects or circumstances and/or events adversely affecting the performance of their obligations under this Access Agreement which would otherwise entitle that Party to relief and/or to claim compensation hereunder.
- 3.11 Except as provided in Clause 3.3, the Council shall not have any liability to the LCP Member whether in contract, tort (including negligence) or otherwise in respect of any legal action or other proceedings relating to the subject matter of this Access Agreement.
- 3.12 The LCP Member shall be responsible for ensuring that, where applicable, it complies with its obligations under section 20 of the Landlord and Tenant Act 1985 and the Council shall have no responsibility for any act or omission on the LCP Member's part in respect of such obligation.

4. TERMINATION

4.1 Rights of termination

- (a) Either Party may at any time by notice in writing to the other Party terminate this Access Agreement forthwith if the other is in Default of any obligation under this Access Agreement, a DPS Agreement or a Call off Contract (as the case may be) and:
- (i) the Default is capable of remedy and that Party shall have failed to remedy the Default within thirty (30) calendar days of receipt of written notice to it specifying the Default and requiring its remedy; or
 - (ii) the Default is not capable of remedy.
- (b) This Access Agreement may be terminated by either Party by giving three calendar months written notice to the other Party.

4.2 Following Termination

- (a) Termination of this Access Agreement shall be without prejudice to any Call off Contracts executed prior to termination which would continue in full force and effect in accordance with their terms.
- (b) Termination of this Access Agreement in accordance with this Clause 4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.
- (c) The provisions of Clauses 1, 3, 4, 5, 6, 11, 13, 14, and the provisions of Schedule 1 shall survive the termination of this Access Agreement.

- (d) For the avoidance of doubt, the provisions of Clause 4.2(a), (b) and (c) shall apply to any termination of this Access Agreement which may be affected pursuant to Clause 4.1.

- 4.3 Where the Council terminates a DPS Agreement and the Service Provider / Contractor and the LCP Member decide that the Service Provider / Contractor should continue to provide the Works or Services under a Call off Contract created in the Minor Works or Construction, Estates and Property Professional Services DPS, the LCP Member shall procure that the Service Provider / Contractor shall Fully Indemnify the Council against all actions, claims, costs, losses, expenses incurred directly or indirectly additional operational and administrative costs and expenses and/or expenditure or charges and damages brought against or suffered by the Council arising as a result of the continuation of such Call off Contract.

5 PROVISION OF INFORMATION

- 5.1 The LCP Member acknowledges that the Council shall access the DPS secured by the LCP Member so as to allow the Council to secure the necessary information to prepare the Management Information Reports.
- 5.2 The LCP Member will be required to submit responses to supplier Key Performance Indicators for all completed projects on a quarterly basis. The format of the KPI return will be determined and expressed by the LCP upon request of this information. The KPI responses will be collated, and form part of the Management Information reports provided by the LCP.
- 5.3 Should the Council require any additional information that is not available on the DPS; the LCP Member will promptly provide this information to the Council within 5 Working Days of the Council's request for such information.
- 5.4 For the avoidance of doubt, the Council confirms that such information shall only be made available to other LCP Members who have access to that specific DPS pursuant to arrangements similar to this Access Agreement (and the confidentiality obligations set out herein).
- 5.5 The LCP Member must obtain for itself at its own responsibility and expense all information necessary for the entry into a Call Off Contract and utilisation of the DPS. Information supplied to the LCP Member (including without limitation the LCP Member Pack) by the Council or contained in the Council's publications is for general guidance. The LCP Member must satisfy itself by its own investigations as to the accuracy of any such information.
- 5.6 Without limitation to other remedies that the Council may have, failure to provide the information required by the Council in accordance with this Clause 5 may result (at the Council's discretion) in the suspension of the LCP Member's use of the DPS where the Council has notified the LCP Member of the failure and within 10 Working Days of such notification, the LCP Member has failed to provide the required information.
- 5.7 The LCP Member will not need to supply, and the Council will not collate information where the LCP Member has not entered into any Call Off Contracts, or no Call Off Contracts are currently active in that reporting period.

6 WARRANTIES AND REPRESENTATIONS

- 6.1 Each Party warrants and represents to the other that it has full capacity and authority and all necessary consents to enter into and to perform this Access Agreement and that this Access Agreement is executed by the duly authorised representatives of the Parties.
- 6.2 The LCP Member agrees that prior to using any DPS Agreement it will ensure that it has received the relevant LCP Member Pack and has carried out all necessary due diligence upon the information contained within it and is content that the DPS Agreement complies with its requirements.
- 6.3 Except as expressly stated in this Access Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the fullest extent permitted by law.

7 CONFIDENTIALITY

- 7.1 The LCP Member, except as otherwise permitted in this Access Agreement, will not without the prior written consent of the Council, publish or disclose to any person, or permit any such disclosure by any of its agents, servants, employees, or sub-contractors, the DPS Agreements or any confidential information received by it in relation to and including the DPS Agreements or the Council's or the relevant Service Provider / Contractor's business generally.
- 7.2 The LCP Member will ensure that all persons engaged by it in relation to the use of the DPS Agreements including, but without limitation to, any of the LCP Member's agents, servants, employees or sub-contractors are notified of the requirement to keep confidential any documents or other information relating to and including the DPS Agreements or the Council's or the relevant Service Provider / Contractor's business generally.
- 7.3 Where the Council requires, the LCP Member shall destroy (at the LCP Member's own cost) any confidential information and the DPS Agreements including, but not limited to electronic copies of the same. The LCP Member and its personnel will ensure that such destruction is effective and total.
- 7.4 The LCP Member will indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, losses, charges and expenses whatsoever in respect of any breach by the LCP Member of this Clause 7.
- 7.5 The LCP Member will not and will ensure that its personnel do not divulge to any third party any information which comes into its or their possession pursuant to and including the details of the DPS Agreements and/or any information received by it in relation to the Council's or the Service Provider / Contractor's business generally.
- 7.6 Clause 7.1 shall not apply to the extent that:
 - 7.6.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure pursuant to the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
 - 7.6.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner.
 - 7.6.3 such information was obtained from a third party without obligation of confidentiality.

7.6.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Access Agreement; or

7.6.5 it is independently developed without access to the other Party's confidential information.

7.7 The DPS Agreements are proprietary to the Council, and the LCP Member acknowledges that no disclosure of the DPS Agreements by the Council gives the LCP Member any intellectual property rights of any kind in relation to the DPS Agreements. The LCP Member also agrees that the Council will own any copies of all or any part of the DPS Agreement documents that the LCP Member make use of, and the LCP Member will label any copies with a notice that they are the Council's property.

8 REQUIREMENT PROCEDURES

8.1 The LCP Member shall be entitled at any time during the term of this Access Agreement to order Services / Works from any Service Provider / Contractor in accordance with the Requirement Procedures contained in the relevant DPS Agreements.

8.2 The LCP Member shall carry out all Requirement Procedures entirely at its own expense in accordance with the procedures contained within the DPS Agreement and the LCP Member Pack.

8.3 The LCP Member acknowledges that it is independently responsible for the conduct of its award of any Call Off Contract under any DPS Agreement and that the Council is not responsible or accountable for and shall have no liability whatsoever in relation to the performance or non-performance of any Call Off Contract between the LCP Member and any Service Provider / Contractor.

8.3 Subject always to Clause 3, the LCP Member agrees to Fully Indemnify the Council in respect of any material losses it may suffer as a result of the LCP Member failing to comply with the Requirement Procedures.

8.4 Where the LCP brokers the Requirement on behalf the LCP Member, The LCP Member agrees to operate in accordance with SLA (Appendix 1) which forms part of this Access Agreement.

9 CHARGES FOR THE SERVICES

9.1 The payments due and payable to a Service Provider / Contractor for the performance of any Services / Works for the LCP Member under any Call Off Contract shall be as calculated in accordance with the provisions of the relevant Call Off Contracts.

10 ACCESS SERVICES BY THE COUNCIL AND FEES

10.1 The Council may provide the following (in addition to granting access to the DPS Agreements) to the LCP Member free of charge:

(a) LCP Member Pack (which is provided for information only).

(b) facilitate the LCP Member and the Service Provider / Contractor's operation of the DPS Agreements; and

- (c) Provide guidance to the LCP Member during the course of this Access Agreement in relation to the use of any DPS Agreement.
- (d) Provide Management Information Reports, including, but not limited to:
 - i. number of Service Providers / Contractors successfully enrolled under each Service Category within the respective DPS (reported on a monthly basis).
 - ii. successful Service Provider / Contractor Onboarding, including micro businesses and small and medium enterprises regional split (reported on a monthly basis).
 - iii. record of any failures by any Service Provider / Contractors to provide the Services / Works in accordance with any Call Off Contract (reported on a quarterly basis).
 - iv.
- 10.2 The LCP will provide Tender brokerage services for LCP Members where requested at no additional charge.
- 10.3 In consideration of the Council granting the LCP Member access to utilise the DPS for the purposes of the provision of the Services, the LCP Member shall pay the Council the Fee within 30 days of the date of any invoice for the Fee, as issued to the LCP Member by the Council. Those fees are 2% of the awarded value of the Call Off Contract
- 10.4 The LCP reserves the right to negotiate the above rates should the LCP Member provide a pipeline of projects to be tendered through the LCP DPS, or where projects being tendered are of a higher value.

11 TERM

- 11.1 The Access Agreement shall commence on the day of 20 and shall continue in force until the 01 day of April 2026, unless terminated earlier in accordance with the provisions of this Access Agreement.

12 DISPUTE RESOLUTION

- 12.1 Should any dispute arise in relation to this Access Agreement the Council shall appoint a representative ("the Council's Authorised Officer") and the LCP Member shall appoint a representative ("the LCP Member's Authorised Officer") for the purposes of dealing with such dispute.
- 12.2 The Council's Authorised Officer and the LCP Member's Authorised Officer shall consult in good faith in an attempt to resolve the disputed matter.
- 12.3 If the Council's Authorised Officer and the LCP Member's Authorised Officer have failed to resolve the dispute within 30 Working Days of the date on which the dispute was referred to them then the matter shall be referred to mediation in accordance with the Centre for Dispute Resolution Model Mediation Procedure as amended from time to time (the "Model Procedure").
- 12.4 No Party may terminate the mediation until each Party has made its opening presentation and the mediator has met each Party for at least one hour. Thereafter paragraph 14 of the Model Procedure will apply.
- 12.5 If the Parties have failed to settle the dispute within 30 Working Days from when the mediation was initiated, the Parties may refer the matter to the English Courts.

13 SEVERABILITY

- 13.1 If any provision of this Access Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Access Agreement.

14 WAIVER

- 14.1 A failure by the Council at any time to enforce the provisions of this Access Agreement or to require performance by the LCP Member of any of the provisions of this Access Agreement will not be construed as a waiver of any such provision and will not affect the validity of this Access Agreement or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

15 ENTIRE AGREEMENT

- 15.1 This Access Agreement constitutes the entire understanding between the Parties relating to the subject matter of this Access Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either Party.
- 15.2 The LCP Member agrees that at the same time as executing this Access Agreement, incorporating all of the Schedules, it will also execute a copy of the Software Licence (in schedule 2) and return the whole document to the Council before it will be permitted to access the DPS.

16 THE SCHEDULES

- 16.1 The details of the Service Categories are set out in Schedule 1 and the Software Licence in schedule two.

17 CONTRACTS (RIGHTS OF THIRD PARTIES)

Unless expressly stated otherwise, the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Access Agreement and no person who is not a party to this Access Agreement

18 LAW AND JURISDICTION

- 18.1 This Access Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts.

19 **Implementation Information**

In order for us to work with you to implement the DPS systems required please provide the information below:

19.1 Upon signing this Access Agreement, you will be assigned a Portfolio Manager who will work with you to establish your profile on the system and will be your first point of contact for the LCP.

19.2 **Disclaimer**

In signing this Access Agreement, you are giving express permission to the LCP to use your organisation logo and any publicly available promotional material relating to construction projects procured via the London Construction Programmes Procurement Platforms.

SIGNED ON BEHALF OF **NAME OF LCP MEMBER**

by: -

Authorised Officer

19.3 Please provide the lead officer from your organisation, who will be the point of contact through the on-boarding of your organisation.

Name.....

Role.....

Email.....

Contact number.....

IN WITNESS whereof the parties have executed this Access Agreement under hand the day and year first before written.

**EXECUTED ON BEHALF OF THE)
MAYOR AND BURGESSES OF THE)
THE LONDON BOROUGH OF)
HARINGEY)
by: -**

Director

Head of Service

EXECUTED ON BEHALF OF [insert name of LCP member])

by: -

Authorised Officer

SCHEDULE 1
Details of Service Categories

Construction, Estates and Property Professional Services DPS

1. Construction related Multi- Disciplinary Services
2. Construction Project Management Services
3. Highways and Transport Services
4. Public Realm and Landscape
5. Architectural Design Services
6. Mechanical & Electrical Services
7. Civil & Structural Engineering Services
8. Quantity Surveying Services
9. Building Surveying Services
10. Construction Health and Safety Advisor (CDM 2015)
11. BREEAM Assessors
12. Specialist Environmental Surveys
13. Asbestos Advisory Services and Surveys
14. Site Supervision/Clerk of Works for Construction Projects
15. Environmental, Sustainability & Waste
16. Fire Services
17. General Advice on Estates and Property Management
18. Ancillary Services
19. Security
20. Retrofit

Minor Works DPS

1. Asbestos
2. Brickwork
3. Carpentry & joinery
4. Cleaning & Clearance
5. Demolition

6. Drainage
7. Electrical
8. Energy Efficiency
9. Fencing & Gates
10. Fire
11. Foundations
12. General Construction Multi Trade
13. Glazing
14. Groundworks
15. Heating, gas appliances & installations
16. Highways
17. Landscaping
18. Lifts
19. Masonry
20. Modern Methods of Construction
21. Painting & decorating
22. Plasterwork & other finishes
23. Plumbing
24. Principal Contractor
25. Roofing
26. Scaffolding
27. Specialist treatment
28. Wall, floor, tile & sheet finishes
29. Adaptations
30. Retrofit

As amended from time to time

Schedule 2 - LICENCE AGREEMENT

THIS AGREEMENT is made on the []

BETWEEN:

- (1) The London Construction Programme (“LCP”) and
- (2) [] (“LCP Member”).

• DEFINITIONS AND INTERPRETATION

a. The following definitions apply:

“Contracting Authorities”	means a body governed by public law within the United Kingdom including but not limited to local authority councils, educational establishments and NHS bodies who may submit Requirements through the Solution.
“Data Protection Legislation”	means the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 ((SI 2003/2426), the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679 (“GDPR”) and all applicable data protection and privacy laws, rules, regulations in force from time to time. In the event any of the foregoing are repealed or replaced, the successor legislation to such repealed or replaced law(s) shall be deemed to constitute Data Protection Legislation.
“Documentation”	means any online or electronic documentation used in the Solution.
“Effective Date”	means the date of this Licence.
“Licence”	means this licence agreement together with any schedules in its entirety and any other supplementary documents agreed with the LCP from time to time.
“Permitted Purpose”	means the LCP Member’s use of the Solution to procure services or works by entering into Call Off Contracts with potential Suppliers / Contractors, use of the Solution for contract management
“Service Agreement”	means a contract for the supply of works and/or services awarded by the LCP Member’s acceptance of a Supplier’s Offer in response to a Tender . The contract is supplemental call-off to any DPS Agreement.

“Supplier”	means a person who is party to a DPS Agreement to provide works and/or services to the LCP Member and includes any employee, agent, servant, sub-contractor or representative of such Supplier / Contractor or person employed on behalf of the Supplier to provide the services or works.
“Technology”	means the LCP’s proprietary web-based technology

- **COMMENCEMENT AND DURATION**

- a. The service commences on the Effective Date and remains in effect until the conclusion of the LCP DPS.

- **GRANT AND SCOPE OF LICENCE**

- b. The LCP grants the LCP Member a non-exclusive, non-transferable license to utilise the service.
- c. The LCP Member guarantees that their staff users will use the service solely for the Permitted Purpose and in compliance with the terms of this License.
- d. The LCP retains the right to revoke access to the service, content, and any documentation at its sole discretion and without prior notice to the LCP Member.
- e. The LCP reserves the right, at its sole discretion, to decline, suspend, or expel the LCP Member from the Solution.
- f. The LCP Member may not duplicate any component of the Solution, except for the Permitted Purpose.
- g. The LCP Member may not rent out, lease, sublicense, resell, loan, translate, merge, adapt, alter, or modify the Solution, or allow unauthorised access to it in any manner.
- h. The LCP Member may not make or attempt to make changes or modifications to the entire Solution or any part of it or permit the Solution to be integrated with or incorporated into other programs, unless agreed upon in writing by the LCP.
- i. The LCP Member may not disassemble, decompile, reverse engineer, or create derivative works based on the Solution or any part of it, except to the extent that such actions are essential for achieving interoperability of the Solution with another software program, as allowed by section 296A of the Copyright, Designs and Patents Act 1988.
- j. The LCP Member may not allow users to access or use the Solution for personal use or any purpose outside the Permitted Purpose.
- k. The LCP Member may not provide or distribute the Solution, in whole or in part, to any person or at any time.
- l. The LCP Member may not transmit the Solution or any part thereof using audio-visual media or digital distribution channels.
- m. The LCP Member must ensure that the Authorised Officer supervises and regulates the use of the Solution by their staff users and ensures that all staff users use the Solution in accordance with this License.

- n. The LCP Member agrees to enter into this License based on its own due diligence and will take all necessary steps to verify the accuracy and completeness of data submitted by any Supplier / Contractor and conduct its own due diligence on any Contracting Authority as a potential contracting party.
- o. The LCP Member warrants that it has raised all relevant due diligence questions before entering into this License and, if so, has verified the answers provided to its satisfaction, and therefore entered into this License based on its own due diligence.

- **INTRODUCTION**

- a. The LCP offers the Solution to the LCP Member under this License as a tool for the LCP Member to establish a Call Off Contract with Suppliers / Contractor.
- b. The LCP Member recognises and agrees that any contractual arrangements, including Call Off Contracts, with a Supplier / Contractor are solely between the LCP Member and the Supplier / Contractor.
- c. The LCP bears no responsibility or liability for any actions or omissions related to such Call Off Contracts or any subsequent contracts.
- d. The LCP Member acknowledges that the LCP and its Software server act as a platform to connect LCP Members with Suppliers / Contractors.

- **INTELLECTUAL PROPERTY RIGHTS**

- a. All Intellectual Property Rights in the Solution, including but not limited to its content, functionality and design and any copyright is owned by the LCP or its licensors and shall remain vested in them at all times. The rights in the Solution are licensed (not sold) to the LCP Member, and the LCP Member has no rights in, or to, the Solution other than the right to use it in accordance with the terms of this Licence.
- b. If the LCP Member does not continue to do only what is permitted under this Licence, then the LCP Member will be in breach of the Licence and the LCP shall have the right to terminate this Licence by written notice and take action to recover from the LCP Member any damages suffered by the LCP as a result of such breach.

- **SOLUTION WARRANTY**

- a. The LCP warrants that it has tested the Solution for viruses using commercially available virus-checking software, consistent with current industry practice but does not guarantee that the Solution, its digital content or the medium used shall be free of harmful defects/viruses.
- b. The LCP Member shall be responsible for running its own virus-checking software, malware protection and all other reasonable security and safety checks.
- c. The LCP shall not be responsible for any damage suffered by the LCP Member as the result of any virus or other computer defect in the Solution.
- d. The LCP Member acknowledges and accepts that the Solution may not be free of bugs or errors and agree that the existence of minor errors shall not constitute a breach of this Licence.
- e. The LCP Member acknowledges and accepts that the Solution may require down-time during which the LCP Member will not be able to use the Solution in order for the LCP to undertake necessary repairs, upgrades and maintenance and the LCP Member agrees that such work will not constitute

a breach of this Licence. The LCP will use its reasonable endeavours to carry out such repairs outside of normal working hours (being 8:30 - 17:00 Monday to Friday in the United Kingdom) but does not guarantee that reports will be carried out in these terms.

- f. The LCP does not warrant that the functions of the Solution meet the requirements of the LCP Member or that the media is compatible with any computer system on which it is used or that the operation of the Solution will be unlimited or error free.

- **LIABILITY**

- a. The LCP shall not be liable if, for any reason, the LCP Member is unable to access or use the Solution.
- b. The LCP shall not be liable for any loss arising from the Supplier's use of the Solution or the accuracy of the information submitted by the Supplier within the Solution.
- c. The LCP shall not be liable to the LCP Member or any Contracting Authority (either directly or through the Supplier), whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any consequential or indirect damages, costs or losses including loss of income, loss of business profits or contracts, business interruption, loss of the use of money or anticipated savings and loss of opportunity, goodwill, or reputation.
- d. The LCP shall not be liable for any loss or damage of any kind (except for personal injury or death) arising from the use of the Solution or from errors, deficiencies, or faults therein, whether such loss or damage is caused by negligence or otherwise, unless agreed otherwise in any other written and signed contract between the LCP Member and the LCP.
- e. Any condition, warranty, representation, or other term concerning the supply of the Solution which might otherwise be implied into, or incorporated in, this Licence, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.
- f. The LCP shall not be responsible or liable for any third-party content contained within the Solution or any content on any third-party site, which may be hyperlinked or otherwise referenced to through the Solution.
- g. The LCP shall not be responsible or liable for any comments or opinions expressed through feedback or comments sections, and any comments or opinions shared through this functionality shall not be deemed to reflect those of the LCP.
- h. The LCP Member shall indemnify and forever keep the LCP indemnified against all actions, proceedings, costs, claims, demands, liabilities, losses, and expenses whatsoever whether arising in tort (including negligence) default or breach of this Licence ("Loss"), to the extent that any Loss or claim is due to the breach of contract, negligence, wilful default, or fraud of itself or of its employees or of any of its representatives or sub-contractors. This indemnity will not apply if the Loss is exclusively caused by or exclusively arises from the negligence, breach of this Licence or applicable law by the LCP or its representatives.
- i. Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Licence.

- **TERMINATION**

- a. The LCP may terminate this Licence immediately by written notice to the LCP Member if:
 - i. the LCP Member uses the Solution or any part thereof for any purpose other than the Permitted Purpose.
 - ii. the LCP Member commits a material or persistent breach of this Licence which it fails to remedy (if remediable) within 14 days after written notice requiring the LCP Member to do so.
 - iii. the LCP Member fails to comply with the Licence that is materially adverse to the interests of the LCP or prevents the LCP from discharging a statutory duty.
 - iv. if there is a Change of Control of the LCP Member (within the meaning of s.1124 Corporation Tax 2010, as amended from time to time); or
 - v. where the use of the Solution is contingent upon the existence of a superior or additional agreement between the LCP Member and the LCP, if that superior or additional agreement is terminated.
- b. Upon termination for any reason:
 - i. All privileges granted to the LCP Member under this License will cease.
 - ii. The LCP Member and all their staff users (if applicable) must discontinue all activities authorised by this License.
 - iii. The LCP Member must promptly settle any outstanding payments owed to the LCP under this License.
 - iv. The LCP Member must immediately return all access and login credentials, eliminate or uninstall the Solution from all computer devices in its possession, and promptly destroy or return (at the LCP's discretion) any copies of the Solution in its possession, custody, or control. If destroyed, the LCP Member must certify to the LCP that it has done so.
 - v. The LCP reserves the right to terminate the LCP Member's account and access privileges to the Solution.
 - vi. The LCP Member is obligated to indemnify the LCP against any losses or expenses incurred by the LCP as a result of such termination for cause.

- **PERSONAL DATA PROTECTION**

- a. The LCP Member must adhere to all Data Protection Legislation when handling Protected Data, providing Services, and carrying out its rights and duties under this License. This includes maintaining all necessary regulatory registrations and notifications as mandated by Data Protection Legislation ("Data Protection Legislation").
- b. The parties mutually consent that, concerning the Protected Data, the LCP will act as the Controller.

- **CONFIDENTIALITY**

- a. The LCP Member acknowledges that every user, when using the Solution, may receive or have access to information which is confidential to the LCP or its licensors or contributors. This information may include, but shall not be limited to, information relating to the operations, commercial and financial arrangements, communications strategies, business management, financial or marketing activities and information derived from computer programmes and databases ("Confidential Information").
- b. The LCP Member shall, and shall procure that each user shall, keep all Confidential Information strictly confidential and shall not disclose such Confidential Information to any third party, without the prior written consent of the LCP.
- c. The LCP Member shall not make any public statement or issue any press release or publish any other public document relating to, connected with, or arising out of the Licence, the Solution or the matters contained therein without obtaining the prior written consent of the LCP.
- d. The LCP Member acknowledges and accepts that the LCP may audit the LCP Member on any such activity associated with the Solution upon reasonable notice throughout the duration of this Licence. If an audit identifies that the LCP Member has failed to perform its obligations under this Licence in any material manner, the parties shall agree and implement a remedial plan.

- **TRANSFER OF RIGHTS AND OBLIGATIONS**

- a. During the term of the License, the LCP retains the right to transfer, assign, charge, subcontract, or otherwise transfer this License, along with any associated rights or obligations.
- b. The LCP Member is prohibited from transferring, assigning, charging, or otherwise disposing of this License, including any associated rights or obligations.

- **NOTICES**

- a. Any communication directed to the LCP must be in written form and transmitted via email to LCP@Haringey.gov.uk. However, this provision does not pertain to the service of legal proceedings or any other legal documents.

- **FORCE MAJEURE**

- a. The LCP shall not be liable for any failure to perform, or delay in performance of, any of its obligations under this Licence that is caused by events outside its reasonable control ("Force Majeure Event").
- b. A Force Majeure Event includes any act, event, non-happening, omission, or accident beyond reasonable control and includes in particular (without limitation) the following:
 - i. fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster.
 - ii. impossibility or interruption of the use of public or private telecommunications networks.
 - iii. failure in supply of electricity, water, gas or any other utility.
 - iv. strikes, lockouts or other industrial action.

- v. civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war.
 - vi. impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; or
 - vii. the acts, decrees, legislation, regulations, or restrictions of any government
 - c. The LCP's performance under this Licence is deemed to be suspended for the period that the Force Majeure Event continues, and the LCP will have an extension of time for performance for the duration of that period. The LCP will use its reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which its obligations under this Licence may be performed despite the Force Majeure Event.
- **WAIVER**
 - a. If, at any point during the Term, a party neglects to demand strict adherence to any of its duties under this License or fails to utilise any of the rights or remedies granted under this License, this will not be considered a relinquishment of those rights or remedies, nor will it excuse the party from fulfilling those obligations.
 - b. The LCP's forgiveness of any breach will not extend to subsequent breaches. Any waiver by the LCP of the terms and conditions outlined herein will only be valid if expressly stated as such and communicated to the LCP Member in writing.
 - **ENTIRE AGREEMENT**
 - a. The LCP retains the authority to unilaterally modify the terms of this License periodically. The LCP will not entertain any alterations to this License proposed by the LCP Member unless explicitly agreed upon in writing.
 - **THIRD PARTY RIGHTS**
 - a. The parties recognise that the provision and utilisation of the Solution adhere to the terms of this License and operate under a precise business-to-business contractual arrangement, where relevant. This arrangement does not establish an agency or employment association between the parties, and neither party may claim authority to bind the other. Only the parties directly involved in this License have the right to enforce its terms, and the Contract (Rights of Third Parties) Act 1999 does not apply to this License.

- **LAW AND JURISDICTION**

This License, its content, and its establishment (including disputes or claims not covered by the contract) will be regulated by and interpreted in accordance with the laws of England and Wales and subject to the exclusive jurisdiction of the English courts. The rights and solutions offered in this License are supplementary to, and not the sole means of, any rights or solutions provided by law.

Signed by _____ for and on
behalf of [_____]

_____ |

Authorised Signatory

Appendix One

Service Level Agreement

Between Parties:

London Construction Programme and its members

Purpose: This document sets out the relationship, roles, responsibilities, and expectations relating to DPS tenders that are brokered by LCP on behalf of a member.

1. ROLES AND RESPONSIBILITIES

Onboarding of new member (once access agreements have been signed)

- LCP to issue onboarding sheet (meeting to discuss can be held if required)
- Upon receipt LCP to coordinate setting up of users and approvers in the platform
- Provide service category and sub-category breakdowns
- Provide glossary of system terms

Onboarding activities by the Member

- Provide completed onboarding sheet within agreed timescales

Pre-tender activities to be undertaken by London Construction Programme

- Agree format of transfer of documentation throughout the process (google drive, WeTransfer etc)
- Provide new requirement template to the member
- Provide an up-to-date supplier list split by service category
- Provide guidance on use of filters (geographical and price banding)
- Support onboarding of any new suppliers identified by the member providing advice and support in the completion of the onboarding process. **The LCP cannot be held responsible for suppliers who fail to complete the process or who do not meet the onboarding criteria.**
- Will carry out quality control checks on the procurement pack which include
 - ⊖ Comparison of procurement timetable against the requirement template
 - ⊖ Comparison of the weightings on the quality questions, pricing schedule against the requirement template
- We will provide guidance on best practice, but final decisions made are the sole discretion of the member and or the party acting on behalf of the member
- Prior to tender publication allow member to view the draft configuration via Teams call

Pre-tender activities to be undertaken by member

- If additional suppliers are requested, provide supplier contact details (name, email, and phone) . Where the programme allows 15 working days prior to tender issue date is best practice.
- Return completed new requirement template and tender documentation at least 2 working day before tender issue date.
- Where multiple requirements are to be published on the same date documentation must be provided 5 working days before the tender issue date.

- Provide the name of the person who will approve the award of the DPS contract
- Provide the name of the Contract Manager for the awarded contract

Tender and post tender activities to be undertaken by London Construction Programme

- Monitor the level of interest in the requirement and make contact with suppliers where low interest identified. We aim to achieve a minimum of three responses per requirement
- Monitor clarification questions posted on the DPS and send clarification tracker to member
- Upload clarification responses
- Forward all tender response documentation
- In the event of a technical issue, we will investigate with the technology provider and provide detailed explanation of the event in order for the member to make an informed decision regarding their procurement
- The LCP will carry out a check to ensure all tender response documents requested have been returned if a tender return checklist is provided as part of the tender package
- Post tender clarification questions on the DPS within 1 working day of receipt
- Issue award notification and/or standstill letters (where applicable) upon receipt from member
- Create DPS Contract transferring the ownership to the member for agreement approval and contract management. I.e., extensions and variations.

Tender and post tender activities to be undertaken by member

- Return clarification responses on tracker provided by LCP
- Where additional or updated documents are to be uploaded during the active tender period the member should provide wording explaining the reason for the upload
- Provide LCP and post tender clarification questions and include deadline for supplier response
- Carry out the evaluation scoring on the LCP Portal
- Carry out the evaluation scoring moderation on the system
- Provide reasons for rejection of tender responses.
- Provide award and rejection letters including standstill letters where applicable
- Approve DPS Contract
- Provide a purchase order number for payment of the levy due
- Manage the agreement including extensions, and variations

2. EXPECTATIONS AND TIMESCALES

London Construction Programme

- LCP will conduct a 'light-touch' review of tender documentation prior to issue to ensure alignment with DPS configuration. However, LCP do not provide procurement advice to members or sign off any tender documentation
- All clarification requests received before 1pm will be sent to the member the same day, all other clarifications will be forwarded within 24 hours. Clarification responses received before 1pm will be uploaded the same day, all other clarification responses will be uploaded within 24 hours
- Ensure that the tender is delivered in accordance with procurement regulations.
- When active tenders close on or before midday LCP will forward all offer documents to the member on the same day unless otherwise stated. Where active tenders close later than midday LCP reserve the right to forward offer documents the following working day
- Provide a professional service to all stakeholders involved in the process.

Member

- Provide a single point of contact who will be responsible for liaising with the LCP and coordinate any identified tasks above or ad hoc request as required. Alternative contacts to be provided for periods of absence.
- Respond to information required in line with the tender timetable and any additional timescales identified for ad hoc requests
- Respond to clarification messages in a timely manner
- Not to seek to respond to clarification messages or post tender clarifications off system
- Provide any additional post evaluation documents (award notification letters, standstill letters etc) correctly addressed and dated. If documents are to be uploaded the same day, they must be received by LCP before 1pm
- Not to request to carry out any activities which would compromise the integrity of the London Construction Programme