



Homes
England

Delivery Partner Dynamic Purchasing System Agreement Version 1.2



Delivery Partner Dynamic Purchasing System Agreement v1.2

Introductory notes:

These covering notes are for information only and do not form part of the Agreement.

How the Agreement works

*The Delivery Partner Dynamic Purchasing System Agreement (“**Agreement**”) issued by Homes England is a legally binding document which you are required to agree to in order to be admitted to Homes England’s dynamic purchasing system for housing development (“**DPS**”). As part of the registration process for the DPS, you will be asked to accept the terms and conditions of this Agreement by clicking on the wording “Accept terms & conditions” set out on the webpage headed “Your response summary” on the web portal used by Homes England to operate the DPS. Once you have clicked on “Accept terms & conditions”, you will automatically be legally bound by the terms of this Agreement if your application to join the DPS is accepted by Homes England. You will not be required to physically sign anything to enter into this Agreement.*

What the Agreement does

If you are appointed as a member of the DPS, this Agreement will govern your membership of the DPS. This means that the “terms and conditions” of your membership are set out in the Agreement including the duration of your membership, the way in which you can bid for housing-led development contracts, any regular reporting requirements that may apply to you and also how Homes England may terminate or suspend your membership of the DPS.

What the Agreement doesn’t do

The Agreement is not a housing-led development contract. This Agreement does not guarantee that you will be awarded any housing-led development contracts. Homes England will not be paying you for the provision of any works or services under this Agreement. All housing-led development contracts under the DPS will be awarded following the procedures set out in this Agreement.

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PARTIES TO THIS AGREEMENT

This Agreement is made between:

- (1) **THE HOMES AND COMMUNITIES AGENCY** (trading name **HOMES ENGLAND**) located at 2nd Floor, The Lumen, St James Boulevard, Newcastle Helix, Newcastle upon Tyne, NE4 5BZ (“**We**”, “**Us**“, “**Our**”); and
- (2) you, the legal entity identified as the “bidding party” at section 1.1 of the Selection Questionnaire (defined below) in Your Member Information (“**You**”, “**Your**”).

Where the term “**party**” or “**parties**” is used in this Agreement, it is a reference to You and/or Us unless the term used is “third party”.

TERMS OF THIS AGREEMENT

1 Meaning of capitalised words used in this Agreement

1.1 The following words and phrases have the meanings set out beside them:

“**Agreement**” means the details provided by You in Your Member Information together with the terms and conditions set out in the rest of this document, including the Schedules, but not including the Introductory notes.

“**Access Agreement**” means an agreement entered into between Us and any organisations, bodies or other entities as listed in the DPS Memorandum of Information (which can be accessed on Our website) who wish to, and are entitled to, receive the Services from Members as an Other Customer under the DPS.

“**Affiliate**” means in relation to any Member, a subsidiary of that Member or a holding company of that Member or any other subsidiary of that holding company.

“**Affiliated Entity**” means either (a) an entity which is Your Affiliate; (b) an entity which is jointly controlled by You or Your Affiliate and a separate entity, You or Your Affiliate holding at least 50% of the registered share capital of the relevant entity and/or 50% of the votes at a meeting of the executive or members of the relevant entity; or (c) an entity which is jointly controlled by You or Your Affiliate and Us and/or an Other Customer, Your or Your Affiliate holding at least 50% of the registered share capital of

the relevant entity and/or 50% of the registered share capital of the relevant entity and/or 50% of the votes at a meeting of the executive or members of the relevant entity.

“Approved Affiliated Entity” means an Affiliated Entity which has been approved by Us or the relevant Other Customer in writing for the purposes of entering into a Project Agreement.

“Business Day” means any day which is not a Saturday, a Sunday or a public holiday in England.

“Call for Competition” means the process set out in Schedule 4 (*Call for Competition – Procedure*) used for selecting a Member and awarding a Project Agreement to the selected Member under the DPS.

“Confidential Information” means any information, however it is communicated or transferred, that relates to an entity’s business, affairs, developments, trade secrets, know-how, personnel, clients and/or suppliers which belongs to You or Us, including IPRs, together with any information which originates from the above and any other information belonging to You or Us which should reasonably be considered confidential even if not marked “confidential”.

“Data Protection Legislation” means (i) the Data Protection Act 2018 and any successor or equivalent legislation; (ii) the GDPR and any applicable national implementing Law as amended from time to time; (iii) the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (the **“Data Protection Regulations”**); (iv) the UK GDPR as defined in the Data Protection Regulations; (v) and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (vi) all applicable Law about the processing of personal data and privacy.

“Delivery Period” means the period for which the DPS will operate as set out in paragraph 1 of Schedule 1 (*Delivery Period, Geographic Areas and Development Types*).

“Development Types” means the types of housing-led development which may be carried out under the DPS. The current Development Types are listed in Schedule 1 (*Delivery Period, Geographic Areas and Development Types*) although We may add to these during the Delivery Period.

“DPS” means the dynamic purchasing system We have established for housing-led development.

“DPS Portal” means Our portal through which the DPS will operate which at the Start Date is Pro-contract but this may be changed by Us. We will give all Members reasonable notice of any change of portal.

“End Date” means the earlier of the date on which this Agreement: (a) expires, which will be the date the DPS expires or is brought to an end by Us; or (b) is terminated in accordance with its terms.

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor or company engaged within the relevant industry or business sector.

“Information Disclosure Requirements” means Our obligations to disclose information under the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and any associated legislation, guidance or codes of practice.

“Intellectual Property Rights” or **“IPRs”** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, database rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“ITT” or **“Invitation to Tender”** means the invitation to tender for any Call for Competition issued by Us or any Other Customer.

“Law” means any applicable legal requirements including any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; any requirements set by any regulatory body as applicable in England and Wales; and any relevant code of practice as applicable in England and Wales.

“Member” means any member of the DPS including You.

“Membership Category” means the category of DPS membership that You applied and have been accepted for, as set out in Your Member Information.

“Member Information” means the information which You provided to Us as part of Your application to participate in the DPS.

“Other Customers” means legal entities who have entered into an Access Agreement with Us.

“Parent Company” means any company which is Your ultimate holding company and which is either responsible directly or indirectly for Your business activities or which is engaged in the same business or similar business to You.

“Preferred Development Types” means the Development Types that a Member has noted that they can carry out in their Member Information.

“Preferred Geographic Areas” means the geographic areas out of those listed in Schedule 1 (*Delivery Period , Geographic Areas and Development Types*) for which a Member has indicated in their Member Information that they can carry out the activities listed in Schedule 2 (*Scope of Activities*).

“Project Agreement” means the lease or other form of contract to be entered into with Us, or if applicable, an Other Customer, if You are successful in a Call for Competition. Details of the forms of lease and contracts that may be used for Project Agreements are set out in Schedule 3 (*Template Contracts*).

“Scope of Activities” means the housing-led development activities covered by the DPS and which are listed in Schedule 2 (*Scope of Activities*).

“Selection Questionnaire” means the selection questionnaire issued by Us as part of the procedure for applicants to participate in the DPS.

“Staff” means all persons employed or engaged by You to perform Your obligations under this Agreement including any Sub-contractors and persons employed or engaged by those Sub-contractors.

“Start Date” means the date on which We accept Your application to register as a Member of the DPS and, as a consequence, You are legally bound by the terms of this Agreement.

“Sub-contract” means a contract between You and another supplier made completely or mostly for the purpose of delivering (or contributing to the delivery of the whole or any part of this Agreement.

“Sub-contractor” means the other party to a Sub-contract which You enter into.

“Tender” means a Member’s tender submission in relation to any Call for Competition.

“Your Representatives” means the two (2) individuals named as such in Your Member Information.

“Your Team” means You together with any Approved Affiliated Entity.

1.2 Please note the following points when reading this Agreement:

- 1.2.1 any reference to a clause or a Schedule is to a clause or Schedule in this Agreement;
- 1.2.2 the headings to each clause are included for ease of reading and have no legal effect;
- 1.2.3 if the words “writing” or “written” are used, this includes use of email;
- 1.2.4 the words coming after the word “includes”, “include” or “including” do not form a final list and are only examples; and
- 1.2.5 a reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment of that section.

2 How long will this Agreement run?

- 2.1 As part of Your Application to become a Member, You agreed to be legally bound by the terms of this Agreement by clicking on the relevant part of the application form on the DPS Portal. Therefore, this Agreement begins automatically on the date on which We accept You as a Member (**“Start Date”**) and will continue in force until the End Date.

2.2 If We extend the Delivery Period, this Agreement shall, if You agree, be extended for the same additional length of time. We will let You know if We intend to extend the Agreement and seek Your agreement to an extension.

2.3 This Agreement may be terminated before the End Date if any of the circumstances set out in clause 11 (*Termination*) happen.

3 Membership of the DPS

3.1 As a Member, You are eligible to take part in any Call for Competition run in respect of Your Membership Category, Preferred Geographic Areas and Preferred Development Types and to be awarded Project Agreements during the Delivery Period if You are successful in any relevant Call for Competition.

3.2 Each Project Agreement represents a contractual arrangement between the parties to that Project Agreement. That contractual arrangement is separate from and independent of this Agreement. In the event of any conflict between a Project Agreement and this Agreement, the Project Agreement takes precedence in respect of the subject matter of that Project Agreement.

3.3 All Calls for Competition will be run through the DPS Portal.

3.4 You accept that neither We nor any Other Customer are obliged to award any Project Agreements in relation to either this Agreement or any Call for Competition.

3.5 You agree that being a Member of the DPS does not guarantee that You will be asked to provide or carry out any of the activities listed in Schedule 2 (*Scope of Activities*) or that You will earn any income in relation to this Agreement or any Call for Competition.

3.6 Provisions relevant to management of Your Membership of the DPS, and with which You must comply, are set out in Schedule 5 (*DPS Management*).

3.7 You agree that You are responsible for all of Your costs and expenses under this Agreement including the costs of taking part in any Call for Competition.

3.8 You accept that We or any Other Customer may purchase the provision or delivery of activities, the same as or similar to those set out in Schedule 2 (*Scope of Activities*), by means other than through the DPS.

3.9 You warrant on a continuing basis that:

- 3.9.1 any information You provided as part of Your Member Information is, subject to clause 3.9.2, correct as at the Start Date;
 - 3.9.2 You will promptly update Your Member Information on the DPS Portal in the event of any changes; and
 - 3.9.3 You will on request from Us promptly provide evidence requested by Us to substantiate any of the information provided in Your Member Information, or any other information We have relied on in offering You a place on the DPS.
- 3.10 You agree that at any time during the Delivery Period, if requested to do so by Us, You must provide evidence that the individual who completed Your application to be a Member on Your behalf had the authority to agree and legally bind You to the terms of this Agreement. If You are unable to provide evidence which We consider satisfactory, We may suspend or disqualify You from the DPS.
- 3.11 We may consider implementing sanctions or remedial actions if We discover at any point during the Delivery Period that You provided false or misleading information when you applied to join the DPS. Sanctions may include suspension or disqualification from Your Membership Category or the DPS.
- 3.12 The terms of any suspension or disqualification which occurs under clause 3.10 or 3.11 (including the right to re-apply to join the DPS or a Membership Category) will depend on the exact circumstances but any disqualification will mean that We will terminate this Agreement on a notice period of Our choosing.

4 Call for Competition

- 4.1 Any Call for Competition will be carried out in accordance with Schedule 4 (*Call for Competition - Procedure*). You are not obliged to participate in any Call for Competition.
- 4.2 Details of the form of lease or other form of contract that will be used for any Project Agreement You are awarded will be included with documentation issued to Members as part of the Call for Competition. A list of the types of forms or lease or other forms of contract current at the start of the Delivery Period is set out in Schedule 3 (*Template Contracts*). We may update the contracts listed in Schedule 3 (*Template Contracts*) during the Delivery Period. Where possible we will notify Members of any updates

however You should always review the form of contract issued as part of any Call for Competition.

- 4.3 You acknowledge and agree that, if asked to do so by Us, or any relevant Other Customer, as part of a Call for Competition, You will provide a guarantee from Your Parent Company in connection with any Project Agreement. The form of the guarantee and its adequacy in relation to Our or, as applicable, any Other Customer's requirements will be decided by Us or the Other Customer, as applicable and this decision shall be final.

5 Responsibility for Affiliated Entities

- 5.1 If, in connection with any Call for Competition, You want an Affiliated Entity to enter into the relevant Project Agreement instead of You, You must make that request during the tender stage for that Project Agreement. We, or the relevant Other Customer, will consider Your request in accordance with Schedule 4 (*Call for Competition – Procedure*). You will provide Us or the Other Customer with all necessary assistance and information to enable Us or the Other Customer to assess whether or not the proposed entity fits the definition of Affiliated Entity and can become an Approved Affiliated Entity. We, or the Other Customer as relevant, will have absolute discretion as to approval of any request made under this clause 5.1 and may request a Parent Company Guarantee from the Affiliated Entity. The form of the guarantee and its adequacy in relation to Our or, as applicable, any Other Customer's requirements will be decided by Us or the Other Customer, as applicable and this decision shall be final.
- 5.2 If an Affiliated Entity becomes an Approved Affiliated Entity under clause 5.1, You will also comply with any conditions required in respect of that Approved Affiliated Entity particularly in connection with any financial security required by Us or the Other Customer to ensure that, collectively, Your Team meets the financial selection requirements in accordance with paragraph 3 of Schedule 5 (*DPS Management*)
- 5.3 We can choose to deal only with You in connection with the DPS even if an Approved Affiliated Entity enters into the Project Agreement. Therefore, You agree that We may consider any instructions, communications or notices We issue to You (whether verbally, by email or other means), to have been issued also to any relevant Approved Affiliated Entity. You are solely responsible for making sure that any relevant Approved Affiliated Entity is made aware of any instructions, communications or notices We issue to You.

- 5.4 You warrant and undertake to Us that:
- 5.4.1 You have complete authority to communicate with Us and carry out any procedures set out in this Agreement on behalf of any Approved Affiliated Entity; and
 - 5.4.2 You shall ensure that any relevant Approved Affiliated Entity carries out all of Your obligations under this Agreement where relevant, but accept that any failure by the Approved Affiliated Entity to do so will be considered as Your failure to comply with such obligations.
- 5.5 Affiliated Entities can apply for membership of the DPS in their own right. However, accepting their membership will be at Our absolute discretion.
- 5.6 You agree that it may be a requirement of any Call for Competition that We or the Other Customer becomes a shareholder or member in any Approved Affiliated Entity.

6 Communications

- 6.1 When We need to contact You for any reason, We will contact either one or both of Your Representatives. You must ensure that details of Your Representatives are kept up to date on the DPS Portal and that alternative contact details are included when either of Your Representatives leaves Your employment or is absent or is going to be absent for more than fifteen (15) days.
- 6.2 If You need to contact Us, You can email us at deliverypartnerprocurement@homesengland.gov.uk. You must not use this email address to ask any questions relating to a Call for Competition that should be submitted as part of the clarification question process for that Call for Competition in accordance with the procedure set out in Schedule 4 (*Call for Competition – Procedure*).

7 IPR

- 7.1 This Agreement does not grant You any rights in relation to use of Our IPR.
- 7.2 You grant Us an irrevocable, perpetual and non-exclusive right to use, copy, amend and reproduce any IPR contained within Your Member Information for the purposes of managing the DPS, complying with Law and carrying out Our business activities.

8 Confidential Information

8.1 In this clause 8:

8.1.1 a party giving Confidential Information to, or sharing Confidential Information with, the other party is the “**Disclosing Party**”; and

8.1.2 the party obtaining the Confidential Information from the Disclosing Party is the “**Receiving Party**”.

8.2 The Receiving Party must keep all Confidential Information it receives from the Disclosing Party confidential, secret and secure. The Receiving Party must not use, disclose or exploit the Disclosing Party’s Confidential Information without the Disclosing Party’s written consent except for the purposes of complying with its obligations under this Agreement. If the Receiving Party suspects unauthorised access, copying, use or disclosure of the Confidential Information has happened, it must notify the Disclosing Party immediately.

8.3 The Receiving Party will not be considered to have breached clause 8.2 if it discloses the Disclosing Party’s Confidential Information in any of the following cases:

8.3.1 where disclosure is required by applicable Law or by a court if, where allowed to do so by Law, the Receiving Party notifies the Disclosing Party of the full circumstances, what Confidential Information has been disclosed, and the extent of the disclosure;

8.3.2 if the Receiving Party already had, or had received from a third party, the information without any obligation of confidentiality before it was disclosed by the Disclosing Party;

8.3.3 if the information had already been made public (and not by the Receiving Party) at the time of the disclosure;

8.3.4 if the information was independently developed without access to the Disclosing Party’s information; or

8.3.5 the information is disclosed to the Receiving Party’s auditors or for the purposes of complying with regulatory requirements or to its professional advisors on a need-to-know basis.

- 8.4 You may disclose Our Confidential Information on a confidential need-to-know basis to Your Staff to enable You to meet Your obligations under this Agreement.
- 8.5 We may disclose Your Confidential Information in any of the following cases:
- 8.5.1 on a confidential basis to Our employees, agents, consultants and contractors and Other Customers;
 - 8.5.2 on a confidential basis to any Central Government Body or its successors;
 - 8.5.3 if, acting reasonably, We consider disclosure is necessary or appropriate to carry out Our public functions;
 - 8.5.4 in accordance with clause 18 or if requested by Parliament.
- 8.6 The phrase “on a confidential basis” in clauses 8.4 and 8.5 means disclosure under a confidentiality agreement or arrangement which includes confidentiality terms equivalent to those set out in this clause 8.
- 8.7 You shall not publicise the terms of this Agreement or use Our name or the name of any Other Customer or any trade name or trade mark used by Us or any Other Customer or refer to Us or any Other Customer in any other way in any promotional literature, publications or advertising material without prior written consent from Us or the relevant Other Customer.

9 Liability

- 9.1 Neither party excludes or limits its liability for:
- 9.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
 - 9.1.2 bribery or fraud or fraudulent misrepresentation by it or its employees; or
 - 9.1.3 any liability to the extent that it cannot be excluded or limited by Law.
- 9.2 Subject to clause 9.1, Our total aggregate liability to You under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall in no event exceed £100,000 (one hundred thousand pounds).

- 9.3 Subject to clause 9.1, Your total aggregate liability to Us under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall in no event exceed one million pounds (£1,000,000).
- 9.4 Subject to clause 9.1, neither Party shall be liable to the other Party under or in connection with this Agreement for any:
- 9.4.1 indirect, special or consequential loss; or
- 9.4.2 loss of profits, savings (whether anticipated or otherwise), revenue, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 9.5 You acknowledge and agree that this clause 9 does not limit Your liability to Us or any Other Customer under any Project Agreement and Your liability under a Project Agreement shall be as set out in that Project Agreement.

10 Joint ventures

- 10.1 If You are a joint venture consisting of two or more entities (each being a “**JV Party**” under this clause 10) who have each entered into this Agreement with Us, each JV Party is jointly and severally (that is, separately) liable to Us in respect of any actions, omissions or defaults of any of the JV Parties that happen under this Agreement.
- 10.2 Any reference in this Agreement to “You”, or to “parties” or “party” when applicable to You, shall refer to both JV Parties both jointly and severally (that is, separately) and any breach of this Agreement by one JV Party shall entitle Us to exercise the relevant right, remedy or power against any or all JV Parties. Any notice given by Us to either JV Party shall be deemed to be notice to both JV Parties, and We may accept notice from either JV Party as being notice from You.

11 Termination

- 11.1 We may terminate this Agreement by serving written notice on You with effect from the date specified in that notice in the following cases:
- 11.1.1 if You materially breach this Agreement and You do not remedy that breach to Our satisfaction within twenty (20) Business Days (or other period We specify reasonably) of Us issuing a written notice detailing the material breach and requesting that You remedy it;

- 11.1.2 if You are in persistent breach of any of Your obligations under this Agreement even if the breach is capable of remedy. Three or more non-material breaches of the terms of this Agreement in any period of six consecutive months will be considered a persistent breach when applying this clause 11.1.2;
- 11.1.3 if You breach any of clauses 8 (*Confidential Information*), 15 (*Data Protection*), or 18 (*Information Disclosure Requirements (Freedom of Information) and transparency*);
- 11.1.4 if We terminate a Project Agreement awarded to You as a consequence of a material breach of that Project Agreement by You;
- 11.1.5 in accordance with clause 19.2 (*Prevention of bribery*) or clause 22 (*Conflicts of interest*);
- 11.1.6 in the circumstances set out in clause 3.10, clause 3.11, paragraph 9 of Schedule 4 (*Call for Competition – Procedure*) or paragraph 3 of Schedule 5 (*DPS Management*);
- 11.1.7 an order is made or a resolution is passed for Your winding-up or an administrator is appointed by order of the court or by other means to manage Your affairs, business and property or a receiver and/or manager or administrative receiver is validly appointed in respect of all or any of Your assets or undertaking, or circumstances arise which entitle the Court or a creditor to appoint a receiver and/ or manage or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or You take or suffer any similar or analogous action (in any jurisdiction) in consequence of debt;
- 11.1.8 You cease, or threaten to cease, to carry on business; or
- 11.1.9 You undergo a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without Our prior written consent. We shall be entitled to withhold such consent if, in Our reasonable opinion, the proposed change of control will have a material adverse impact on the performance of this Agreement or Our reputation.

11.2 We may by notice in writing terminate this Agreement with immediate effect if:

- 11.2.1 this Agreement has been amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
 - 11.2.2 it has come to Our notice that You should have been excluded under the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement; or
 - 11.2.3 You or one of Your Sub-contractors has failed to comply with legal obligations in the fields of environmental, social or labour law.
- 11.3 We have the right to terminate this Agreement, or terminate the provision of any part of this Agreement at any time by giving You one month's notice in writing.
- 11.4 Without affecting Our right to terminate this Agreement under clause 11.1.6, if a right to terminate this Agreement occurs under Schedule 5 (*DPS Management*), We may choose instead, by giving You notice in writing, to suspend Your right to take part in any Call for Competition. If We give You notice in accordance with this clause 11.4, Your Membership of the DPS shall be suspended for the time period set out in such notice.

12 Consequences of termination

- 12.1 Termination of this Agreement, for any reason, will not affect or adversely impact the accumulated rights of the parties as at termination or the continuation of any term of this Agreement which continues (either expressly or by implication) in force after termination or expiry.
- 12.2 You will not be entitled to any compensation, costs, expense, loss of profit or damages for suspension of Your Membership or termination of this Agreement.
- 12.3 Termination or expiry of this Agreement will not cause any Project Agreements or the DPS to terminate automatically. Project Agreements will remain in force unless and until they are terminated or expire in accordance with their own terms.

13 Insurance

- 13.1 You are responsible for ensuring that You are adequately insured to cover all potential liability under this Agreement. As a minimum, You will shall put in place and/or maintain in force at Your own cost with a reputable commercial insurer and in accordance with Good Industry Practice, insurance arrangements in respect of:

- 13.1.1 employer's liability with the minimum cover per claim of ten million pounds (£10,000,000);
 - 13.1.2 public liability with the minimum cover per claim of ten million pounds (£10,000,000); and
 - 13.1.3 contractors all risks as required and for the sum specified under any Project Agreement,
- or in each case any higher sum as required by Law.
- 13.2 If the proceeds of any insurance cover are insufficient to cover the settlement of any claim made against You under this Agreement, it will be Your responsibility to make good any shortfall.
 - 13.3 You warrant that You will not take any action or fail to take any action or (as far as is reasonably within Your power) permit anything to occur which would allow any insurer to refuse to pay any claim under any of the insurances set out in clause 13.1.
 - 13.4 You will within five (5) Business Days of any reasonable request from Us provide documentary evidence to Us that insurance arrangements taken out by You in accordance with this clause 13 are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid. If You fail to provide such evidence, We may suspend You from the DPS in accordance with paragraph 2.2 of Schedule 5 (*DPS Management*).
 - 13.5 When this Agreement expires, or if it is terminated earlier for any reason, You must ensure that any ongoing liability You have or may have arising out of this Agreement will continue to be the subject of appropriate insurance arrangements for the period of six (6) years from the End Date or until such earlier date as that liability may reasonably be considered to have ceased to exist

14 Audit

- 14.1 You must fully co-operate with and assist Us in meeting Our audit and regulatory requirements by providing access for Us, Our internal auditors (which includes, for the purposes of this Agreement, Our internal audit, security and operational risk functions), Our external auditors, any agents We appoint or Our regulators (or any person appointed by Our regulators) to conduct appropriate reviews and inspections of Your activities and records (and to take copies of records and documents and interview

members of Your Staff) relating to the performance of your obligations under this Agreement and to the provision of Works and the accuracy of any pricing and charges under any Project Agreement.

- 14.2 You must bear Your own costs in relation to any reasonable number of audits carried out by Us. Where any audit reveals any breach or non-compliance by You, You must also bear Our costs of carrying out the audit.

15 Data Protection

- 15.1 You must comply with Your obligations under the Data Protection Legislation in connection with this Agreement.

16 Modern Slavery and Human Trafficking

- 16.1 You must:

- 16.1.1 comply with all modern slavery and human trafficking laws, statutes, regulations and codes from time to time in force that may apply to this Agreement or any activities that You carry out under any Project Agreement;
- 16.1.2 ensure that slavery and human trafficking is not taking place in any part of Your business or in any part of Your supply chain;
- 16.1.3 respond promptly, with complete and accurate answers, to any questions We send You about slavery and human trafficking;
- 16.1.4 have due diligence procedures for Your own suppliers, Sub-contractors and other participants in Your supply chains, to ensure that there is no slavery or human trafficking in Your supply chains or those of your Sub-contractors;
- 16.1.5 tell Us promptly if You become aware of any actual or suspected slavery or human trafficking in any part of Your business or in a supply chain which has a connection with this Agreement; and
- 16.1.6 include anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 16 in Your Sub-contracts.

- 16.2 You represent and warrant that at the Start Date You have not:

- 16.2.1 been convicted of any offence involving slavery and human trafficking; or
 - 16.2.2 been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 16.3 If You fail to comply with any of Your obligations under this clause 16, without prejudice to any other rights or remedies which We may have, We can:
- 16.3.1 terminate this Agreement immediately on notice without any liability to You; and/or
 - 16.3.2 require You to take any steps We reasonably consider necessary to manage the risk to Us of contracting with You (and You shall take all such steps); and/or
 - 16.3.3 reduce, withhold or claim a repayment (in full or in part) of the charges payable under any Project Agreement; and/or
 - 16.3.4 share with third parties information about such non-compliance.

17 Equality, Diversity and Inclusion

- 17.1 The meaning of “**Equality Legislation**” in clause 17.2 is any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998.
- 17.2 You must not, whether as an employer or provider of services and/or goods, discriminate within the meaning of the Equality Legislation.

18 Information Disclosure Requirements (Freedom of Information) and Transparency

- 18.1 In this clause 18, “**Request for Information**” is a request for information (as defined in the Freedom of Information Act 2000 (“**FOIA**”) or the Environmental Information Regulations 2004 (“**EIR**”)) relating to or connected with this Agreement.

- 18.2 You acknowledge that We and Other Customers are subject to the Information Disclosure Requirements. You must assist and co-operate with Us and any Other Customers to enable Us and the Other Customers (as relevant) to comply with those requirements.
- 18.3 If You or any of Your Sub-contractors receives a Request for Information or any request which appears to be or could potentially be a Request for Information, at Your own cost You must:
- 18.3.1 as soon as reasonably practicable after receipt and in any event within five (5) Business Days of receipt, send the Request for Information to Us and the relevant Other Customer (if any); and
 - 18.3.2 give all necessary assistance as reasonably requested by Us and the relevant Other Customer to enable Us and/or such Other Customer to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of the EIR, as applicable.
- 18.4 You acknowledge that any lists or schedules provided by You outlining information that you consider to be Confidential Information (for example, in relation to Your Membership or any Call for Competition) are of indicative value only and that We and any Other Customer may nevertheless be obliged to disclose Confidential Information in accordance with the Information Disclosure Requirements or where such Confidential Information has entered the public domain or been treated by You as non-confidential since the date when it was disclosed to Us and/or the relevant Other Customer.
- 18.5 Regardless of any other term of this Agreement, You give Your consent for Us to publish this Agreement in its entirety (subject only to redaction of any information that We determine is exempt from disclosure in accordance with the provisions of the Information Disclosure Requirements) including from time to time agreed changes to this Agreement. You will help and cooperate with Us to enable Us to publish this Agreement.
- 18.6 We may consult with You to help with making our decision regarding any exemptions under clause 18.5 but We will have absolute discretion about the final decision.

19 Prevention of Bribery

- 19.1 You warrant and represent that:

19.1.1 You have not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):

- (i) offered, given or agreed to give any of Our officers or employees any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this Agreement or any other agreement with Us (including any Project Agreement) or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with Us (including any Project Agreement); or
- (ii) in connection with this Agreement, paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to Us; and

19.1.2 You have in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

19.2 If You or Your Staff (or anyone acting on Your or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without Your knowledge in relation to this Agreement or any other agreement with Us (including any Project Agreement):

19.2.1 we will be entitled:

- (i) to terminate this Agreement and recover from You the amount of any loss resulting from the termination; and
- (ii) to recover from You: (a) the amount or value of any gift, consideration or commission concerned; or (b) any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

19.2.2 any termination under clause 19.2.1 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to Us; and

19.2.3 notwithstanding clause 21, any dispute relating to:

- (i) how this clause 19 is interpreted; or
- (ii) the amount or value of any gift, consideration or commission,

shall be decided by us, acting reasonably, and the decision shall be final and conclusive.

20 Disclosure of information on suspected or confirmed fraudulent activities

20.1 You must tell Us promptly if You become aware of any actual or suspected fraudulent activity connected in any way with any activity which is purchased through the DPS.

21 Dispute Resolution Procedure

21.1 Except if dealt with otherwise in this Agreement, resolution of any dispute relating to this Agreement starts at stage 1 of the Escalation Process set out in clause 21.2 then continues to stages 2 and 3, unless resolved at any earlier stage. Any dispute relating to a Project Agreement will be dealt with under the terms of that Project Agreement.

21.2 Escalation procedure for disputes (“**Escalation Process**”): The management levels at which a dispute may be dealt with are as follows:

Stage	Us	You	Maximum length of stage (consecutive calendar days)
1	<i>Delivery Partner</i> DPS Manager	Your Representative	5
2	Head of Technical Excellence	A senior manager with knowledge of the dispute or the area of dispute	5
3	Technical Director	A Director or equivalent	5

21.3 Without affecting Our right to terminate this Agreement, if a dispute occurs in connection with this Agreement, the parties shall make every reasonable effort to communicate and cooperate and follow the Escalation Process as the first step to resolving the dispute.

21.4 If a dispute occurs, either party can serve a notice (“**Dispute Notice**”) in accordance with clause 24.6 to begin formal resolution of that dispute using the Escalation Process. Stage 1 will start on the date of service of the Dispute Notice. If at stage 1 or 2, the

relevant representatives reasonably believe that the dispute is close to resolution and can be resolved with more time, the relevant representative for each party will apply for approval from their stage 3 representative to extend the maximum length of the stage. The length of a stage can only be extended where both parties' stage 3 representatives agree. The stage 3 representatives can agree to extend the length of stage 3.

- 21.5 If the matter in dispute has not been resolved in accordance with the Escalation Process, either party shall be entitled to refer the dispute to a mediator (to be appointed by the Centre for Effective Dispute Resolution if the parties cannot agree on the identity of the mediator) for resolution by way of structured negotiations with the assistance of the mediator (or, if the parties agree to it, any other form of dispute resolution).
- 21.6 Subject always to clause 21.7 if the parties are unable to resolve a dispute within three months after service of a Dispute Notice, either party may (but shall not be obliged to) start court proceedings.
- 21.7 Nothing in this clause 21 shall prevent either party from applying at any time to the court for injunctive relief on the grounds of infringement, or threatened infringement, of the other party's obligations of confidentiality contained in this Agreement or infringement, or threatened infringement, of a party's Intellectual Property Rights.

22 Conflicts of interest

- 22.1 You recognise that We are subject to conflicts of interest requirements as set out in PPN 01/19: Applying Exclusions in Public Procurement, Managing Conflicts of Interest and Whistleblowing (<https://www.gov.uk/government/publications/procurement-policy-note-0119-applying-exclusions-in-public-procurement-managing-conflicts-of-interest-and-whistleblowing>) ("PPN"). You must comply with this clause 22 in order to assist Us with Our compliance with Our obligations under the PPN.
- 22.2 You must take appropriate steps to make sure that neither You, Your Staff or Your Team are placed in a position where (in Our reasonable opinion) there is or may be an actual conflict, or potential conflict between Your financial or personal interests or those of Your Staff or Your Team and the duties owed to Us under this Agreement or any Project Agreement You enter into. If You become aware of any conflict of interest or potential conflict of interest as described above, You must notify Us promptly giving full details. You must also tell us about any steps You are going to take to rectify the

relevant conflict of interest or to make sure a potential conflict of interest does not happen.

- 22.3 We reserve the right to terminate this Agreement with immediate effect by giving You written notice and/or take any other steps We reasonably believe to be necessary if, in Our reasonable opinion, there is or may be an actual conflict or a potential conflict of interest as describe in clause 22.2.

23 Assignment and novation

- 23.1 We can assign, novate or transfer all or any of Our rights under this Agreement without Your consent. If We novate any of Our rights under this Agreement, You must execute any documents in connection with the novation within seven (7) days of Us providing You with the relevant documents.
- 23.2 You must not assign, novate or transfer and of Your rights or obligations under this Agreement.

24 General

- 24.1 This Agreement, the Schedules and the documents otherwise referred to in it contain the whole agreement between You and Us in respect of the subject matter of the Agreement and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between Us and You, whether written or spoken, relating to the subject matter of this Agreement.
- 24.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party that the waiver is addressed to and to the circumstances for which the waiver is given.
- 24.3 This Agreement does not create any rights or benefits enforceable by any person not a party to it (within the meaning of The Contracts (Rights of Third Parties) Act 1999) except that Other Customers may enforce this Agreement. No consent is required from Other Customers to vary or terminate this Agreement (even if such variation changes the rights of Other Customers under this Agreement).
- 24.4 No variation to this Agreement will be valid unless it is in writing and signed by both parties.

- 24.5 Nothing in this Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 24.6 Any notice which is to be given by either party to the other shall be given by e-mail. Such e-mail shall be addressed to the other party in the way set out in clause 24.7. Any notice shall be deemed to have been received at the time of sending, or, if this time falls outside working hours in the place of receipt, when working hours resume. Working hours means 9.00am to 5.00pm on a Business Day.
- 24.7 For the purposes of clause 24.6:
- 24.7.1 We will send any notices to You to the contact email address which is included in Your Member Information; and
- 24.7.2 any Notice You send to Us must be sent to:
deliverypartnerprocurement@homesengland.gov.uk.
- 24.8 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), will be governed by, and construed in accordance with, English law.
- 24.9 Each party agrees that, except where clause 21 applies, the courts of England and Wales have the 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).

Schedule 1

Delivery Period, Geographic Areas and Development Types

1 Delivery Period

- 1.1 The Delivery Period is ten (10) years from 1st September 2021 or such other period as may be determined by Us in accordance with this Agreement.

2 Geographic Areas and Development Types

- 2.1 The Geographic Areas for the DPS are:

- East Midlands
- East of England
- London
- North East
- North West
- South East
- South West
- West Midlands
- Yorkshire and The Humber

- 2.2 A map showing the Geographic Areas can be found here [DPS Geographic Areas](#).

- 2.3 A list of Development Types is included in the Appendix to this Schedule 1. You should note, however, that We may update this list from time to time. We will post updates of any changes on the DPS Portal.

- 2.4 Potential Members must identify:

- 2.4.1 their Preferred Geographic Areas in which they are able to undertake housing-led development activity under their chosen Membership Category; and

- 2.4.2 their Preferred Development Types,

when completing their application to join the DPS.

- 2.5 You can amend Your Preferred Geographic Areas and Preferred Development Types at any point through the DPS Portal if Your circumstances change.
- 2.6 Opportunities to participate in Calls for Competition for specific sites will be made available to You only if all of the following apply:
 - 2.6.1 the relevant Membership Category for the project matches Your Membership Category; and
 - 2.6.2 if the specific site is located in one of Your Preferred Geographic Areas; and
 - 2.6.3 the relevant Development Type corresponds to one of Your Preferred Development Types.

Appendix to Schedule 1

Development Types

- Residential Development sites that involve a significant amount of conversion or refurbishment of an existing building or buildings. (Conversion / refurbishment is 50% or more of whole site construction cost)
- Construction and direct contracting, where You would provide a design and construction service only, through a construction contract such as JCT or NEC, but would not be responsible for sale and marketing.
- Schemes including the development of Extracare or other supported living accommodation.
- Schemes of the provision of 100% Affordable Housing.
- General Residential led development (not having a particular requirement of any of the specialisms above). It is anticipated the majority of requirements will come under this Development Type.

Schedule 2

Scope of Activities

1. The Delivery Partner DPS will be used to procure housing-led development. This will include all activities necessary to construct housing and associated infrastructure, marketing and sales and transfer of freehold to eventual owners, including, but not limited to:
 - Raising of development finance
 - Means to share development risk and reward
 - Planning promotion including masterplanning
 - Obtaining planning permission
 - Supply chain management
 - Design and / or construction of homes
 - Provision of all forms of affordable housing (in association with a Registered Provider, Local Authority or alternative provider)
 - First Homes and discounted market sales products
 - Design and construction of infrastructure to support housing
 - Sales and / or marketing and / or promotion of homes
 - Aftercare and maintenance
 - Management of completed units/developments
 - Soft market testing

Specifically:

- Development and disposal of sites for residential use
 - Development and disposal of mixed-use, housing-led sites. Mixed-use elements to include community facilities, retail or commercial development, open space ancillary to and in support of housing
 - Construction of housing and other associated buildings to include community facilities, retail or commercial development ancillary to and in support of housing
 - Refurbishment/retrofit of existing houses, residential buildings, empty homes and associated buildings
 - Refurbishment, restoration, conversion of heritage or other buildings for residential led use
 - Demolition, site remediation and enabling works to prepare sites for residential or mixed-use development
 - Construction of infrastructure to support residential and mixed-use development
 - Development of Extra Care accommodation, Independent Living accommodation, other accommodation for vulnerable people and private rented housing
 - Development of Student accommodation
 - Off-site manufacture of homes, modular construction, system build
 - Maintenance and site management
 - Construction or development of buildings to provide social infrastructure to support residential or residential-led development
 - Provision of custom build homes
 - Provision of serviced self-build plots
 - Provision of serviced development parcels within a larger development site
2. The activities set out in paragraph 1 above are only to give an idea of what might be required under a Project Agreement. A separate specification will be issued under each Call for Competition setting out details of Our requirements or the requirements of the Other Customer as relevant.

Schedule 3

Template Contracts

1 Homes England Building Lease

- 1.1 The Homes England Building Lease as amended from time to time by Us. The latest version is available on the DPS Portal.

2 Homes England Building Lease “Lite”

- 2.1 The Homes England Building Lease “Lite”, various ‘add-on’ Options and Guidance Note, as amended from time to time by Us. The latest version is available on the DPS Portal.

3 Homes England Agreement for Lease

- 3.1 The Homes England Agreement for Lease as amended from time to time by Us. The latest version is available on the DPS Portal.

4 Development Agreement

- 4.1 The Development Agreement as amended from time to time by Us. The latest version is available on the DPS Portal.

5 DB 2016 Design and Build Contract 2011

- 5.1 The Joint Contracts Tribunal Design and Build Contract (2011) or (2016) including the Public Sector Supplement as may be updated from time to time. This form of contract is available to purchase at <https://www.jctltd.co.uk/product/design-and-build-contract>

6 NEC4

- 6.1 The New Engineering Contract Edition 4 (NEC4) suite of Contracts including supporting schedules, as may be updated from time to time. This form of contract is available to purchase at <https://www.neccontract.com/NEC4-Products/NEC4-Contracts>

Schedule 4

Call for Competition – Procedure

1 Introduction

- 1.1 The operation of the DPS will include a Call for Competition as an integral step between being a Member and being awarded a contract for a specific project. We will use an electronic tendering system (referred to in this Agreement as the DPS Portal which is currently Pro Contract but is subject to change). You will be required to use the DPS Portal to submit Your Tender for any projects.
- 1.2 You will have the opportunity to submit Tenders if there is a Call for Competition (by Us or an Other Customer) for sites falling within Your Membership Category for Your Preferred Geographic Areas and Preferred Development Types. You will not be invited to submit a Tender outside of Your Membership Category. For example if a site is for 100 homes, located in the South West and it involves the conversion of an existing building it will only be offered to those Members who are, at the point of issue of the Call for Competition, within all three of the categories of over 70 Homes, South West and Conversion / Refurbishment / Listed Buildings, and not those members who are only in one or two of those categories.
- 1.3 Full details of how to submit Your Tender and the evaluation process will be set out in the ITT issued for each Call for Competition. The rest of this Schedule 6 sets out an overview of the Call for Competition process.

2 Tender Submission Process

- 2.1 The process for the submission of Tenders is divided into 2 stages as follows:
 - 2.1.1 Stage 1 – confirmation of interest and self-assessment exercise (“**Expression of Interest**”) (to be completed by all Members interested in tendering). Further details are provided in paragraph 3 below.
 - 2.1.2 Stage 2 – divided into two sub-stages as follows (but please note paragraph 4.2 below):
 - (i) Stage 2a: issue of Invitation to Tender to Members who have successfully completed Stage 1 and submission of an initial tender

by Members who wish to continue to participate in the Call for Competition (“**Initial Tender Submission**”); and

- (ii) Stage 2b: Members who have successfully completed Stage 2a will submit a full Tender (“**Full Tender Submission**”).

Further details of Stage 2 are set out below in paragraph 4.

3 Stage 1 – Expression of Interest (confirmation of interest and self-assessment)

3.1 For Stage 1, the process will be as follows:

3.1.1 We will issue information to You on the DPS Portal for projects in Your Membership Category for sites located within Your Preferred Geographic Areas and which match Your Preferred Development Types (“**Project Information**”). You will be asked to respond within ten (10) days or more (depending on the project) to say whether or not You are interested in participating further in the Call for Competition for that project.

3.1.2 If You indicate that you want to participate in the Call for Competition, You must also respond on a yes / no basis to questions set out in the Project Information concerning specific criteria relevant to the project. Such questions may include:

- are You able to meet project timescales?
- are You able to confirm that all information given in Your Selection Questionnaire when You became a Member is up to date and correct?
- are You able to meet specific project design, sustainability or Modern Methods of Construction criteria?

Questions will generally cover project criteria or requirements relating to the specific project.

3.2 We will verify Your Expression of Interest to ensure it complies with Our requirements as set out in the Project Information. If Your Expression of Information meets those requirements, You will be able to take part in Stage 2 (see paragraph 4 below).

4 Stage 2 –Tender Stage

- 4.1 We will issue an ITT inviting all Members who have successfully completed Stage 1 (as set out in paragraph 3 above) to take part in Stage 2. However, please note the conditions that may apply to Your progression to Stage 2 set out in paragraph 6.1.2 below.
- 4.2 Stage 2 (Tender Stage) is divided into sub-stages (Stage 2(a) and Stage 2(b), see below for further explanation). Stage 2(a) may not be used in every Call for Competition. If, further to Stage 1, there are six (6) or fewer Members eligible to receive an ITT, We (or the relevant Other Customer) may choose to proceed directly to Stage 2(b). If, on the other hand, a significant number (generally more than six (6)) of Members successfully complete Stage 1, both Stage 2(a) and (b) may apply. It is Our decision (or that of the relevant Other Customer) as to whether both Stage 2(a) and (b) will be used in any Call for Competition. The relevant ITT will set out which sub-stages of the Tender Stage apply.
- 4.3 The evaluation criteria and the associated weightings to be used in the evaluation of Tenders are set out in paragraphs 11 (construction works) and 12 (development works) below. The evaluation criteria and associated weightings may be formulated more precisely from project to project. A detailed evaluation methodology, tailored to each specific project, will be set out in the relevant ITT and used to evaluate all Tenders for that project.

Stage 2(a)

- 4.4 Stage 2(a) will consist of submission of an initial proposal (“**Initial Tender Submission**”) relating to key aspects of the project. Details of the procedure for raising any clarification questions prior to submitting Your Initial Tender Submission will be set out in the relevant ITT. The deadline for submitting Your Initial Tender Submission may vary from project to project but will never be any less than ten (10) days after issue of the ITT.
- 4.5 The Initial Tender Submission requirements may request Members to submit elements such as the following:
- 4.5.1 a constraints plan;
- 4.5.2 scheme composition in terms of house types, numbers and values;

4.5.3 identification of key project risks and how these would be mitigated; and

4.5.4 details of any proposed Affiliated Entity to enter into the Project Agreement.

However, please note that the elements You will be required to submit for any Call for Competition may vary from project to project.

4.6 Initial Tender Submissions will be evaluated in accordance with the evaluation methodology set out in the ITT to select the Members who will proceed to Stage 2(b).

4.7 If Our evaluation of Your Initial Tender Submission identifies that You are not eligible to proceed to Stage 2(b), You will receive a 'notification of exclusion' letter detailing the following:

- Initial Tender Submission evaluation criteria
- Your score
- Reasons why You were awarded Your score
- Number of successful Initial Tender Submissions
- Total Number of Initial Tender Submissions received
- Lowest successful score
- Highest successful score
- Contact details to request further information

Stage 2(b)

4.8 For Stage 2(b), Members who successfully complete Stage 2(a) will be invited to submit a full Tender ("**Full Tender Submission**"). Details of the procedure for raising any clarification questions prior to submitting Your Full Tender Submission will be set out in the relevant ITT. The deadline for submitting Your Full Tender Submission may vary from project to project but will never be any less than ten (10) days from being You being invited to do so.

4.9 Full Tender Submissions will be evaluated in accordance with the evaluation methodology set out in the ITT to identify the Member(s) who have been successful in the relevant Call for Competition.

4.10 Following evaluation of the Your Full Tender Submission, if You have been unsuccessful, You will be sent a letter notifying You of the following information:

- The name of the successful bidder
- The standstill period end date
- Award Criteria and sub-criteria (if applicable)
- Your scores
- Reasons for Your scores
- Successful Member's scores

- Narrative to explain why the successful Member scored higher marks including characteristics and relative advantages of the winning tender compared to Your Tender (subject to any known confidentiality / intellectual property restrictions)
- Contact details to request further information

If no challenges arise within the standstill period, the Project Agreement will be awarded to the Member identified as achieving the highest score in respect of their Full Tender Submission in accordance with the evaluation methodology as set out in the relevant ITT.

5 Tender Financial Appraisal

- 5.1 During the Tender Stage (set out in paragraph 4), We (or the Other Customer as relevant) will carry out financial appraisals in relation to Members' financial standing on a project specific basis ("**Tender Financial Appraisal**"). The purpose of the Tender Financial Appraisal is to assess whether Members have sufficient financial strength and capacity to undertake the relevant project.
- 5.2 The requirements of any Tender Financial Appraisal (see examples in paragraph 5.3) are additional to the requirements that were imposed on You when You joined the DPS and those You must meet on an ongoing basis to continue as a Member. Depending on the size and complexity of the project, a Tender Financial Appraisal may also include requiring You to demonstrate a higher level of turnover and net assets than You were asked to evidence to be accepted into Your chosen Membership Category.
- 5.3 Any additional project specific requirements for a Tender Financial Appraisal will be determined on a project by project basis, depending on the nature, scale and complexity of the project, the proposed payment terms and Your current and anticipated exposure to Us under the DPS at that time. These specific requirements will be set out clearly within the relevant ITT but may include the provision of the following to support the Tender Financial Appraisal:
- 5.3.1 project appraisal setting out the anticipated profile of costs, income and cash flow across the duration of the delivery of the relevant activity under the Project Agreement;
 - 5.3.2 evidence of funding to both purchase the site and develop the scheme in line with Our requirements as set out in the ITT;

- 5.3.3 latest financial statements and additional financial information such as management accounts and financial forecasts if deemed necessary; and
 - 5.3.4 any other information that Our (or the relevant Other Customer's) Financial Due Diligence team deems necessary for it to undertake and complete the Tender Financial Appraisal.
- 5.4 If, further to the Tender Financial Appraisal, We (or the Other Customer as relevant) are not satisfied that You have sufficient financial strength and capacity to undertake the relevant project, then, depending on the requirements of the project and the outcome of the Financial Appraisal:
- 5.4.1 You may be asked to provide a guarantee from a parent company or other body which satisfies Our requirements (or the requirements of any Other Customer as relevant); or
 - 5.4.2 Your Tender may be excluded from evaluation meaning You will be disqualified from the relevant Call for Competition; or
 - 5.4.3 Your Tender proposing deferred payment terms may be excluded from evaluation meaning You will be disqualified from the relevant Call for Competition or that Your Tender can only be evaluated based on upfront payment terms (where You provide these).
- 5.5 Your Tender proposing deferred payment terms may also be excluded from evaluation where it indicates that Your current or anticipated exposure to Us exceeds defined thresholds as set out in the relevant ITT. This could mean that You are disqualified from the relevant Call for Competition or that Your Tender can only be evaluated based on upfront payment terms (where You provide these).

6 Verification of Membership Information

- 6.1 We may perform information checks ("**Information Checks**") on Your Membership Information as follows:
- 6.1.1 during the Tender Stage on receipt of Your Tender; or
 - 6.1.2 before We allow you to proceed to Stage 2 where you have successfully passed Stage 1 but You self-certified information contained in Your Selection Questionnaire when you applied to join the DPS.

- 6.2 The Information Checks are to ensure that all Selection Questionnaire information submitted by You at the time of your application to the DPS or updated since then is accurate and up to date.
- 6.3 If, as a result of an Information Check, any of Your Membership Information is found to be inaccurate or more than one (1) year out of date, You may be prevented from participating further in the Call for Competition and will be suspended as Member of the DPS until Your Membership Information is updated and/or corrected.

7 Award of Project Agreement

- 7.1 If You are successful under a Call for Competition that We have carried out and We wish to go ahead and enter into a contract with You (subject to paragraph 7.2 below):
- 7.1.1 You (or the Approved Affiliated Entity as applicable) must first enter into the Homes England Agreement for Lease with Us as referred to in Schedule 3 (*Template Contracts*); and
- 7.1.2 We will then agree and conclude with You (or the Approved Affiliated Entity as applicable) any further contractual arrangements as detailed in the Call for Competition.
- 7.2 Before We enter into any contract under paragraph 7.1 above, We will carry out checks under Our “Know Your Customer/Customer Due Diligence” requirements as part of Our obligations under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. If the result of any checks are not to Our satisfaction, We will not be able to enter into a contract with You (or the Approved Affiliated Entity as applicable).
- 7.3 If You are successful under a Call for Competition that an Other Customer has carried out and they wish to go ahead and enter into a contract with You, the Project Agreement for their project will be substantially in one of the forms listed in Schedule 3 (*Template Contracts*). Once agreed, the Project Agreement will be signed by You (or the Approved Affiliated Entity as applicable) and the Other Customer.
- 7.4 If the Member who was ranked highest (or the Member who was ranked next highest, as the case may be) confirms in writing that it is not able to enter into the Project Agreement in accordance with Our (or an Other Customer’s) requirements as set out in the relevant Call for Competition, then We (or the Other Customer as relevant) may decide to enter into the Project Agreement with the Member ranked next highest.

- 7.5 The process set out in paragraph 7.4 above may be repeated until the Project Agreement is awarded or there are no further Members qualified (in accordance with the requirements set out in the ITT) to enter into it.

8 No obligation to award

- 8.1 We are not, and any Other Customer is not, obliged to award any Project Agreement further to any Call for Competition. We or any Other Customer will not be responsible for Your costs in relation to any Call for Competition whether or not a Project Agreement is awarded to a Member.

9 Provision of false or misleading information

- 9.1 We may consider imposing sanctions or remedial actions if You submit false or misleading information in respect of any Call for Competition and/or Tender Financial Appraisal.
- 9.2 Any sanctions or remedial actions we impose in accordance with paragraph 9.1 will be at Our discretion. Sanctions may include:
- 9.2.1 excluding Your Tender from evaluation meaning You are disqualified from the Call for Competition;
 - 9.2.2 Your suspension or disqualification from a Membership Category; or
 - 9.2.3 Your suspension or disqualification from the DPS.
- 9.3 The terms of any suspension or disqualification (including any right to re-join or reapply) will depend on Your specific actions and the circumstances in question. Therefore You will be informed of these terms at the time if You are suspended or disqualified from either Your Membership Category or the DPS.
- 9.4 If You are disqualified from the DPS further to this paragraph 9, We will terminate this Agreement on a notice period to be determined by Us.

10 Evidence of insurance cover

- 10.1 During the Tender Stage (see paragraph 4), We may verify the adequacy of Your insurance arrangements on a project specific basis. For example, Contractors All Risks Insurance and other additional insurances will be required on a project specific

basis. Details of the required insurances and the level of cover will be set out in each ITT.

11 Evaluation criteria and weightings for Construction Works

11.1 In the case of construction works Tenders will be evaluated on the following basis:

Call for Competition – Evaluation Criteria and Weighting range		
Criteria	Sub-criteria	Weighting
Quality	Employer's requirements Planning Technical approach Resources and Expertise Programme Social Value Safety Sustainability Financial and Customer Due Diligence	50% (+/- 30%)
Price	n/a	
Construction Costs		50% (+/-30%)
	Total score	100%

11.2 The evaluation methodology to be used for each individual project will be made clear in the ITT for the relevant Call for Competition. Not all sub-criteria listed above will apply to each Call for Competition.

11.3 We or any Other Customer as relevant may vary the weighting of the evaluation criteria or the sub-criteria to suit the nature of the individual project. The exact weighting of the evaluation criteria and sub-criteria to be used will be detailed within the relevant ITT.

11.4 Financial evaluation of Tenders for construction work will focus on Build Costs.

12 Evaluation criteria and weightings for development works

- 12.1 For development works the following provides guidance as to how Tenders will be evaluated. However this approach will be tailored on a project specific basis and may be developed over time to meet future policy and economic requirements

Call for Competition – Evaluation Criteria and Weighting range		
Criteria	Sub-criteria	Weighting
Quality	Use of Modern Methods of Construction Design Quality Risk Register of Technical Risks Social Value Planning Long-term Management Arrangements Marketing Strategy Programme Capacity and Resources Financial and Customer Due Diligence	50% (+/- 30%)
Price	Financial offer / land value bid Cost schedule / Cost robustness	50% (+/-30%)
	Total score	100%

- 12.2 The evaluation methodology to be used for each individual project will be made clear in the ITT for the relevant Call for Competition.
- 12.3 We or any Other Customer as relevant may vary the weighting of the evaluation criteria to suit the nature of the individual project. The exact weighting of the evaluation criteria and sub-criteria to be used will be detailed in the relevant ITT. Not all sub-criteria listed above may apply to each Call for Competition.
- 12.4 Financial evaluation of Tenders for development works will be defined in the relevant ITT.

Schedule 5

DPS Management

1 Use of the DPS by the Agency

- 1.1 The DPS will be managed by Framework Team. However, management of individual projects and Project Agreements will be the responsibility of the relevant teams within Our organisation or Other Customer

2 Keeping Member Information up to date

- 2.1 Members are responsible for ensuring that all Member Information provided within their application to join the DPS is maintained as current and up to date. This includes:

- Details about Your organisation
- Grounds for exclusion
- Economic and Financial Standing
- Technical and Professional Ability (new examples to be provided if any one or more existing ones were completed more than 5 years ago)
- Requirements under the Modern Slavery Act 2015
- Insurance
- Equal opportunities and Diversity
- Environmental Management
- Health and Safety
- Data Protection

- 2.2 You should review and update Your Member Information each year. If any part of Your Member Information is more than one (1) year out of date, You will be suspended as a Member and unable to participate in any Call for Competition until You review and update Your Member Information.

3 DPS Financial Appraisal

- 3.1 Once You have been accepted as a Member of the DPS, Your financial strength will continue to be assessed and evaluated as follows:

- 3.1.1 by means of an annual assessment process ("**Annual Assessment**"). Your Annual Assessment will be similar to the initial assessment You completed when You applied to join the DPS. You will be assessed based on Your most recent sets of statutory accounts (audited where applicable) covering a period of at least two (2) years prior to the date of Your Annual Assessment. The timing of Your Annual Assessment will be in accordance

with Your financial year and/or submission of audited accounts to Companies House; and

- 3.1.2 in addition to Your Annual Assessment, You will be required to notify Us of any failure to comply with the Audit Opinion (as defined in section 4 of the Selection Questionnaire), any county court judgements and Insolvency Event metrics (as set out in section 4 of the Selection Questionnaire) within 10 Business Days of non-compliance.

3.2 We may consider implementing sanctions or remedial actions if:

- 3.2.1 You fail to provide the relevant information or you provide misleading, inaccurate or fraudulent information as part of:

- (i) Your Annual Assessment; or
- (ii) Your obligations under paragraph 3.1.2 above;

- 3.2.2 You fail to achieve the relevant thresholds for the metrics which comprise Your Annual Assessment (as described in paragraph 3.1.1 above);

- 3.2.3 We discover at any point during the Delivery Period that You provided false or misleading information:

- (i) when You applied to join the DPS;
- (ii) during Your Annual Assessment; or
- (iii) in relation to Your obligations under paragraph 3.1.2 above; or

- 3.2.4 We discover any other material adverse indicators concerning Your financial strength or financial standing, which, had they been known to Us at the time, would have enabled Us to refuse Your application to join the DPS.

3.3 Any sanctions We may impose further to paragraph 3.2 above may include:

- 3.3.1 excluding any current Tenders You have submitted from evaluation meaning You are disqualified from the relevant Call for Competition;

- 3.3.2 Your suspension or disqualification from a Membership Category; or

- 3.3.3 Your suspension or disqualification from the DPS.
- 3.4 The terms of any suspension or disqualification (including any right to re-join or reapply) will depend on the circumstances in question. Therefore You will be informed of these terms at the time if You are suspended or disqualified from either Your Membership Category or the DPS.
- 3.5 If You are disqualified from the DPS further to this paragraph 3, We will terminate this Agreement on a notice period to be determined by Us.

4 Use of the DPS by Other Customers

- 4.1 The DPS has been set up to allow other public sector bodies to use it. A current list of all public sector bodies entitled to use the DPS is set out in the DPS Memorandum of Information which can be found on the DPS Portal. If a public sector body which has the right to use the DPS wishes to access the DPS and become an Other Customer, an Access Agreement will be put in place between Us and the public sector body concerned. All Other Customers will be responsible for procuring their own requirements through the DPS via a Call for Competition using the procedure set out in Schedule 4 (*Call for Competition – Procedure*). We will not be party to that Call for Competition nor any individual commissions and will have no liability for work procured by Other Customers through the DPS. On the signing of an Access Agreement by an Other Customer, We will make guidance available so that it can use the DPS compliantly.
- 4.2 In order to use the DPS, Other Customers will have to accept that:
- 4.2.1 the way in which they are able to use the DPS may be limited by us upon their acceptance as an Other Customer or at any time throughout the Delivery Period;
 - 4.2.2 they will have full responsibility for any Call for Competition that they run and the selection, appointment, management and payment of the Member;
 - 4.2.3 if there is a dispute between the Other Customer and the Member, We will not formally be involved unless the relevant Other Customer believes that the issue has a fundamental impact on the Member's ability or capacity to continue to provide services to Us and Other Customers; and

- 4.2.4 We reserve the right to close the DPS to Other Customers should their usage compromise the capacity of DPS Members to provide services to Us.

5 DPS meetings

- 5.1 In order to manage the ongoing DPS arrangements We will aim to arrange a meeting with Members on an annual basis to review workload, progress partnering initiatives, share learning and information and action any matters arising. The key aim of these meetings will be to identify ways in which the parties can work together better. This will include identifying ways in which We can act as a better client as well as defining how Members can better enable Us to meet Our objectives. The meetings are intended to enable sharing of information between Us and Members and also between Members themselves.

6 Induction and Training

- 6.1 When You are accepted as a Member of the DPS, we will provide you with an induction briefing which will be in the format most suitable for Us at the time. You will be provided with access to training guidance which explains the operation and management of the DPS.
- 6.2 We advise You to read all guidance issued carefully and notify Us if there is anything that You do not understand as this could affect Your ability to participate in Calls for Competition.

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