**Access Agreement Guidance**

**Please can you ensure all highlighted areas on the agreement are completed as well as the information under Schedule 1. We will not be able to accept the Access Agreement without this information.**

**Many thanks**

**DPS Team**

DATED 20[♦]

(1) **OXFORD CITY COUNCIL**

 (2) **[DPS USER NAME]**

 **DYNAMIC PURCHASING SYSTEM**

**FOR**

**ELECTRIC VEHICLE CHARGING INFRASTRUCTURE**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ACCESS AGREEMENT FOR DPS USER

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This **AGREEMENT** is made on [***Date***]

**BETWEEN:**

1. **OXFORD CITY COUNCIL** of the Town Hall, St. Aldate’s, Oxford, OX1 1BX (the “**Authority**” which expression includes any permitted successor to it and any successor to it in the exercise of its functions); and
2. **[DPS USER]** whose principal office is at [***address***] (the “**DPS User**”) which expression includes any permitted successor to it and any successor to it in the exercise of its functions),

each a “**Party**” and together, the “**Parties**”,

**BACKGROUND**

1. The Authority, acting on behalf of itself and the other **Potential Employers** (which term means all UK Public Sector Bodies as identified in Contract Notice 2021/S 000-000417 published on Find a Tender Service on 8 January 2021) (*Potential Employers*), has set up the Dynamic Purchasing System for the Supply of Electric Vehicle Charging Infrastructure and Associated Services (“**EVIDPS**”);
2. The Authority has authorised the individual DPS Members listed by Lot in Schedule 1 (*DPS Members*) to this Agreement to compete for stage 2 tenders in standard form, the terms, conditions and other provisions of which are referred to as the “**Call-Off Contract”**;
3. Under EVIDPS, the Potential Employers may publish opportunities for DPS Members compete to enter into Call-Off Contracts for the supply of Electric Vehicle Charging Infrastructure and Associated Services as set out in the Dynamic Purchasing System;
4. The DPS User wishes to make use of EVIDPS; and
5. The Authority requires that any DPS User which wishes to use EVIDPS enters into this Agreement with the Authority to regulate the use and operation of the Dynamic Purchasing System.

IT IS AGREED as follows:

1. **Consideration and Intention to Create Legal Relations**
	1. The consideration for this Agreement shall be as follows –
		1. The Authority permits the DPS User to use EVIDPS in accordance with the provisions of this Agreement, the provisions of the EVIDPS and Applicable Law; and
		2. The DPS User agrees to abide by and perform diligently and in full the obligations of the DPS User set out in this Agreement, in the EVIDPS, the Call-Off Contract, and to comply with Applicable Law in doing so.
	2. The Parties intend that this Agreement should have legal effect and should be enforceable by either of them as a contract.
2. **Interpretation**
	1. The following terms and expressions shall have the meanings ascribed to them:

|  |  |
| --- | --- |
| **Agreement** | means this Agreement including its recitals, terms and conditions, schedules, attachments thereto and any documents referred to as forming part of it; |
| **Applicable Law**  | means any law, statute, proclamation, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the DPS User is bound to comply; |
| **Call-Off Contract** | means an agreement between one or more Employers and a DPS Member to carry out works and/or supply services for a Electric Vehicle Charging Infrastructure Project awarded via the EVIDPS, in the form set out at Schedule 3; |
| **EIR** | means the Environmental Information Regulations 2004, and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation; |
| **EIR Exception** | means any applicable exemption to EIR; |
| **EVI DPS User Guide** | The guide to the use of EVI DPS (reference DN519227) published by the Authority and as amended from time-to-time; |
| **Exempted Information** | means any Information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions; |
| **FOIA Authority** | means a public authority as defined by FOIA and / or EIR; |
| **FOIA Exemption** | means any Information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions; |
| **Information** | means in relation to:(i) FOIA, the meaning given under section 84 of the FOIA and which is held by the Authority or a FOIA Authority at the time of receipt of an RFI; or(ii) EIR, has the meaning given under the definition of “environmental information” in section 2 of EIR and which is held by the Authority or a FOIA Authority at the time of receipt of an RFI; |
| **Pre-Selection Information** | The information to be provided by the DPS User to the Authority under clause 5.2 detailing the nature, scope, value and source of funding of a Call-Off Contract that the DPS User wishes to procure under EVIDPS, as more particularly set out at Schedule 2; |
| **Procurement Law** | means the Public Contracts Regulations 2015 and Directive 2014/24/EU, the Procurement Act 2023 and any regulations made under the it, as applicable, and in each case the relevant case law of the European Court of Justice and the UK Courts relating to the above legislation in so far as it constitutes binding precedent; |
| **Request for Information / RFI** | shall have the meaning set out in FOIA or any request for information under EIR which may relate to this Agreement; and |
| **Selection Process** | means the processes to be followed by the DPS User in entering into Call-Off Contracts, as set out in the EVI DPS User Guide. |

* 1. In this Agreement unless the context otherwise requires:
		1. references to a statute or statutory provision shall be construed as a reference to the same as from time to time amended, consolidated, modified, extended, re-enacted or replaced. Any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision;
		2. words in the singular shall include the plural and vice versa and a reference to a gender shall include a reference to all genders;
		3. a reference to a person shall include a reference to a firm, a body corporate or unincorporated association or to a person’s executors or administrators;
		4. a reference to a Clause or Schedule shall be a reference to a Clause or Schedule (as the case may be) of or to this Agreement;
		5. the headings are for convenience only and shall not affect the interpretation of any provision of this Agreement;
		6. unless a right or remedy of a party is expressed to be an exclusive right or remedy, the exercise of it by a party is without prejudice to that party’s other rights and remedies;
		7. any phrase introduced by the words “including”,“includes”,“in particular” or “for example” or similar shall be construed as illustrative and shall not limit the generality of the related general words; and
		8. “writing” or “written” includes e-mail (provided that an error-free transmission report is received by the sender and no notification of malfunction or failure of transmission is received by the sender).
1. Term
	1. This Agreement will commence on the date first stated above and will continue until terminated by either Party upon giving the other 30 days’ notice in writing.
2. **Warranties and Exclusion of Liability**
	1. The DPS User warrants that it has the necessary power and authority to use EVIDPS (including entering into Call-Off Contracts) and has carried out all necessary steps and actions (including obtaining necessary approvals whether internal or otherwise) so as to comply with its own procedures and the Applicable Law.
	2. The Authority and the DPS User warrant to each other that their respective representative(s) who execute this Agreement are duly authorised and empowered to do so.
	3. The Authority gives no warranty and makes no representation about the ability of the DPS User to use EVIDPS for the DPS User’s intended purpose in accordance with Applicable Law (including Procurement Law). The DPS User acknowledges this and further acknowledges that the DPS User is wholly responsible for carrying its own due diligence to ensure that it is able to use EVIDPS for the DPS User’s intended purpose in accordance with Applicable Law.
	4. Neither Party limits its liability to the other for death or personal injury arising from negligence, or for any liability arising from fraud or fraudulent misrepresentation.
	5. Subject to Clause 4.4 above, the Authority excludes any and all liability to the DPS User including in contract, tort (including negligence), breach of statutory duty, Procurement Law, competition law, public law including judicial review, restitution, legitimate expectation or any other area of liability to the fullest extent permitted by law, for any loss, damage, costs or proceedings whatsoever arising out of –
		1. any claim or issue as to whether the DPS User had the necessary power and authority and/or has complied with all applicable procedural requirements; and/or
		2. any claim or issue as to whether the DPS User has complied with its obligations under Procurement Law,

in each case in relation to the DPS User entering or proposing to enter into a Call-Off Contract and/or the DPS User’s use of EVIDPS.

* 1. The DPS User acknowledges that the Authority shall not in any way be responsible or held liable for any loss, damage, costs or proceedings whatsoever arising out of the performance of any Call-Off Contract(s), such matters being between the DPS User and the relevant DPS Member(s).
	2. The DPS User will indemnify the Authority against any losses arising pursuant to the DPS User’s use or misuse of the EVIDPS or the Call-Off Contract or any breach of this Agreement by the DPS User that would not otherwise have arisen but for the DPS User’s use of the DPS or breach of this Agreement or the Call-Off Contract.
1. **Use of the EVIDPS**
	1. The DPS User must not commence any Selection Process or enter into any Call-Off Contract without first obtaining the prior written consent of the Authority. The DPS User must obtain such consent on each occasion that it wishes to commence any Selection Process or enter into any Call-Off Contract.
	2. Where the DPS User applies for the Authority’s consent to commence a Selection Process or enter into a Call-Off Contract it must at the same time provide to the Authority the Pre-Selection Information.
	3. The DPS User shall in conducting any Selection Process and/or awarding any Call-Off Contract comply with the provisions of the EVI DPS User Guide and the reasonable requirements of the Authority.
	4. Within seven (7) days after completion of any Selection Process (whether or not resulting in the award of a Call-Off Contract), the DPS User shall provide the following information to the Authority –
		1. the works or services to be undertaken under the Call-Off Contract;
		2. the Lot or Lots involved in the Selection Process;
		3. the Selection Process used;
		4. the time allowed to DPS Members to respond to the DPS User’s invitation to tender or request (as appropriate);
		5. the DPS Members who responded or submitted tenders (as appropriate);
		6. the form of contract awarded;
		7. the value of the contract awarded;
		8. the identity of the DPS Member to whom the Call-Off Contract has been or will be awarded; and
		9. if the Selection Process did not result in an award of a Call-Off Contract, the reasons for this.
	5. The DPS User shall notify the Authority of any complaint, claim or challenge (whether or not involving legal proceedings) in relation to the DPS User’s use of EVIDPS as soon as reasonably practicable after becoming aware of it.
	6. The DPS User shall not do anything to prejudice the Authority’s procurement of EVIDPS and in particular the DPS User shall not amend the form(s) of Call-Off Contract(s) without the prior written consent of the Authority, unless such amendments are for project specific reasons as indicated and permitted in the relevant documents.
2. **Freedom of Information**
	1. The Parties to this Agreement are FOIA Authorities and are subject to legal duties which may require the release of information under FOIA and / or EIR and that the FOIA Authorities may be under an obligation to provide Information subject to a Request for Information.
	2. The FOIA Authority in receipt of or to receive the RFI (“Relevant FOIA Authority”) shall be responsible for determining in its absolute discretion whether:-
		1. any Information is Exempted Information or remains Exempted Information; and/or
		2. any Information is to be disclosed in response to a Request for Information;

and in no event shall any party, other than the Relevant FOIA Authority, respond directly to a RFI except to confirm receipt of the RFI and that the RFI has been passed to the Relevant FOIA Authority.

* 1. Subject to clause 6.4 below, all Parties acknowledge that the Relevant FOIA Authority may disclose Information:-
		1. without consulting the other; or
		2. following consultation with the other party and having taken (or not taken, as the case may be) its views into account.
	2. Without in any way limiting clauses 6.2 and 6.3, in the event that the Relevant FOIA Authority receives an RFI, the Relevant FOIA Authority will, where appropriate, as soon as reasonably practicable notify the other Party.
	3. The Parties will assist and co-operate with one another as requested by the Relevant FOIA Authority to enable the Relevant FOIA Authority to comply with its obligations to disclose Information under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents and sub-contractors will), at their own cost:
		1. transfer any RFI received to the Relevant FOIA Authority as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
		2. provide all such assistance as may be required from time to time by the Relevant FOIA Authority to enable the Relevant FOIA Authority to comply with its obligations to disclose Information;
	4. Nothing in this Agreement will prevent the Relevant FOIA Authority from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and / or EIR in relation to any Exempted Information.
1. **Confidentiality**
	1. The DPS User agrees not to disclose without the Authority’s written consent any commercially sensitive information relating to any DPS Members provided to it by the Authority pursuant to this Agreement.
2. **Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

1. **Costs and Expenses**

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

1. **No Partnership or Agency**
	1. Nothing in this Agreement shall be construed as creating a partnership.
	2. No Party shall be deemed to be an agent of any other Party and no Party shall hold itself out as having authority or power to bind any other Party in any way.
2. **Third Party Rights**

Nothing in this Agreement shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999.

|  |  |
| --- | --- |
| **Signed on behalf of the Authority by:****[Authorised Signatory]** | **Signed on behalf of [the DPS User] by:****[Authorised Signatory]** |

**SCHEDULE 1**

**PRE-SELECTION INFORMATION**

The DPS User should provide the following information to the Authority under clause 5.2 when requesting consent to undertake a Selection Process:

|  |  |
| --- | --- |
| Nature of the works or services to be undertaken under the proposed Call-Off Contract |  |
| Estimated value of the proposed Call-Off Contract | £ |
| Lot which the DPS User proposes to use |  |
| Selection Process which the DPS User proposes to use |  |
| Award or tender procedure which the DPS User proposes to use |  |
| Source of funding to be used for the Call-Off Contract (select one or more) | ☐ DPS User funded☐ Car parking revenue☐ Concession☐ Grant (provide name of grant scheme and grantor) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_☐ Other (please detail)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

The DPS User should send the pre-selection Information to the Authority by email to dps@oxford.gov.uk.

**SCHEDULE 2**

**DPS MEMBERS**

***Note: this may vary from time to time due to suspension, replacement and termination in accordance with the terms of the Dynamic Purchasing System***

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
| **Lot 1 – End to end / Turnkey services** |
|  |  |  |  |
| 1 | Ameresco Limited | 18 | Joju Ltd |
| 2 | Anglia Car Charging | 19 | Jolt Charge Ltd |
| 3 | Blink Charging UK Ltd | 20 | Kajima Partnerships |
| 4 | Char.gy | 21 | Liberty Charge t/a Believ |
| 5 | Charge My Street | 22 | London Engineers Company LTD |
| 6 | Chargelight Ltd | 23 | Mer Charging UK Limited |
| 7 | Chargemaster Limited t/a BP Pulse | 24 | ODS Group |
| 8 | Clenergy EV Ltd | 25 | Project Better Energy ltd |
| 9 | CONNECTED KERB | 26 | Qwello UK Ltd |
| 10 | E.ON Drive Infrastructure UK Limited | 27 | RAW Infrastructure Ltd |
| 11 | Electric Car Chargers UK Ltd | 28 | SMS Energy Services Limited |
| 12 | EZ-Charge Ltd | 29 | Swarco Smart Charging Limited |
| 13 | Fastned UK Ltd | 30 | Trojan Energy Ltd |
| 14 | FM Conway Ltd | 31 | Ubitricity |
| 15 | Gamma Energy Ltd | 32 | Urban Fox Networks (UK) Limited |
| 16 | Hanger19 Ltd | 33 | Yunex |
| 17 | Iduna Evci Asset Co 1 Ltd | 34 | Zest Eco Ltd Ameresco Limited |
| **Lot 2 – Network operation** | **Lot 3 - Maintenance and Inspection** |
|   |  |   |   |
| 1 | Anglia Car Charging | 1 | Anglia Car Charging |
| 2 | Blink Charging UK Ltd | 2 | Blink Charging UK Ltd |
| 3 | Clenergy EV Ltd | 3 | Clenergy EV Ltd |
| 4 | CONNECTED KERB | 4 | CONNECTED KERB |
| 5 | Hanger19 Ltd | 5 | Dynamic Energy Solutions Holdings Ltd |
| 6 | Kajima Partnerships | 6 | Hanger19 Ltd |
| 7 | Mer Charging UK Limited | 7 | Liberty Charge t/a Believ |
| 8 | Qwello UK Ltd | 8 | Mer Charging UK Limited |
| 9 | SMS Energy Services Limited | 9 | Qwello UK Ltd |
| 10 | Swarco Smart Charging Limited | 10 | RAW Infrastructure Ltd |
|  |  | 11 | SMS Energy Services Limited |
|  |  | 12 | Swarco Smart Charging Limited |
|  |  | 13 | Volker Highways |
|  |  | 14 | Yunex |
|  |  |  |  |
| **Lot 4 - Installation, Construction, Commissioning** | **Lot 5 - Supply** |
| 1 | Anglia Car Charging | 1 | Anglia Car Charging |
| 2 | Blink Charging UK Ltd | 2 | Clenergy EV Ltd |
| 3 | Clenergy EV Ltd | 3 | CONNECTED KERB |
| 4 | CONNECTED KERB | 4 | FIMER UK |
| 5 | Dynamic Energy Solutions Holdings Ltd | 5 | Hanger19 Ltd |
| 6 | Envevo | 6 | Kajima Partnerships |
| 7 | Hanger19 Ltd | 7 | Mer Charging UK Limited |
| 8 | Kajima Partnerships | 8 | Petalite Limited |
| 9 | Liberty Charge t/a Believ | 9 | Project Better Energy ltd |
| 10 | Mer Charging UK Limited | 10 | Qwello UK Ltd |
| 11 | Qwello UK Ltd | 11 | RAW Infrastructure Ltd |
| 12 | RAW Infrastructure Ltd | 12 | SMS Energy Services Limited |
| 13 | SMS Energy Services Limited | 13 | Swarco Smart Charging Limited |
| 14 | Swarco Smart Charging Limited | 14 | Yunex |
| 15 | Volker Highways |  |  |
| 16 | Yunex |  |  |
| **Lot 6 - Roaming Services/eMSPs** | **Lot 7 - Consultancy** |
|  1 | Anglia Car Charging | 1 | Anglia Car Charging |
| 2 | Blink Charging UK Ltd | 2 | Blink Charging UK Ltd |
| 3 | Clenergy EV Ltd | 3 | Cenex Consultancy Services Limited |
| 4 | Hanger19 Ltd | 4 | City Science Corporation Ltd |
| 5 | Qwello UK Ltd | 5 | Clenergy EV Ltd |
| 6 | SMS Energy Services Limited | 6 | CONNECTED KERB |
|  |  | 7 | Curzon & Company LLP |
|  |  | 8 | Gamma Energy Ltd |
|  |  | 9 | Hanger19 Ltd |
|  |  | 10 | Lendlease Construction (Europe)  |
|  |  | 11 | Limited |
|  |  | 12 | Liberty Charge t/a Believ |
|  |  | 13 | NEOM Utilities Limited |
|  |  | 14 | Project Centre |
|  |  | 15 | Qwello UK Ltd |
|  |  | 16 | SMS Energy Services LimitedSteer Davies Gleave |
|  |  | 17 | Urban Foresight Ltd |
|  |  | 18 | Wood Group UK Ltd |
| **Lot 8 - EV Energy Storage Solutions and Capacity Management Offering** | **Lot 9 - E-Car Club EV Charging Solutions** |
|   |   |   |   |
| 1 | Anglia Car Charging | 1 | Anglia Car Charging |
| 2 | Clenergy EV Ltd | 2 | Blink Charging UK Ltd |
| 3 | Hanger19 Ltd | 3 | CONNECTED KERB |
| 4 | Kajima Partnerships | 4 | Hanger19 Ltd |
| 5 | LCS Energy Ltd | 5 | Jolt Charge Ltd |
| 6 | ODS Group | 6 |  Liberty Charge t/a Believ |
| 7 | Project Better Energy ltd | 7 |  Mer Charging UK Limited |
| 8 |  Qwello UK Ltd | 8 |  Qwello UK Ltd |
| 9 | SMS Energy Services Limited |  |  |

**SCHEDULE 3**

**FORM OF CALL-OFF CONTRACT**