



SCHEDULE 1 – SUPPLIER AGREEMENT CONDITIONS

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PART 1: GENERAL

1. DEFINITIONS AND INTERPRETATION

1.1 In the Supplier Agreement, unless the context otherwise requires:

“Access Agreement”	means an access agreement between the Council and an Other Contracting Authority, substantially in the form set out in Schedule 7 (Admission Agreement), granting access for the Other Contracting Authority to procure DPS Services via the DPS;
“Auditor”	means an auditor appointed by the National Audit Office or the Council or some other body that is required to audit the accounts of the Council including those relating to the Council’s purchase of the DPS Services under the Supplier Agreement;
“Authorised Officer”	means the representative(s) of the Council appointed to manage the performance of DPS Suppliers under the DPS (as the same may be replaced or delegate his functions from time to time);
“Award Letter”	means a letter issued by the Participating Authority to confirm acceptance of the Supplier’s Offer and award of the Service Agreement to the Supplier, to be completed substantially in the form set out in Schedule 3 (Award Letter);
“Categories”	means the following three (3) categories for the DPS: <ul style="list-style-type: none">- 1 – 9 Taxi and MPV;- 10 – 16 Minibus;- 16 + Coach and “Category” shall mean any one (1) of them;

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“Charges”	means the charges exclusive of Value Added Tax payable by the Participating Authority in accordance with the relevant Service Agreement as specified in the applicable Award Letter;
“Confidential Information”	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Legislation;
“Contracting Authority”	means any contracting authority as defined in the PC Regulations including the Council;
[“Council’s e-Invoicing System”	means the Council’s electronic invoicing system as notified by the Council to the Supplier as the same may be updated from time to time;
“Data Controller”	has the meaning given to that term in the Data Protection Legislation in force from time to time;
“Data Processor”	has the meaning given to that term in the Data Protection Legislation in force from time to time;
“Data Protection Impact Assessment”	means an assessment carried out pursuant to Article 35 of the General Data Protection Regulation;
“Data Protection Legislation”	means the Data Protection Act 2018, Privacy and Electronic Communications (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 and the General Data Protection Regulation and any legislation implemented in connection with the General Data Protection Regulation , together with any Law implemented in connection with or replacement of such Law coming into effect from time to time, and all applicable laws and regulations relating to the processing of personal data and privacy including guidance, codes of practice and other publications issued by the Information Commissioner’s Office;

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“Data Security Breach”	means any breach of security or confidentiality leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data;
“Data Subject”	has the same meaning as is set out in the Data Protection Legislation;
“Default”	means any breach of the obligations of the relevant Party under the Supplier Agreement (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or its staff in connection with or in relation to the subject matter of the Supplier Agreement and in respect of which such Party is liable to the other;
“Dispute”	means any dispute, difference or question of interpretation arising out of or in connection with the Supplier Agreement, including any dispute, difference or question of interpretation relating to the DPS Services, failure to agree in accordance with the DPS Variation Procedure or any matter where the Supplier Agreement directs the Parties to resolve an issue by reference to the dispute resolution procedure set out in clause 37 (Dispute Resolution);
“Distribution Group”	means a sub-set of the DPS within the Technology that relates to the relevant Participating Authority;
“DPS”	means the Council’s passenger transport dynamic purchasing system operated via the Technology, which applies the procurement methodology set out in Regulation 34 of the Regulations;
“DPS Commencement Date”	means [(end of) April 2020];
“DPS Documents”	means the documents listed in clause 1.2 of the Supplier Agreement;
“DPS Supplier”	means any supplier appointed by the Council as a potential provider of the DPS Services;
“DPS Services”	means any and all of the services to be provided under the DPS as more particularly described in the Specification;
“DPS Term”	as defined in clause 2.1;

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“Environmental Information Regulations”	means the Environmental Information Regulations 2004 together with any guidance and / or codes of practice issues by the Information Commissioner’s Office or relevant Government Department in relation to such regulations;
“Financial Deduction”	means a reduction to the Charges to reflect a failure by Supplier to perform the Services (which may be a complete failure such as non-operation of a Journey or a partial failure such as missed pickups) determined in accordance with the Transport Performance Points Scheme;
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under the FOIA from time to time together with any guidance and / or codes of practice issued by the Information Commissioner’s Office or relevant Government Department in relation to such legislation;
“Force Majeure Event”	means war, natural flood, exceptionally adverse weather conditions, strike or lockout (other than a strike or lock-out which is limited to the Supplier’s Representatives), civil disorder, Act of God, power cuts or delays or other wholly exceptional events outside the control of the parties which could not have reasonably been foreseen or avoided;
“Good Industry Practice”	means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged as the case may be in the same type of undertaking as that of the Supplier under the same or similar circumstances at the relevant time for such exercise;
“Guidance”	means any guidance issued or updated by the UK government from time to time in relation to the PC Regulations;
“Holding Company”	shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto;
“Information”	has the meaning given under section 84 of the FOIA;
“Information Commissioner’s Office”	means the office of the Information Commissioner, being the regulator appointed in the UK as the data protection supervisory authority;

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“Insolvency Event”

in relation to the Supplier, means:

- (a) any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into (or, in the case of such a voluntary arrangement, being proposed);
- (b) a supervisor, receiver, administrator, administrative receiver or other encumbrancer of a similar nature taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged with seven (7) days) upon the whole or any material part of the Supplier’s assets;
- (c) where a court makes an order that the Supplier be wound up or a resolution for a voluntary winding up of the Supplier is passed;
- (d) the Supplier ceasing or threatening to cease carrying on business or being or being deemed to be unable to pay its debts when they become due within the meaning of Section 123 of the Insolvency Act 1986;
- (e) the Supplier, being an individual(s), has a bankruptcy order made against him or compounds with his creditor or comes to any arrangements with any creditors;

“ITMC”

means an invitation to Mini-Competition issued by a Participating Authority via the Technology;

“KPI”

as defined in the Service Agreement Terms;

“Law”

means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

“Mini-Competition”

means a tendering process carried out in relation to a Requirement for the DPS Services and the award of a Service Agreement under the DPS and “**Mini Competitions**” shall be interpreted accordingly;

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“Mini-Competition Award Criteria”	means the award criteria to be applied for Mini Competitions determined in accordance with Schedule 3 (Mini-Competition Award Criteria);
“Mini-Competition Deadline”	as defined in clause 5.5.4.2;
“Offence”	means a failure to provide the Services in accordance with the Specification, as described in the Transport Performance Points Scheme;
“Offer”	means a tender submission submitted in response to a Mini Competition;
“OJEU Notice”	means the contract notice [Insert reference and date] published in the Official Journal of the European Union;
“Other Contracting Authority”	means all Participating Authorities except for the Council;
“Parent Company”	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged in the same or similar business to the Supplier;
“Participating Authority”	means the Council and any Other Contracting Authority identified in the OJEU Notice and Schedule 7 (Participating Authorities);
“Passenger”	means the person(s) directly receiving the DPS Services provided by the Supplier;
“PC Regulations”	means the Public Contracts Regulations 2015 (SI 2015/102) as the same may be updated or replaced from time to time;
“Performance Points”	means a measure of performance applied by the Participating Authority, as detailed in the Transport Performance Points Scheme;

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“Persistent Breach”	means: <ul style="list-style-type: none">(a) where two (2) or more Service Agreements awarded to the Supplier under the Supplier Agreement are terminated as a consequence of a material Default by the Supplier;(b) the Supplier repeatedly breaching any of the terms of the Supplier Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Supplier Agreement.
“Personal Data”	has the meaning given to that term in the Data Protection Legislation in force from time to time ;
“Prohibited Act”	as defined in clause 12.1;
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Supplier Agreement or any other affairs of the Council and “ Regulatory Body ” shall be construed accordingly;
“Relevant Categories”	as defined in clause 4.1;
“Representative”	means any employee, officer, worker, agent or Supplier engaged by a Party in connection with the DPS Services including any Sub-Contractor;
“Request for Information”	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations relating to the Supplier Agreement and “Requests for Information” shall be construed accordingly;
“Required Insurances”	as defined in clause 25.1;
“Requirement”	means a detailed route specification;
“Selection Criteria”	means the requisite criteria that the Supplier must meet and maintain throughout the term of the DPS in order to successfully complete their Accreditation and Enrolment onto the DPS;

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“Selection Questionnaire”	means the selection questionnaire submitted by the Supplier with its Selection Submission;
“Selection Submission”	as defined in Recital E of the Signature Document;
“Service Agreement”	means the legally binding agreement (made pursuant to the provisions of the Supplier Agreement) for the provision of the Services made between a Participating Authority and the Supplier comprising an Award Letter, the Service Agreement Terms, the Specification, the Requirement, the Supplier’s Offer and such Schedules and other documents as are referred to in the Service Agreement Terms and / or are expressly incorporated by the Award Letter issued by the Participating Authority;
“Service Agreement Order Procedure”	means the ordering procedures specified in clause 5 (Service Agreement Order Procedure);
“Service Agreement Terms”	means the terms on which the Supplier shall provide the ordered DPS Services to the Participating Authority as set out in Schedule 5 (Service Agreement Terms) subject to any amendments permitted pursuant to clause 5.4.4 hereof and which, for the avoidance of doubt, shall automatically be bound into the Service Agreement upon signature of the Award Letter by the Participating Authority;
“Service Category”	means a sub-set of the DPS Services within each Category, as described in the Specification at paragraph 6.2;
“Signature Document”	means the signed document between the Council and the Supplier which constitutes the Parties’ agreement to and the creation of the Supplier Agreement;
“Social Value”	means improvements for the economic, social and environmental wellbeing for the local area created by the procurement or commissioning of the DPS Services by the Participating Authority, above and beyond the benefit of the DPS Services themselves;
“Social Value Deliverables”	as defined in clause 14.2;

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“Social Value Threshold”	means Charges equal to one hundred thousand pounds per annum (£100,000) being payable by a Participating Authority across all Service Agreements entered into between that Participating Authority and the Supplier;
“Specification”	means the specification in Schedule 2 (DPS Services) detailing the range of DPS Services to be provided under the DPS;
“Sub-Contract”	means any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the DPS Services from that third party;
“Sub-Contractor”	means the Suppliers that enter into a Sub-contract with the Supplier;
“Supplier Agreement”	means the agreement entered into between the Council and the Supplier and all DPS Documents (including the Supplier Agreement Conditions set out in this Schedule);
“Supplier Appointment Date”	means [the DPS Commencement Date OR the date set out at the top of the Signature Document]; ¹
“Suspendable Offence”	means an Offence which is identified in the Transport Performance Points Scheme as being sufficiently serious to justify a short term suspension of the Supplier’s right to participate in Mini-Competitions issued for the relevant Distribution Group;
“Technology”	means the proprietary web-based software owned and operated by the Technology Provider currently called SPProc.Net or such other technology as agreed between the Parties or as may be nominated by the Council from time to time;
“Technology Provider”	means the owner and provider of the Technology, adam HTT Limited t/a <i>adam</i> (registered company no/ 07718565);
“Transport Performance Points Scheme”	Means the performance monitoring scheme applicable to the DPS, as detailed in paragraph 23 of the Specification;
“Working Day”	means any day other than a Saturday, Sunday or public holiday in England and Wales;

1.2 Unless the context otherwise requires, in the Supplier Agreement:

¹ For Suppliers on-boarded on the opening of the DPS, this will be the DPS Commencement Date, for all others it will be the date at the top of the Signature Document.

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- 1.2.1 reference to any statute, order, regulation or other similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended or re-enacted by any subsequent statute, order, regulation or instrument.
- 1.2.2 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.3 words importing the masculine include the feminine and the neuter and vice versa;
- 1.2.4 the words 'include', 'includes' 'including' 'for example' and 'in particular' and words of similar effect shall be construed as if they were immediately followed by the words 'without limitation';
- 1.2.5 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
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- 1.2.6 headings are included in the Supplier Agreement for ease of reference only and shall not affect the interpretation or construction of the Supplier Agreement.
- 1.2.7 references in the Supplier Agreement to any clause without further designation shall be construed as a reference to the clause or sub-clause of these Supplier Agreement Conditions so numbered.
- 1.2.8 references in the Supplier Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or subparagraph of the Schedule in which it is referenced;
- 1.2.9 time shall, during the summer time be British summer time but otherwise Greenwich mean time;
- 1.2.10 reference to a clause is a reference to the whole of that clause unless stated otherwise; and
- 1.2.11 in the event and to the extent only of any conflict between the clauses of the Supplier Agreement and any of the Schedules, the terms set out in this Schedule 1 (Supplier Agreement Conditions) shall prevail.
- 1.3 Any decision, act or thing which the Council is required or authorised to take or do under the Supplier Agreement may be taken or done by the Authorised Officer or any person authorised, either generally or specially, by the Council to take or do that decision, act or thing, provided that upon receipt of a written request the Council shall inform the Supplier of the name of any person so authorised.

PART 2: DPS ARRANGEMENTS AND SERVICE AGREEMENT ORDER PROCEDURE

2. COMMENCEMENT AND DURATION

2.1 The DPS shall commence on the DPS Commencement Date and shall (unless terminated in accordance with the terms of the Supplier Agreement or by operation of law, or is otherwise lawfully terminated) remain in force for a period of ten (10) years from the DPS Commencement Date (“**DPS Term**”).

2.2 The Supplier Agreement shall commence on the Supplier Appointment Date and shall remain in force until the expiry of the DPS Term unless terminated at an earlier date by operation of Law.

3. SCOPE OF THE SUPPLIER AGREEMENT

3.1 The Supplier Agreement governs the relationship between the Council and the Supplier in respect of the commissioning of the Services by the Participating Authorities, and the provision of the DPS Services by the Supplier to the Participating Authorities under the Service Agreements awarded under the DPS.

3.2 The Council enters into the Supplier Agreement for itself and on behalf of the Other Contracting Authorities. On the DPS Commencement Date, it is anticipated that only the Council shall commission DPS Services via the DPS; however, throughout the DPS Term, it is anticipated that the Other Contracting Authorities will adopt the DPS by entering into an Access Agreement and will thereafter commission DPS Services via the Technology.

3.3 The Parties acknowledge and agree that the Other Contracting Authorities shall, upon entering into an Access Agreement, have the right to order the DPS Services pursuant to the Supplier Agreement provided that they comply at all times with the PC Regulations and the Service Agreement Order Procedure. If there is a conflict between the Service Agreement Order Procedure and the PC Regulations, the PC Regulations shall take precedence.

3.4 A Participating Authority may at its absolute discretion and from time to time order the DPS Services from the Supplier in accordance with the PC Regulations and the Service Agreement Order Procedure (but, in the case of an Other Contracting Authority, only once it has entered into an Access Agreement).

3.5 The DPS is split into two (2) primary Categories, and each Category is further split into Service Categories. Each time an Other Contracting Authority enters into an Access Agreement, a new Distribution Group will be set up for that Participating Authority.

3.6 The Supplier acknowledges that, in entering the Supplier Agreement, no form of exclusivity or volume guarantee has been granted by the Council or any Other Contracting

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Authority for the DPS Services and that each Participating Authority is at all times entitled to enter into other contracts and arrangements with other service providers (including other DPS Suppliers) for the provision of any or all services which are the same as or similar to the DPS Services.

- 3.7 The Council does not guarantee that any Service Agreements will be awarded to the Supplier under the Supplier Agreement. The Supplier acknowledges that there is no obligation for a Participating Authority to purchase any DPS Services from the Supplier during the DPS Term and the Council similarly acknowledges that there is no obligation for the Supplier to bid for any DPS Services awarded through the DPS during the DPS Term.
- 3.8 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council in respect of the total quantities or values of the DPS Services to be procured by it or any Other Contracting Authority pursuant to the Supplier Agreement and the Supplier acknowledges and agrees that it has not entered into the Supplier Agreement on the basis of any such undertaking, statement, promise or representation.
- 3.9 For the avoidance of doubt, the Council shall not in any circumstances have any involvement, responsibility, or liability to the Supplier and / or any Other Contracting Authority in respect of a Service Agreement and / or the DPS Services provided thereunder by the Supplier to any Other Contracting Authority.

4. SUPPLIER'S APPOINTMENT

- 4.1 The Council hereby appoints the Supplier as a DPS Supplier.
- 4.2 As part of the Accreditation and Enrolment process, the Supplier indicated the Service Categories and Distribution Groups for which the Supplier wishes to receive ITMCs. The Council has assessed the Supplier's Selection Submission against the Selection Criteria for the relevant Service Categories and (with support from any relevant Other Contracting Authority where appropriate) Distribution Groups, and has confirmed via the Technology those Service Categories and Distribution Groups to which the Supplier has been appointed ("**Relevant Categories**").
- 4.3 Where a Distribution Group is added after the Supplier Appointment Date, the Supplier shall not be automatically added to the new Distribution Group and shall be required to notify the Council via the Technology if it wishes to be added to that Distribution Group. Upon receipt of such notification, the Council shall (with support from any relevant Other Contracting Authority where appropriate) assess the Supplier against the Selection Criteria for the relevant Service Category and notify the Supplier via the Technology of the outcome.
- 4.4 The Supplier shall be eligible to be considered for the award of Service Agreements for DPS Services falling within the Relevant Categories during the DPS Term in accordance with the terms of the Supplier Agreement. For the avoidance of doubt, the Supplier shall not

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be notified of a Mini-Competition if the Supplier has not signed-up to and been approved for the relevant Service Category and Distribution Group that the Requirement falls under.

- 4.5 The Supplier shall at all times during the DPS Term maintain the organisational and technical ability and capacity to provide the DPS Services for the Relevant Categories in accordance with the Supplier Agreement and the applicable Selection Criteria.
- 4.6 Appointment as a DPS Supplier entitles the Supplier to receive ITMCs (and, where successful, Service Agreements resulting from the relevant Mini-Competition) for the Relevant Categories from the Participating Authorities in accordance with the terms of the Supplier Agreement.
- 4.7 As part of a Mini-Competition, and / or at the time of awarding a Service Agreement, a Participating Authority shall have the right, and the Council shall have the right at any time throughout the DPS Term, to challenge any information provided by the Supplier in its Selection Submission for admittance to the DPS and the relevant Participating Authority shall be entitled to request from the Supplier such confirmation and additional information as it deems necessary to demonstrate the Supplier's ability to provide the DPS Services in accordance with the Supplier Agreement and / or its Requirement(s) in accordance with the Service Agreement Terms. Failure to provide such information may lead to the exclusion and removal of the Supplier from the DPS or from the provision of the DPS Services under any Service Agreement.

5. SERVICE AGREEMENT ORDER PROCEDURE

- 5.1 If a Participating Authority decides to commission DPS Services through the DPS at any time during the DPS Term, it will conduct a Mini-Competition in accordance with the Service Agreement Order Procedure. For the avoidance of doubt, no Service Agreement will be awarded under the DPS without the Service Agreement Order Procedure first taking place.
- 5.2 Any Other Contracting Authority shall only be entitled to issue an Order and enter into a Service Agreement following completion of an Access Agreement.
- 5.3 In the event that a Participating Authority considers it necessary to enter into a Service Agreement with the Supplier as a deed the Supplier agrees that it shall do so at no additional cost to the Participating Authority.
- 5.4 Where a Participating Authority wishes to procure DPS Services using the DPS it shall:
- 5.4.1 identify the Service Categories into which the Requirement falls;
 - 5.4.2 identify all the DPS Suppliers appointed to the relevant Service Categories;
 - 5.4.3 identify the Mini-Competition Award Criteria that will apply to the evaluation of Offers;

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5.4.4 supplement and refine the Service Agreement Terms for the Requirement only to the extent anticipated by the Specification and permitted by and in accordance with the requirements of the PC Regulations and the Guidance;

5.4.5 invite Offers by conducting a Mini-Competition in accordance with clause 5.5 (Mini-Competition Process).

5.5 Mini-Competition Process

5.5.1 Any Mini-Competition conducted pursuant to the Supplier Agreement shall be undertaken in accordance with the principles of fairness, openness and transparency.

5.5.2 To ensure maximum fairness, openness and transparency, the Mini-Competition for any Requirement will be issued via the Technology.

5.5.3 All DPS Suppliers approved for the Category, Distribution Group and applicable Service Categories shall be notified via the Technology of the Mini-Competition.

5.5.4 The ITMC will include:

5.5.4.1 full details of the Requirement and any other information the Participating Authority considers relevant;

5.5.4.2 details of the time limit for the receipt of Offers, which shall be a minimum of ten (10) days from the date on which the ITMC is published ("**Mini-Competition Deadline**"). In setting the Mini-Competition Deadline the Participating Authority shall take into account factors such as the complexity of the Requirement and the time needed to prepare a response and such time limits will at all times be reasonable and proportionate;

5.5.4.3 a proposed evaluation matrix, indicating the Mini-Competition Award Criteria that will apply (which shall seek to balance the need for quality against cost and to maximise overall value for money); and

5.5.4.4 instructions regarding how Offers must be completed and returned.

5.5.5 The Participating Authority will seek to minimise and mitigate unnecessary time and costs associated with submitting Offers.

5.5.6 The Supplier shall submit all Offers within the Technology in accordance with the procedures detailed in this clause 5, and as may be further detailed in the ITMC.

5.5.7 The Supplier shall submit its Offer prior to the Mini-Competition Deadline or shall otherwise be excluded from that Mini-Competition within the Technology.

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5.5.8 The Participating Authority shall keep each Offer confidential until the MiniCompetition Deadline.

5.5.9 The Participating Authority shall apply the Mini-Competition Award Criteria to each compliant Offer submitted by a DPS Supplier in response to the ITMC as the basis of its decision to award the resulting Service Agreement.

5.5.10 The Participating Authority shall award the Service Agreement to the DPS Supplier whose Offer is assessed to be the most economically advantageous tender pursuant to the pre-notified Mini-Competition Award Criteria and evaluation matrix.

5.5.11 If an Offer appears to be abnormally low, the Council may reject the Offer, but only if it has:

5.5.11.1 requested in writing from the Technology Provider details of the constituent elements of the Offer which are considered to contribute to the Offer being abnormally low;

5.5.11.2 taken account of the evidence supplied by the Supplier;

5.5.11.3 verified those constituent elements with the Supplier,

and concluded that the Supplier would not be able to carry out the DPS Services to the required standards.

5.5.12 Any award made as a result of a Mini-Competition will be notified to all DPS Suppliers who responded to the Mini-Competition.

5.5.13 Any Offer submitted by the Supplier shall remain open for acceptance for a minimum period of [ninety (90)] days.

5.5.14 In the event that none of the DPS Suppliers respond to the ITMC, the Participating Authority reserves the right to enter into other contracts and arrangements for the Requirement, including with service providers not on the DPS and / or by direct awarding its Requirement(s) to one (1) or more DPS Suppliers where this is permitted under the PC Regulations.

5.5.15 Notwithstanding that a Participating Authority has followed the Mini-Competition procedure set out above, the Participating Authority may cancel, postpone, delay or end the Mini-Competition without awarding a Service Agreement. Nothing in the Supplier Agreement shall oblige a Participating Authority to award any Service Agreement for DPS Services.

5.6 Formation of the Service Agreement

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5.6.1 Subject to the provisions of this clause 5 (Service Agreement Order Procedure), following the Mini-Competition, the Participating Authority may enter into a Service Agreement with the successful DPS Supplier.

5.6.2 The Participating Authority shall do so by populating and issuing an Award Letter to the successful DPS Supplier. The Mini-Competition response submitted by the Supplier shall be its “offer” and the Award Letter shall constitute the Participating Authority’s “acceptance” of the Offer.

5.6.3 The terms and conditions applicable to any DPS Services procured under a Mini Competition shall be the Service Agreement Terms contained in Schedule 4 (Service Agreement Terms) of the Supplier Agreement.

6. NEW ENTRANTS

6.1 From the DPS Commencement Date the DPS will be continually open to new joiners throughout the DPS Term.

6.2 All potential new entrants to the DPS will be required to complete a replica of the documentation issued during the initial invitation to participate process, and the requests to participate will be evaluated on the same basis as the original requests to participate. Any new entrants will be appointed to the DPS for the remainder of the DPS Term and will be entitled to participate in any Mini-Competitions and to be awarded Service Agreements accordingly from the date on which the new entrant is appointed to the DPS. For the avoidance of doubt, any appointment of new entrants to the DPS will not affect the Supplier’s position on the DPS nor any of its rights or obligations under the Supplier Agreement or any Service Agreements awarded under it.

7. PRECEDENCE OF DOCUMENTS

7.1 The Supplier shall perform all Service Agreements entered into with any Participating Authority in accordance with:

7.1.1 the requirements of the Supplier Agreement; and

7.1.2 the Service Agreement Terms.

7.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of the Supplier Agreement and any Service Agreement (including any documents thereof), such conflict or inconsistency shall be resolved according to the following order of priority:

7.2.1 the terms of the Supplier Agreement (excluding the Schedules);

7.2.2 the Award Letter;

7.2.3 the Service Agreement Terms;

7.2.4 the Specification;

7.2.5 the Requirement and the Route Schedule;

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7.2.6 the remaining Schedules to the Supplier Agreement;

7.2.7 any other document referred to in the Service Agreement Terms;

7.2.8 any other document referred to in the Supplier Agreement;

7.2.9 the Supplier's Offer,

save to the extent that the standards or levels of Service set out in the Supplier's Offer exceed those set out in the Specification and / or the Requirement; in which case, such higher standards or levels of performance set out in the Supplier's Offer shall prevail (to the extent necessary to achieve the performance of such higher standards or levels of performance only).

8. PRICES AND PAYMENT FOR THE DPS SERVICES

8.1 The Charges shall be those offered by the Supplier in its Offer, as recorded in the Award Letter issued by the Participating Authority.

PART 3: THE SUPPLIER'S GENERAL DPS OBLIGATIONS

9. WARRANTIES, REPRESENTATIONS AND GUARANTEES

9.1 The Supplier warrants, represents and undertakes to the Council that:

9.1.1 it has full capacity and authority, and all necessary consents (including, where its procedures so require, the consent of its Parent Company), to enter into and to perform its obligations under the Supplier Agreement;

9.1.2 the Supplier Agreement is executed by a duly authorised representative of the Supplier;

9.1.3 in entering into the Supplier Agreement and any Service Agreement the Supplier has not committed any Prohibited Act;

9.1.4 all Offers submitted by the Supplier shall be made in good faith;

9.1.5 as at the DPS Commencement Date, all information, statements, warranties and representations contained in the Supplier's Selection Submission and (unless otherwise agreed) any other document which resulted in the appointment of the Supplier onto the DPS are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of the Supplier Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

9.1.6 it has not in any other way breached the Bribery Act 2010 or the Section 117(2) of the Local Government Act 1972;

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- 9.1.7 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress, or, to the best of its knowledge and belief pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under the Supplier Agreement and / or any Service Agreement thereunder;
- 9.1.8 it is not subject to any contractual obligation, compliance with which will be likely to have an effect on its ability to perform its obligations under the Supplier Agreement and / or any Service Agreement thereunder; and
- 9.1.9 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of their knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.
- 9.2 The Supplier shall not subject the Council, the Technology Provider or the Technology, to derogatory or abusive treatment. The Supplier acknowledges that in such circumstances, or in the event of a breach of clause 16.4, the Council [or Technology Provider] has the right to suspend the Supplier from activities within the Technology, in addition to any other remedies available in this Contract.
- 9.3 Each time a Service Agreement is entered into, the warranties, representations and undertakings in this clause 9 (Warranties, Representations and Guarantees) shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time that they are deemed to be repeated.
- 9.4 For the avoidance of doubt, the fact that any provision within the Supplier Agreement is expressed as a warranty shall not preclude any right of termination the Council may have in respect of breach of that provision by the Supplier.
- 9.5 The Supplier acknowledges and agrees that:
- 9.5.1 the warranties, representations and undertakings contained in the Supplier Agreement are material and are designed to induce the Council into appointing the Supplier to the DPS and to induce the Participating Authorities to enter into any and all Service Agreements thereunder;
- 9.5.2 the Council has been induced into appointing the Supplier to the DPS and in doing so has relied upon the warranties, representations and undertakings contained in the Supplier Agreement; and
- 9.5.3 each Participating Authority will (amongst other things) on each and every occasion that it enters into a Service Agreement be induced into doing so by, and in being so induced shall rely upon, the warranties, representations and undertakings contained in the Supplier Agreement.

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9.6 The Supplier warrants, represents and undertakes for the duration of the DPS Term that:

9.6.1 all personnel used to provide the DPS Services will be vetted in accordance with Good Industry Practice and, where applicable, the Council's DBS Checks for Contractors policy (as the same may be updated from time to time);

9.6.2 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Supplier's obligations under the Supplier Agreement; and

9.6.3 it shall at all times comply with Law in carrying out its obligations under the Supplier Agreement.

10. REPORTING AND MEETINGS

10.1 Each Participating Authority may require the Supplier to attend performance monitoring meetings, to assess the quality and progress of the DPS Services being provided to that Participating Authority by giving not less than five (5) Working Days written notice.

10.2 The Supplier acknowledges that users of the Technology may submit a quality review or summary of the Supplier's performance under the DPS. Such reviews shall comprise the opinion of those submitting such comments only and not those of the Council. The Technology shall have a facility to report any abusive or derogatory comments, and the Council shall deal with such instances as the Council deems necessary in accordance with the Specification.

11. REPRESENTATIVES AND LIASON RELATING TO THE DPS

11.1 Each Participating Authority shall liaise with and instruct the Supplier and its Representatives regarding any matters relating to performance by the Supplier of its obligations under the Supplier Agreement and shall determine any matters or issue any notices as stipulated under the Supplier Agreement. The Council shall confirm to the Supplier a single point of contact for each Participating Authority in respect of the Supplier Agreement.

11.2 The Technology Provider shall also act as a point of contact for the Supplier in respect of issues or queries relating to the Technology and / or access to it.

12. CORRUPT GIFTS AND FRAUD

12.1 The Supplier shall not (and will procure that anyone acting on its behalf or to its knowledge shall not):

12.1.1 offer, give or agree to give to any employee, agent or representative of the or any other person any gift or consideration at any time which could act as an as an inducement or reward:-

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12.1.1.1 for doing or not doing any act in relation to the obtaining or performance of the Supplier Agreement, any Service Agreement or any other contract with a Participating Authority; or

12.1.1.2 for showing or not showing favour or disfavour to any person in relation to the Supplier Agreement, any Service Agreement or any other contract with a Participating Authority;

12.1.2 enter into the Supplier Agreement, any Service Agreement or any other contract with a Participating Authority in connection with which commission has been paid or has been agreed to be paid by the Supplier (or anyone acting on its behalf or to its knowledge) unless (before such contract is made) particulars of any such commission have been disclosed in writing to the Council;

12.1.3 fix or adjust the amount of his Offer by or in accordance with any agreement or arrangement with any other person;

12.1.4 communicate to any person other than the Participating Authority the amount or approximate amount of his proposed Offer (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the Offer or for insurance purposes);

12.1.5 enter into any agreement or arrangement with any other person that he or the other person(s) shall refrain from making an Offer or as to the amount of any Offer to be submitted;

12.1.6 commit any offence under:

12.1.6.1 the Bribery Act 2010;

12.1.6.2 section 117(2) of the Local Government Act 1972;

12.1.6.3 legislation creating offences in respect of fraudulent acts;

12.1.6.4 common law in respect of fraudulent acts;

in relation to the Supplier Agreement, any Service Agreement or any other contract with the Council;

12.1.7 defraud or attempt to defraud or conspire to defraud the Council.

Each of which shall be a “**Prohibited Act**”

12.2 The Supplier shall promptly inform the Council of the occurrence of any such Prohibited Act or offence of which it becomes aware.

13. FINANCIAL INFORMATION, AUDITS AND COMPLIANCE WITH SELECTION CRITERIA

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13.1 The Supplier shall, whenever so required by the Council, provide the Council with such financial information and data reasonably requested by the Council to enable the Council:

13.1.1 to comply with the Code of Practice on Local Council Accounting in the United Kingdom 2019/20 issued by the Chartered Institute of Public Finance and Accountancy (as the same may be updated or replaced from time to time);

13.1.2 examine, evaluate and be satisfied as to the Supplier's continued compliance with the Selection Criteria.

14. SOCIAL VALUE

14.1 Where the Charges payable by a Participating Authority to the Supplier meet or exceed the Social Value Threshold, the Supplier shall be required to provide Social Value for that Participating Authority.

14.2 The Supplier and the relevant Participating Authority shall work together to agree the Social Value to be provided by the Supplier ("**Social Value Deliverables**").

14.3 Once agreed between the Supplier and the Participating Authority, the Social Value Deliverables shall become a contractual obligation under this Supplier Agreement and failure by the Supplier to provide the Social Value Deliverables within the agreed timescales shall constitute a Default.

PART 4 – SUPPLIER'S INFORMATION OBLIGATIONS

15. RECORDS AND AUDIT ACCESS

15.1 The Supplier shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of the Supplier Agreement (or any longer period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Supplier Agreement including the DPS Services provided under it, the Service Agreements entered into and the amounts paid to the Supplier by the Participating Authorities thereunder.

15.2 The Supplier shall keep the records referred to in clause 15.1 in accordance with Good Industry Practice.

15.3 The Supplier shall provide such records and accounts on request during the DPS Term and for a period of six (6) years after expiry of the DPS Term to the Council and its internal and external Auditors.

15.4 The Council shall use reasonable endeavours to ensure that the conduct of any Audit does not unreasonably disrupt the Supplier or delay the provision of the DPS Services pursuant to a Service Agreement, save insofar as the Supplier accepts and

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acknowledges that the conduct of an Audit carried out by the National Audit Office is outside of the control of the Council.

15.5 Subject to the Council's rights of confidentiality, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:

15.5.1 all information requested by the Auditor within the scope of the Audit;

15.5.2 reasonable access to sites controlled by the Supplier and to equipment used in the

provision of the Services; and

15.5.3 access to the Supplier's Staff.

15.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 15 (Records and Audit Access), unless the Audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Council's reasonable costs incurred in relation to the Audit.

16. PUBLICITY AND BRANDING

16.1 The Supplier shall not:

16.1.1 advertise or publicise, or make any public announcements relating to, the Supplier Agreement and its content, or the DPS Services; or

16.1.2 use the name or brand of any Participating Authority in any promotion or marketing or announcement of orders;

without the prior consent of the relevant Participating Authority.

16.2 The Council shall be entitled to publicise the Supplier Agreement.

16.3 Each Party acknowledges to the other that nothing in the Supplier Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

16.4 The Supplier shall not do anything or cause anything to be done which may damage the reputation of any Participating Authority and / or the Technology Provider , nor shall it bring any Participating Authority and / or the Technology Provider into disrepute.

17. CONFIDENTIALITY

17.1 Except to the extent set out in this clause 17 (Confidentiality) or where disclosure is expressly permitted elsewhere in the Supplier Agreement, each Party shall:

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17.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

17.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

17.2 Clause 17.1 shall not apply to the extent that:

17.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 18 (Freedom of Information and Transparency);

17.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

17.2.3 such information was obtained from a third party without obligation of confidentiality;

17.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Supplier Agreement;

17.2.5 it is independently developed without access to the other Party's Confidential Information; or

17.2.6 such information is required to enable a determination to be made under clause 37 (Dispute Resolution).

17.3 Nothing in the Supplier Agreement shall prevent the Council from disclosing the Supplier's Confidential Information:

17.3.1 to any Crown Body or any other Contracting Council. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Council;

17.3.2 to any consultant, contractor or other person engaged by the Council or any person conducting an Office of Government Commerce Gateway Review;

17.3.3 for the purpose of the examination and certification of the Council's accounts or any other examination pursuant to the Audit Commission Act 1998; or

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17.3.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.

17.4 The Council shall use all reasonable endeavours to ensure that any Crown Body, government department, Contracting Council, employee, third party or sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to clause 17.3 is made aware of the Council's obligations of confidentiality.

17.5 The Supplier shall notify the Council if it becomes aware of a breach of this clause 17 (Confidentiality).

18. FREEDOM OF INFORMATION AND TRANSPARENCY

18.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

18.2 The Supplier shall and shall procure that its Sub-contractors shall:

18.2.1 transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

18.2.2 provide the Council with a copy of all Information in its possession or power, in the form that the Council requires, within five (5) Working Days (or such other period as the Council may specify) of the Council's request; and

18.2.3 all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

18.3 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.

18.4 The Supplier acknowledges that, except for any information which is exempt from disclosure in accordance with the FOIA or the Environmental Information Regulations, the text of the Supplier Agreement (including the Schedules) is not Confidential Information.

18.5 Subject to the clause 18.4, the Supplier hereby gives its consent for the Council to publish the Supplier Agreement (including the Schedules) in its entirety, including, from time to time, agreed changes to the Supplier Agreement, to the general public in whatever form the Council decides.

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18.6 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

19. DATA PROTECTION

19.1 Both parties shall, and the Supplier shall procure that its Representatives shall, duly observe all their obligations under the Data Protection Legislation, which arise in connection with the performance of the Supplier Agreement.

19.2 The Supplier shall perform its obligations under the Supplier Agreement in such a way as to ensure that it does not cause the Council to breach any of its applicable obligations under the Data Protection Legislation.

19.3 The Supplier shall be liable for and shall indemnify (and keep indemnified) the Council against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands incurred by the Council which arise directly from a breach by the Supplier of its obligations under the Data Protection Legislation, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Legislation by the Supplier or its Representatives.

19.4 The provisions of this clause shall apply during the DPS Term and indefinitely after its expiry or termination.

20. DATA PROCESSING OBLIGATIONS

20.1 For the purposes of a Mini-Competition, it may be necessary for a Participating Authority to share anonymised or pseudonymised information about the Passengers covered by the Requirement. A description of the types of Personal Data that may be processed by the Supplier and the processing activities undertaken by the Supplier are set out in the Data Processing Activities Schedule (Schedule 9 – Part 1). In respect of such Personal Data, the Parties agree that the Supplier shall be a Data Processor for the Participating Authority to which the Requirement covered by the Mini-Competition relates.

20.2 In respect of any Personal Data processed in accordance with clause 20.1, the Supplier shall:

20.2.1 solely process the Personal Data for the purposes of preparing an Offer in response to the relevant Mini-Competition, and in compliance with the Council's written instructions as set out in the Supplier Agreement and as may be specified from time to time in writing by the Participating Authority in the MiniCompetition;

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- 20.2.2 notify the Council immediately if any instructions of the Council or any Other Contracting Authority relating to the processing of such Personal Data are unlawful;
- 20.2.3 not transfer to or access any Personal Data from a country outside of the United Kingdom without the prior written consent of the Council;
- 20.2.4 comply with the Council's instructions in relation to transfers of Personal Data to a country outside of the United Kingdom unless the Supplier is required pursuant to applicable laws to transfer Personal Data outside the United Kingdom, in which case the Supplier shall inform the Council in writing of the relevant legal requirement before any such transfer occurs unless the relevant law prohibits such notification on important grounds of public interest;
- 20.2.5 take reasonable steps to ensure the reliability of any Supplier staff who have access to the Council Data and ensure that all such staff used by the Supplier to process Personal Data are subject to legally binding obligations of confidentiality in relation to the Personal Data;
- 20.2.6 ensure that none of the Supplier's staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or the relevant Participating Authority;
- 20.2.7 not engage any Sub-Contractor to carry out any processing of Personal Data without the prior written consent of the Council provided that notwithstanding any such consent the Supplier shall remain liable for compliance with all the requirements of the Supplier Agreement including in relation to the processing of Personal Data;
- 20.2.8 ensure that obligations equivalent to the obligations set out in this clause 20 are included in all contracts between the Service Provider and permitted SubContractors who will be processing Council Data and who have been approved in accordance with clause 20.2.7;
- 20.2.9 take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data taking into account the harm that might result from such unauthorised or unlawful processing, loss, destruction or damage and the nature of the Personal Data to be protected including without limitation, all such measures that may be required to ensure compliance with the Data Protection Legislation;
- 20.2.10 upon request provide a written description of the technical and organisational measures employed by the Supplier pursuant to clause 20.2.9 (within the reasonable timescales required by the Council) and if the Council does not consider that such measures are adequate to enable compliance with the Data

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Protection Legislation, implement such additional measures as may be specified by the Council (acting reasonably) to ensure compliance;

20.2.11 taking into account the nature of the data processing activities undertaken by the Service Provider, provide, at no cost to the Council (or an Other Contracting Authority, where applicable), all possible assistance and co-operation (including without limitation putting in place appropriate technical and organisational measures) to enable the Participating authority to fulfil its obligations to respond to requests from individuals exercising their rights under the Data Protection Legislation, including (without limitation):

20.2.11.1 notifying the relevant Participating Authority within two (2) Working Days, of receiving any request from a Data Subject exercising their rights under the Data Protection Legislation;

20.2.11.2 complying with the Participating Authority's instructions in relation to complying with the Data Subject's rights under the Data Protection Legislation, which may include (without limitation) providing notices to Data Subjects in a format specified by the Participating Authority, rectifying inaccurate Personal Data, ceasing or restricting processing of Personal Data, providing access to Personal Data, permanently deleting or securely destroying Personal Data and providing copies of Personal Data in a format specified by the Participating Authority;

20.2.12 maintain a record of the Supplier's processing activities in accordance with the requirements of the Data Protection Legislation;

20.2.13 assist the Council, at no cost to the Council, in ensuring compliance with the obligations set out in Articles 32 to 36 (inclusive) of the General Data Protection Regulation (or any equivalent legislation in the UK or any subsequent legislation) taking into account the nature of the data processing undertaken by the Supplier and the information available to the Supplier, including (without limitation):

20.2.13.1 providing information and assistance upon request to enable the Council to notify Data Security Breaches to the Information Commissioner's Office and/or to affected individuals and/or to any other regulators to whom the Council is required to notify any Data Security Breaches; and

20.2.13.2 providing input into and carrying out Data Protection Impact Assessments in relation to the Service Provider's data processing activities;

20.2.14 ensure that it has in place appropriate technical and organisational measures to ensure that processing of Personal Data meets the requirements of the Data

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Protection Legislation and ensures protection of the rights of individuals under the Data Protection Legislation;

20.2.15 notify the Council immediately and in any event within twenty four (24) hours in writing if:

20.2.15.1 the Supplier or any Sub-Contractor engaged by or on behalf of the Supplier suffers a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data; or

20.2.15.2 the Supplier or any Sub-Contractor engaged by or on behalf of the Supplier receives any Data Security Breach notification, complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either Party's compliance with the Data Protection Legislation,

and in each case the Supplier shall provide full co-operation, information and assistance to the Council in relation to any such Data Security Breach, complaint, notice or communication at no cost to the Council;

20.2.16 upon the earlier of: 20.2.16.1 termination of the Supplier Agreement;

20.2.16.2 as soon as required under the Data Protection Legislation; or

20.2.16.3 in the event that the Supplier is unsuccessful in the Mini-Competition

at the discretion of and at no cost to the relevant Participating Authority, delete securely or return all Personal Data to the Participating Authority and delete all existing copies of the Personal Data unless and to the extent that the Supplier is required to retain copies of the Personal Data in accordance with applicable Laws in which case the Supplier shall notify the Participating Authority in writing of the applicable Laws which require the Personal Data to be retained. In the event the Personal Data is deleted or destroyed by the Supplier, the Supplier shall provide the Participating Authority with a certificate of destruction evidencing that the Personal Data has been destroyed or deleted; and

20.2.17 make available to the Participating Authority at no cost all information necessary to demonstrate compliance with the obligations set out in this clause 20 and, upon request, allow the Participating Authority, the Information Commissioner's Office and its representatives access to the Supplier's Premises, records and personnel for the purposes of assessing the Supplier's compliance with its obligations under this clause 20.

20.3 The provisions of this clause 20 shall apply throughout the DPS Term and indefinitely after expiry or termination of the Supplier Agreement.

20.4 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the provisions of this clause 20, to the extent necessary to ensure that any Other

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Contracting Authority shall have the right to enforce the obligations owed to, and indemnities given to, a Participating Authority by the Supplier under this clause 20.

PART 5 – PERFORMANCE MANAGEMENT, DEFAULT, TERMINATION AND REMOVAL OF THE SUPPLIER FROM THE DPS

21. PERFORMANCE MANAGEMENT

21.1 The Supplier's performance of the DPS Services shall be monitored by each Participating Authority using the Transport Performance Points Scheme. Each Participating Authority shall apply Performance Points independently such that Performance Points issued in respect of one Distribution Group shall have no bearing on the Supplier's rights and obligations under any other Distribution Group.

21.2 Each Participating Authority shall be entitled to issue Performance Points, apply Financial Deductions and suspend the Supplier's rights to participate in Mini-Competitions advertised for that Participating Authority's Distribution Group in accordance with paragraphs 18 – 23 of the Specification.

21.3 The Council shall be entitled to amend the Transport Performance Points Scheme upon one (1) months written notice all DPS Suppliers. Any such changes shall apply prospectively so that any new Offences introduced shall only be enforced once the one (1) months notice period has elapsed.

22. SUSPENSION OF SUPPLIER'S RIGHT TO TAKE PART IN MINI-COMPETITIONS

22.1 Without prejudice to the Council's rights to terminate the Supplier Agreement under clause 23 (Termination), any Participating Authority may suspend the Supplier's right to participate in Mini-Competitions under that Participating Authority's Distribution Group by giving notice in writing to the Supplier ("**Suspension Notice**") where:

22.1.1 the Supplier has committed a Suspendable Offence; and / or

22.1.2 the Supplier has incurred seventy five (75) or more negative Performance Points.

The duration of the suspension shall, unless stated otherwise by the Participating Authority in the Suspension Notice, be three (3) months.

22.2 For the avoidance of doubt, a suspension issued to the Supplier by a Participating Authority in respect of that Participating Authority's Distribution Group shall not prevent the Supplier from participating in Mini-Competitions for such other Distribution Groups that the Supplier has been approved for.

22.3 A suspension imposed by a Participating Authority under clause 22.1 shall not impact on the Supplier's obligations to provide the DPS Services pursuant to any Service

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Agreements already entered into with the suspending Participating Authority (or any other Participating Authority).

22.4 A Suspension Notice issued by the Council shall include details of any performance improvements required from the Supplier including timescales for such improvement ("**Performance Improvement Plan**"). The Supplier shall be required to comply with the Performance Improvement Plan within the timescales set out in the Suspension Notice or such other timescale as may be agreed between the Parties.

22.5 In the event that the Supplier fails to comply with the Performance Improvement Plan to the Council's reasonable satisfaction, the Council shall be entitled to terminate the Supplier Agreement in accordance with clause 23.4 (Termination on Default or Failure).

22.6 The service of a Suspension Notice shall not operate as a notice to terminate or suspend any Service Agreement already made under the Supplier Agreement. Suspension of a DPS Supplier pursuant to this clause **Error! Reference source not found.** shall not cause any Service Agreements to terminate or be suspended automatically. For the avoidance of doubt, all Service Agreements shall remain in force unless and until they are terminated or expire in accordance with the Service Agreement Terms.

23. TERMINATION

23.1 Termination on Notice

23.1.1 If the Council no longer wishes to operate the DPS, the Council may terminate the Supplier Agreement by giving written notice to the Supplier (and all other DPS Suppliers) ("**Termination Notice**"). The DPS shall cease to operate and the Supplier Agreement shall be terminated thirty (30) days after the date of the Termination Notice. For the avoidance of doubt, the Supplier shall not be entitled to any compensation in the event of termination under this clause 23.1.

23.2 Termination on Corruption

23.2.1 The Council may terminate the Supplier Agreement and remove the Supplier from the DPS by serving notice on the Supplier with effect from the date specified in such notice where the Supplier commits a Prohibited Act.

23.3 Termination on Breach of Information Obligations

23.3.1 The Council may terminate the Supplier Agreement and remove Supplier from the DPS by serving notice on the Supplier in writing with effect from the date specified in such notice where the Supplier is in material Default of: clause 17 (Confidentiality); clause 18 (Freedom of Information); clause 19 (Data Protection); and / or clause 20 (Data Processing Obligations).

23.4 Termination on Failure

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23.4.1 The Council may terminate the Supplier Agreement and remove Supplier from the DPS by serving notice on the Supplier in writing with effect from the date specified in such notice where:

23.4.1.1 a Persistent Breach has occurred;

23.4.1.2 any warranty given by the Supplier pursuant to clause 9 (Warranties, Representations and Guarantees) is found to be untrue or misleading;

23.4.1.3 the Supplier fails to effect or maintain the Required Insurances;

23.4.1.4 the Supplier fails to effect or maintain the appropriate licences required in accordance with the Specification and / or any other licences required to deliver the DPS Services introduced from time to time;

23.4.1.5 the Supplier commits a Default (other than as a consequence of a Default by the Council) which results in the criminal investigation, prosecution and conviction of the Supplier or any Sub-Contractor under the Health and Safety Regime; or

23.4.1.6 the Supplier materially fails to comply with or materially breaches any Law which imposes a criminal penalty or otherwise and where such failure or breach in the reasonable opinion of the Council adversely affects the reputation of the Council;

23.4.2 In determining whether to exercise any right of termination pursuant to clause 23.4.1.5 the Council shall:

23.4.2.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and

23.4.2.2 give all due consideration, where appropriate, to action other than termination of the Supplier Agreement.

23.5 Termination on Financial Standing

23.5.1 The Council may terminate the Supplier Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where, following an assessment carried out pursuant to clause 13 (Financial Information, Audits and Compliance with Selection Criteria), the Supplier is found to no longer meet the Selection Criteria.

23.6 Termination on Insolvency

23.6.1 The Council may terminate the Supplier Agreement with immediate effect by notice in writing in the event of an Insolvency Event provided always that such

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termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council.

23.6.2 For the avoidance of doubt, a resolution by the Supplier or a court order that the Supplier be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event.

23.7 Termination on Change of Control

23.7.1 The Supplier shall notify the Council immediately in writing if the Supplier undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("Change of Control") and provided this does not contravene any Law shall notify the Council and the relevant Participating Authorities immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation.

23.7.2 The Council may terminate the Supplier Agreement by giving notice in writing to the Supplier with immediate effect within six (6) Months of:

23.7.2.1 being notified that a Change of Control has occurred; or

23.7.2.2 where no notification has been made, the date that Council becomes aware of the Change of Control,

if the Council considers, acting reasonably, that such change is likely to have an adverse effect on the provision of the DPS Services, but the Council shall not be permitted to terminate the Supplier Agreement or any Service Agreement where the Council has approved the Change of Control in advance.

23.7.3 The Council may terminate the Supplier Agreement by giving notice in writing to the Supplier with immediate effect where the Supplier makes any public announcement or a director of the board of directors of the Supplier advises an officer of the Council that the Supplier is no longer going to continue to develop or to offer the provision of services similar to the DPS Services and there is evidence that such announcement will materially adversely impact the ability of the Supplier to provide the DPS Services.

23.8 Termination in compliance with the PC Regulations

23.8.1 The Council may terminate the Supplier Agreement where:

23.8.1.1 the Supplier Agreement has been subject to a substantial modification which would require a new procurement procedure in accordance with regulation 72(9) of the PC Regulations;

23.8.1.2 the Supplier has, at the time of the award of the Supplier Agreement, been in one of the situations referred to in regulation 57(1) of the PC Regulations, including as a result of the application of regulation

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57(2), and should therefore have been excluded from the procurement procedure; or

23.8.1.3 the Supplier Agreement should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

23.9 Termination for continuing Force Majeure Event

23.9.1 Either Party may, by written notice to the other, terminate the Supplier Agreement if a Force Majeure Event endures for a continuous period of more than ninety (90) days.

24. CONSEQUENCES OF TERMINATION AND EXPIRY

24.1 For the avoidance of doubt, the Council shall be entitled to exercise any of its rights of termination set out in clause 21 (Termination) without incurring any penalty or additional costs to the Supplier.

24.2 Notwithstanding the service of a notice to terminate the Supplier Agreement, the Supplier shall continue to fulfil its obligations under the Supplier Agreement until the date of expiry or termination set out in the notice.

24.3 The rights of the Council (to terminate or otherwise) under clause 21 (Termination) are in addition (and without prejudice) to any other right or remedy which the Council may have to claim the amount of loss or damage suffered by the Council on account of the acts or omissions of the Supplier (or to take any action other than termination of the Supplier Agreement).

24.4 The service of a notice to terminate the Supplier Agreement shall not operate as a notice to terminate any Service Agreement made under the Supplier Agreement. Termination or expiry of the Supplier Agreement shall not cause any Service Agreements to terminate automatically. For the avoidance of doubt, all Service Agreements shall remain in force unless and until they are terminated or expire in accordance with the Service Agreement Terms.

24.5 Termination or expiry of the Supplier Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under the Supplier Agreement before such termination or expiry.

24.6 The provisions of the following clauses shall survive the termination or expiry of the Supplier Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination: clause 1 (Definitions and Interpretation); clause 9 (Warranties, Representations and Guarantees); clause 12 (Corrupt Gifts and Fraud); clause 15 (Records and Audit Access); clause 16

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(Publicity and Branding); clause 17 (Confidentiality); clause 18 (Freedom of Information); clause 19 (Data Protection); clause 24 (Consequences of Termination); clause 25 (Insurance); clause 29 (Third Party Rights); clause 30 (Severability); clause 33 (Entire Agreement); clause 35 (Governing Law and Jurisdiction); and clause 37 (Dispute Resolution).

PART 6 – INSURANCE

25. INSURANCE

25.1 The Supplier shall effect and maintain the following insurances with a reputable insurance company in relation to its obligations under the Supplier Agreement with effect from the Supplier Appointment Date for the remainder of the DPS Term:

25.1.1 public liability insurance against all loss of and damage to property and injury to persons (including death) under which the cover shall not be less than ten million pounds (£10,000,000) in respect of any one (1) incident;

25.1.2 Employers' liability insurance with a minimum limit of indemnity of ten million pounds (£10,000,000) in respect of any one (1) incident;

25.1.3 any insurances required as part of the licencing requirements set out in the Specification.

Together the "**Required Insurances**".

25.2 The Supplier shall upon request made from time to time produce to the Council documentary evidence that the Required Insurances are properly maintained.

PART 7 – OTHER PROVISIONS

26. VARIATIONS

26.1 Any variations to the Supplier Agreement ("**DPS Changes**") must be made in accordance with the DPS Variation Procedure set out in Schedule 5 (DPS Variation Procedure).

27. FORCE MAJEURE

27.1 Neither Party shall be liable to the other for any failure to perform its obligations under the Supplier Agreement where such performance is rendered impossible in the circumstances of a Force Majeure Event, but nothing in this clause 27 (Force Majeure) shall limit the obligations of the Supplier to use its best endeavours to fulfil its obligations under the Supplier Agreement.

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27.2 A Party cannot claim the relief from liability set out in clause 27.1 if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

28. SUB-CONTRACTING, ASSIGNMENT AND NOVATION

28.1 The Supplier Agreement is personal to the Supplier and the Supplier shall not:

28.1.1 assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under the Supplier Agreement without the prior written consent of the Council;

28.1.2 enter into a Sub-contract without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed). If given, consent to enter into a Sub-contract shall not relieve the Supplier from any liability or obligation under the Supplier Agreement and the Supplier shall be responsible for the acts, defaults or neglect of any Sub-contractor, its employees or agents in all respects as if they were the acts, defaults or neglect of the Supplier.

28.2 Where the Supplier enters into a Sub-Contract for the purpose of performing its obligations under the Supplier Agreement, it shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due from the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.

28.3 The Council may assign, novate or otherwise dispose of any or all of its rights and obligations under the Supplier Agreement and any associated third party licences to any other Contracting Authority or to any other body which substantially performs any of the functions that previously had been performed by the Council and shall give notice of such assignment, novation or disposal to the Supplier.

28.4 The Supplier shall enter into such agreement and / or deed as the Council shall reasonably require so as to give effect to any assignment, novation or disposal made pursuant to this clause 28 (Sub-Contracting, Assignment and Novation).

29. THIRD PARTY RIGHTS

29.1 Subject to clause 29.2, a person who is not a Party to the Supplier Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Supplier Agreement.

29.2 The Parties agree that each Participating Authority shall be entitled on the Contracts (Rights of Third Parties) Act 1999, to directly enforce against the Supplier the provisions of the following clauses: clause 3 (Scope of Supplier Agreement); clause 5 (Service Agreement Order Procedure); clause 14 (Social Value); clause 20 (Data Processing Obligations); clause 21 (Performance Management); and clause 22 (Suspension of Supplier's Right to Participate in Mini-Competitions).

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

30. SEVERABILITY

30.1 If any provision, clause or part-provision of the Supplier Agreement is or becomes invalid, illegal or unenforceable for any reason, by any court of competent jurisdiction, such provision shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision, clause or part-provision shall be severed and deemed deleted and the remainder of the provisions and clauses hereof shall continue in full force.

30.2 If a provision of the Supplier Agreement that is fundamental to the accomplishment of the purpose of the Supplier Agreement is held to any extent to be invalid, the Supplier and the Council shall immediately commence good faith negotiations to remedy that invalidity.

30.3 Any modification to or deletion of a provision, clause or part-provision under this clause 30 (Severability) shall not affect the validity and enforceability of the rest of the Supplier Agreement.

31. RIGHTS AND REMEDIES

31.1 Except as expressly provided in the Supplier Agreement, the rights and remedies of the Parties provided under the Supplier Agreement are in addition to, and not exclusive of, any rights or remedies provided by Law and the rights and remedies under the Supplier Agreement shall be cumulative.

31.2 Unless a right or remedy of the Council is expressed to be an exclusive right or remedy, the exercise of it by the Council is without prejudice to the Council's other rights and remedies.

32. WAIVER

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

32.2 The rights and remedies provided by the Supplier Agreement may only be waived in writing by the relevant Party in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to in such written notice.

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33. ENTIRE AGREEMENT

33.1 Without prejudice to clause 9.1.4, the Supplier Agreement (including the Schedules) and the documents referred to in it constitutes the entire agreement and understanding between the Parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the Parties relating to that subject matter, provided that nothing in this clause 33 (Entire Agreement) shall operate to exclude any liability for fraud or misrepresentation.

33.2 Save as provided for in clause 9 (Warranties, Representations and Guarantees), each of the Parties acknowledges and agrees that in entering into the Supplier Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Supplier Agreement.

34. NOTICES

34.1 Any notice given or made under the Supplier Agreement shall be in writing and issued via the Technology and / or by email. A notice issued pursuant to this clause 34.1 shall be deemed as served at the time of transmission.

34.2 For the avoidance of doubt, where proceedings to which the Civil Procedure Rules apply have been issued, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings and service via the Technology or by email will not be accepted in relation to such matters.

34.3 For documents to be served pursuant to clause 34.2, the address of each Party shall be:

34.3.1 For the Council:

Address: County Hall, St Anne's Crescent, Lewes, East Sussex BN7 1UE

Telephone: 01273 335067

Email: Specialist-transport.cts@eastsussex.gov.uk and
Mainstream-transport.cts@eastsussex.gov.uk

For the attention of: Principal Transport Officer

with copies to the Assistant Chief Executive
(contractsandprocurement.legal@eastsussex.gov.uk)

34.3.2 For the Supplier: as set out in the Signature Document.

34.4 Either Party may change its address for service by serving a notice in accordance with this clause 34 (Notices).

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35. GOVERNING LAW AND JURISDICTION

Without prejudice to the dispute resolution procedure set out in clause 37 (Dispute Resolution), the Parties accept the jurisdiction of the English courts and agree that the Supplier Agreement is to be governed and construed according to the Law of England and Wales.

36. AGENCY AND PARTNERSHIP

36.1 The Supplier is not and shall in no circumstances hold itself out as being the agent of the Council, otherwise than in circumstances expressly permitted by the Supplier Agreement.

36.2 Nothing in the Supplier Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party. Neither Party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party.

37. DISPUTE RESOLUTION

37.1 The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with the Supplier Agreement within twenty (20) Working Days of either Party notifying the other of a dispute.

37.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

37.3 The obligations of the Parties under the Supplier Agreement and / or any Service Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation pursuant to this clause 37 (Dispute Resolution) and the Supplier and its Staff shall comply fully with the requirements of the Supplier Agreement at all times.

37.4 If the dispute cannot be resolved by the Parties pursuant to clause 37.1, the Parties shall use their best endeavours in good faith to resolve the dispute by agreement. Such endeavours should include conciliation by an independent person to be agreed between the Parties, or in the case of failure to agree, by a representative of a professional body appropriate in the circumstances of the case. Such an independent person shall be given all information and assistance by the Parties in carrying out his duties, and may be given by agreement between the Parties the duty to recommend or approve terms of settlement between the Parties.

37.5 In the event the dispute cannot be resolved by negotiation or conciliation under clause 50.4 within three (3) months, both parties shall attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

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37.6 If the Parties fail to resolve the dispute by mediation within sixty (60) Working Days of a mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts pursuant to clause 35 (Governing Law and Jurisdiction).

SCHEDULE 2 - SPECIFICATION

**Specification
relating to
Dynamic Purchasing System for
the provision of Passenger
Transport Services**

East Sussex County Council
County Hall
St Anne's Crescent
Lewes
East Sussex
BN7 1UE

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INTRODUCTION

1. BACKGROUND

- 1.1 Local Authorities (Councils) in the South East require a range of transport services. These services need to be of a high standard and cost effective to provide best value for taxpayers.
- 1.2 This Specification has been developed to support the commissioning of passenger transport services (the “**Services**”).
- 1.3 The Council has procured a Dynamic Purchasing System (“**DPS**”) to identify the Supplier who meet the quality standards and service delivery requirements set out in this Specification to deliver the Services (“**DPS Suppliers**”). The DPS will be continually open to allow new suppliers to apply to join and become a DPS Supplier at any time. The DPS may also be accessed by Brighton and Hove City Council, Surrey County Council and West Sussex County Council. The Council and each other local authority able to access the DPS (“**Participating Authorities**”) will operate the DPS independently for their local authority area,
- 1.4 Throughout the remainder of this Specification, the term “**Supplier**” shall be used to describe any DPS Supplier delivering the Services. The term “Participating Authority” shall be used to refer to the relevant local authority. A full glossary of terms used in this Specification is set out in paragraph 25 of this Specification.
- 1.5 All passenger transport requirements will be commissioned by the Participating Authority via the DPS using the processes set out in the Supplier Agreement.
- 1.6 The Supplier must be appropriately licensed and meet the high range of needs of individuals transported by the Participating Authority today and any future requirements (“**Passengers**”). The Supplier will supply appropriate, responsible, Passenger-focused staff, especially for those Passengers with challenging needs. The Supplier will ensure staff conduct is managed in line with the participating authority codes of conduct and service standards at all times.
- 1.7 The Supplier will treat all Passengers as customers. The Supplier shall at all times be open and honest in their communication with the Council, both at operational and management levels.

2. THE TRANSPORT TEAMS

- 2.1 Each Participating Authority’s Transport Team commissions transport bookings on behalf of the Participating Authority’s departmental services. The Transport Team in East Sussex operates during the core hours of 0800hrs and 1700hrs Monday to Friday during term time (“**Core Hours**”), and most of the journeys are completed during these times. Other Participating Authorities may use different times but this will be made

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clear in any Mini Competitions held by that Participating Authority. References in this Specification to “Core Hours” shall be a reference to the core hours operated by the relevant Participating Authority (as advertised in the Mini-Competition for any Participating Authority other than the Council). The Transport Team also deals with bookings made outside of Core Hours, i.e. during weekends and evenings, where transport is often required at short notice in the event of an urgent requirement.

- 2.2 The Transport Team incorporates the existing Client Transport Services and all Adult Social Care (ASC) transportation provisions. The Transport Team is responsible for route optimisation, commissioning, performance management, compliance with safeguarding requirements and inspection of services to ensure Suppliers comply with the requirements of this Specification.
- 2.3 Using journey planning software, staff within the Transport Team coordinate transport to make the best use of resources and provide an efficient, economic and personalised service.

3. COUNCIL AUTHORISED IDENTIFICATION BADGE

- 3.1 Participating Authorities may require that all Transport Personnel acquire and maintain an authorised identification card issued to Drivers following a vetting process (“Council Authorised Identification Badge”).
- 3.2 Currently the Council does **not** administer or enforce a Council Authorised Identification Badge; however, this is expected to be implemented during the lifetime of the DPS. The Council shall give no less than three (3) months written notice to the Supplier prior to introducing a Council Authorised Identification Badge.
- 3.3 Surrey County Council and West Sussex County Council currently enforce a Council Authorised Identification Badge system.
- 3.4 For the avoidance of doubt, each Participating Authority enforcing a Council Authorised Identification Badge scheme shall independently administer that Scheme.

4. SERVICES THAT MAY BE COMMISSIONED VIA THE DPS

4.1 Home to school transport for mainstream pupils

The Transport Teams arrange Home to school transport for mainstream pupils using primarily public transport but also must arrange alternative methods of transport where no suitable public transport is available. This requires the transport teams to commission transport services for mainstream pupils using vehicles ranging from taxis through to large coaches.

4.2 Home to school transport for Special Educational Needs (SEN) pupils

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The Transport Teams arrange transport for pupils with special educational needs to enable them to attend a range of special schools and colleges. These educational Establishments provide education for pupils with a wide range of special needs from physical disability, challenging behaviour, autism through to hearing and language impairment. The Transport Teams procure a range of vehicles to suit these often very complex needs. The Services commissioned may also include a Passenger Assistant for one or more of the Passengers .

4.3 Adult Social Care Day Centre requirements

The Transport Team manages transport for vulnerable adults attending Adult Social Care (ASC) day centres, which provide services for older people and adults with learning disabilities. Some Passengers can travel to day centres without assistance; however, for most journeys a Passenger Assistant is required to support mentally and physically disabled Passengers and those with limited mobility and or communication skills.

4.4 Adult's and Children's Services Requirements

The Transport Team arranges trips on behalf of Adult and Children Services. These trips can be any day of the week including weekends and at any time of day. Some of the trips are one offs whilst others may run for several weeks. The trips also vary in journey length and whilst the majority are within East Sussex there is also a requirement to provide longer journeys. It may be possible to give a few days notice of the journey requirements but often a trip is required with less than 48 hours notice and possibly immediately. It is not unusual to have 1 or 2 Passengers in a vehicle, but on occasion more Passengers can be transported together. The Transport Team arranges transport for a range of vulnerable adults and children, including those with learning disabilities and physical disabilities. Due to the nature of this service there can be last minute alterations and cancellations made to these trips. A wide range of vehicles ranging from saloon car to wheelchair accessible minibuses are required to suit mobility needs.

4.5 Adult and Children's Transport with Passenger Assistants

There may be on occasion a requirement for children outside of home to school transport and adults outside of day centres to be transported with a Passenger Assistant. In some cases, a Passenger Assistant will accompany the child or adult; however, where a Passenger Assistant has not been specified as provided then we would require the Supplier to provide a Passenger Assistant as part of the Requirement. Passenger Assistants may also need to have specific medical training (e.g. epilepsy) which will be reflected in the Requirement, only Suppliers who have Passenger Assistants able to meet these medical needs will be eligible to tender for such Service Agreements.

Whenever a Requirement includes a Passenger Assistant, the Participating Authority will fully describe the requirements of the Passenger Assistant and a price will be sought for the combined package.

4.6 Additional Requirements

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In addition, Participating Authorities may require transport for other users not covered in one of the paragraphs above. Where this is the case, the profile of users will be clearly set out in the Requirement issued with the mini competition documents.

DESCRIPTION OF SERVICES

5. AIMS AND OBJECTIVES OF THE SERVICES

5.1 The aim of the Services covered by the DPS is primarily to provide transport to Passengers who are eligible in accordance with Council policy (namely: school children, Special Educational Needs school children, vulnerable adults, looked after children). Requirements may nevertheless include other users where advised by the Participating Authority.

5.2 Key objectives of the Services are:

- **Quality** – Passenger-centred service delivered in a safe, professional and effective manner by trained staff in clean, comfortable vehicles. Ensuring promptness of pick up and drop off is a high priority.
- **Flexibility and Responsiveness** – The Supplier must provide flexibility to respond to changing needs; for example, new locations, ad hoc requests, flexible times for pickup and drop off including evenings and weekends. There will also be a need for some specialist vehicle equipment and/or Transport Personnel training to ensure particular Passenger requirements are met.
- **Communication and Performance Information** – The Supplier is required to be open, honest and ensure regular communication on service issues. the Participating Authority also welcome discussions with Suppliers on flexible and innovative approaches to service delivery.
- **Value for Money** – The Services must be affordable and provide value for money.
- **Environmentally friendly** – The Supplier must take action to reduce the carbon footprint of journeys wherever possible.
- **Innovation and use of Information Technology** – The Supplier must be innovative in its approach, using best practice to respond to future needs, for example GPS vehicle tracking software.
- **Council values** – The Supplier must ensure that the Participating Authorities' published values and residents' rights are upheld.
- **Social Value** – The Participating Authorities have an ambition to deliver additional social value for all contracts with a value in excess of £100,000. Where a Supplier holds Service Agreements with a combined value in excess of £100,000 per annum they will be required to work with the Council as part of the delivery of goods, works or services to support its wider Social Value

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objectives and local community benefits. The Participating Authority will contact eligible Suppliers with further details and to agree the Social Value deliverables.

- 5.3 For each Requirement, the Participating Authority will supply the Supplier with the Route Schedule(s) (which are subject to frequent change), including such information as post codes, Passenger names, and special needs. The Supplier will supply a suitable Contract Vehicle for each route, to suit these sometimes complex needs. In some instances, the Participating Authority will request that a Passenger Assistant, with appropriate training for the relevant Passenger's needs, travels with the Passenger and is responsible for all Passengers whilst they are travelling to and from school.
- 5.4 The Supplier must be able to show initiative and flexibility in order to fulfil the transport needs of the Participating Authorities and the various Establishments covered by this Specification (schools, day centres, etc.), in respect of both route scheduling and operational systems.
- 5.5 The Supplier will be the first point of contact for each Establishment in respect of any changes or issues that affect the transportation of Passengers to that Establishment under a Service Agreement awarded via the DPS. The Supplier will also maintain communication for any changes or issues that affect the Services with the relevant Participating Authority.

OVERVIEW OF SERVICES

6. MINI- COMPETITIONS AND SERVICE CATEGORIES

- 6.1 Mini-Competitions and electronic auctions will be run via the DPS and will include Requirements for individual routes or bundles of routes and, on occasion, a geographic area or entire school. Mini-competitions or e-auctions will be run using the Technology (or any replacement notified by the Council from time to time).
- 6.2 The Services to be commissioned via the DPS are divided into nine (9) service categories based on the table below:

Service Categories
1-9 Taxi and MPV
1-9 Taxi and MPV – Wheelchair Accessible
1-9 Taxi and MPV – Passenger Assistant
10-16 Minibus
10-16 Minibus – Wheelchair Accessible
10-16 Minibus – Passenger Assistant
16+ Coach
16+ Coach – Wheelchair Accessible
16+ Coach – Passenger Assistant

THE SUPPLIER'S RESPONSIBILITIES

7. GENERAL SUPPLIER OBLIGATIONS

The Supplier shall at all times comply with the following obligations:

- 7.1 To provide a staffed telephone link (not an answering machine and not a fax machine) between the hours of 07.30 and 17.30 on any day that the Services are provided under the relevant Service Agreement. This is to allow effective communication of issues in relation to the Service Agreement, particularly those of an urgent nature;
- 7.2 An out-of-hours number must be provided to ensure urgent communication, such as the need to book transport in the event of an emergency outside of Core Hours;
- 7.3 To ensure that, where applicable, the Transport Personnel meet the current and all future requirements of the Licensing Authority and The Road Safety Act 2006;
- 7.4 Licenses are required to be obtained from the relevant authority for any vehicle with a Driver where commercial benefit is obtained. The licenses are:
 - 7.4.1 An operator's licence,
 - 7.4.2 A vehicle licence,
 - 7.4.3 A driver's licence.
- 7.5 To comply with all relevant current and future legislation, national standards and evidence base set out within this Specification and required in the provision of the Services and in the performance of their obligations under the Supplier Agreement and any Service Agreement;
- 7.6 To ensure that any Transport Personnel involved in the provision of the Services have been hired according to the Pan Sussex Child Protection and Safeguarding Procedures and the Sussex Multi-Agency Policy & Procedures for Safeguarding Adults at Risk Procedures in place at any time (or such other safeguarding policies as have been identified by the relevant Participating Authority as part of the mini-competition for the relevant Service Agreement);
- 7.7 To check that all Transport Personnel have the entitlement to work in the UK;
- 7.8 To ensure that each of the Transport Personnel are aware of, and comply with, the requirements of the "Codes of Conduct for Transport Personnel transporting Children / Adults" (Appendix A or B as applicable), including any revisions or amendments made thereto or any replacement document issued by the Council from time to time. The Supplier shall provide all Transport Personnel with his/her own personal copy and the applicable Code of Conduct, such copy to be carried by the Transport Personnel on every journey performed under a Service Agreement awarded via the DPS;

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- 7.9 To immediately remove any Driver or Passenger Assistant notified by an Authorised Officer of the Participating Authority as being either under investigation by, or unacceptable to, the Participating Authority. Any such Transport Personnel must not be used to provide any Services until authorised by an Authorised Officer of the Participating Authority;
- 7.10 To ensure that all Transport Personnel comply with all Road Traffic Act Regulations and any other laws applying to the operation of the Services;
- 7.11 To ensure that appropriate training is given to all Supplier Personnel and Transport Personnel, including an induction for any new members of staff. Such training shall include, but is not limited to:
- 7.11.1 Familiarising the Transport Personnel with the Supplier's company procedures and policies as well as the route covered by the Requirement;
 - 7.11.2 Familiarising any new Transport Personnel with the appropriate Code of Conduct;
 - 7.11.3 Regular updates / re-training for personnel at least every three (3) years;
 - 7.11.4 Appropriate safeguarding training for all Transport Personnel;
 - 7.11.5 First Aid at Work training (for Passenger Assistants);
 - 7.11.6 Ensuring all Transport Personnel are aware of all emergency procedures relating to the safe carriage of Passengers on the Contract Vehicle;
 - 7.11.7 Ensuring all Transport Personnel are aware of all procedures relating to the safe use of any equipment necessary to the Service Agreement.
- 7.12 In addition, when required to do so, the Supplier must make the necessary arrangements to allow Transport Personnel to attend appropriate training sessions organised by the Participating Authority (with associated training costs borne by the Supplier), which will enable them to carry out their duties at the highest level with regard to the health, safety and welfare of their Passengers.
- 7.13 To undertake recorded introductions / familiarisations with all parents/carers unless agreed with the Authority a visit is not required. This should be used to gather information regarding the Passengers' needs and possible techniques to ensure as comfortable a journey as possible, as well as to ensure that contact details are accurate and to pass on details of the transport including times and the names of the Transport Personnel. In some instances it may be necessary to arrange for the Transport Personnel to introduce themselves to the Passenger and their parent(s) / guardian(s) prior to undertaking any transportation, to ensure the most comfortable experience for the Passenger.
- 7.14 For requirements relating to school pupils, to remind Transport Personnel at the start of each school term of the procedures that ensure the health, safety and welfare of Passengers, particularly:
- 7.14.1 the action to be taken in an emergency/break-down situation;

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- 7.14.2 the contractual obligation to prevent any child Passenger from operating the vehicle doors;
- 7.14.3 the emergency procedures relating to the safe carriage of Passengers on the Contract Vehicle; 7.14.4 ensuring that the Transport Personnel are familiar with the needs of all Passengers.
- 7.15 To provide for examination, within a reasonable time, any documentation requested by the Participating Authority relating to a Contract Vehicle or Driver, including any PSV Operator's Licence and/or the driver's licence or PSV licence of any Driver engaged in driving a Contract Vehicle ;
- 7.16 To allow access to Contract Vehicles by authorised officers of the Participating Authority on any part of the contracted route or at the Contract Vehicles' base or destination;
- 7.17 To inform the Participating Authority immediately (within two (2) hours) of any accident or incident (no matter how minor) in which the Contract Vehicle is involved when performing duties under a Service Agreement. A full written report must follow within forty eight (48) hours of the accident or incident to the Participating Authority, using the relevant report template (or any revised templates issued at a later date) (attached as Appendices C)
- 7.18 To ensure that Transport Personnel record any situations and/or issues that give cause for concern and report them to the Participating Authority and to the Establishment;
- 7.19 To ensure that the Contract Vehicle (and/or the Driver) is equipped with mobile communication. Particular attention is drawn to the legislation concerning the use of mobile phones in motor vehicles which prohibits the use of mobile telephones without "hands-free" operation, with which the Supplier and any Driver must comply at all times when delivering the Services;
- 7.20 To ensure that Transport Personnel carry with them a list of telephone numbers of the contacts to be notified in the case of an emergency or break-down;
- 7.21 To strictly adhere to the times and relevant dates notified to the Supplier by the Participating Authority for the collection and setting down of the Passengers
- 7.22 To ensure that any delays or potential delays are communicated as soon as possible to the Establishment or parent/carer/guardian of all Passengers;
- 7.23 To inform the Participating Authority immediately if there is a likely delay of fifteen (15) minutes or more in reaching a destination;
- 7.24 To obtain details from each Establishment of the dates and times they will be open. There will be no entitlement to payment for any journeys made on other dates or at other times or for routes other than the one prescribed by the Requirement;

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- 7.25 If the Requirement concerns transport to an educational Establishment, to regularly check on the Participating Authority's website for any variations to school start and finish times, particularly at the beginning and end of each term; and the Supplier is required to provide the Services to accommodate any such changes to these times;
- 7.26 To have in place suitable arrangements to ensure that, in the event the designated Contract Vehicle breaks down, alternative transport will be arranged promptly, taking no more than sixty (60) minutes to arrive. The Supplier must inform the Participating Authority immediately of any such delay;
- 7.27 To provide within a reasonable time, when requested by the Participating Authority, written details of the daily mileages undertaken on any route specified in the Service Agreement;
- 7.28 To prohibit any Contract Vehicle (whilst conveying authorised Passengers under the Service Agreement) from carrying **any** person other than the authorised Passengers or staff, without the prior written consent of the Participating Authority.
- 7.29 To prohibit any Contract Vehicle, whilst being used in the performance of the Services, to be used for any other purpose whatsoever without prior consent from the Participating Authority.
- 7.30 To ensure that assistance dogs are transported where required;
- 7.31 To advise the Participating Authority immediately of any changes in the route (temporary or permanent), for example pick up timings, order of pick-ups, passengers leaving or Driver/PA changes.
- 7.32 To ensure that business continuity is maintained for the Services at all times. To achieve this, the Supplier must develop, maintain and regularly review an appropriate business continuity plan, a copy of which is to be made available to participating authority upon appointment to the DPS and thereafter after any update is made;
- 7.33 The business continuity plan required under paragraph 1.34 shall address all foreseeable circumstances that would affect the daily operation of the Services.
Examples of such circumstances include, but are not limited to:
- 7.33.1 Failures of equipment, services and staffing;
 - 7.33.2 A natural disaster such as severe weather conditions and any disruption caused;
 - 7.33.3 Disruption to the local and/or national power supply;
 - 7.33.4 Disruption to the transport infrastructure for whatever reason, including fuel shortages or major accidents;
 - 7.33.5 Any major enemy or terrorist attack on the country that creates a large number of casualties, or the threat of such an attack; and
 - 7.33.6 Any actual or potential industrial action, including strike action.

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7.34 The Supplier shall make this information available to the Participating Authority, along with any details of actions to be taken, both immediately and escalating as time passes, until normal circumstances are restored;

7.35 1.36 To provide the Participating Authority with a copy of all the Supplier's written policies and any amendments that may be made to these policies. This shall include, but is not be limited to: Equality & Diversity Policy, Health & Safety Policy, Drugs & Alcohol Policy, Recruitment Policies and procedures.

8. SUPPLIER PERSONNEL

The Supplier is responsible for managing the performance of all members of staff engaged in the delivery of the Services. Furthermore, the Supplier is required to:

8.1 ensure that all personnel who are to be placed in contact with children or Vulnerable Adults are:

8.1.1 competent and reliable;

8.1.2 properly and appropriately licensed;

8.1.3 Have a current enhanced Disclosure & Barring Service (DBS) check in accordance with the Protection of Children Act 1999, Safeguarding Vulnerable Groups Act 2006 and / or Part 5 of the Protection of Freedom Act 2012;

8.1.4 In respect of Transport Personnel, in possession of the Participating Authority's Council Authorised Identification Badge before being allowed to provide any of the Services (where the Council Authorisation Scheme is enforced by the relevant Participating Authority).

8.2 ensure that any Transport Personnel who have not been checked and cleared by the Participating Authority will not be utilised to deliver any Services under any Service Agreement;

8.3 ensure that, following any government reviews of the Vetting and Barring Scheme, should a safeguarding authority or organisation be introduced, all personnel satisfy all checks or processes that may be introduced before they are utilised to deliver any Services under any Service Agreement;

8.4 ensure that, notwithstanding that owing to the nature of the Services, the Transport Personnel are exempt from the application of Section 4 (2) of the Rehabilitation of Offenders Act 1974 by virtue of the Rehabilitation of Offenders Exception Act 1974 (Exceptions) Order 1975, all personnel engaged in the provision of the Services nevertheless are required to and do provide information in accordance with this Act and Order, in relation to convictions which would otherwise be spent under the provisions of the said Act;

8.5 ensure that any Transport Personnel is fit and able to carry out their duties safely, without risk of harm to themselves or to Passengers;

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- 8.6 be familiar with all legislative requirements regarding the safe operation of all the equipment provided for the comfort and safety of the Passengers, and to be responsible for compliance with those legislative requirements;
- 8.7 At all times, take all proper precautions to ensure the safety of the Passengers and observe and comply with the requirements of the Road Traffic Act 1988 or any amendments to, or replacement of, that Act that come into force relating to road traffic;
- 8.8 ban all Transport Personnel from smoking, vaping and / or smoking an electronic cigarette, whilst providing the Services. Smoking is strictly prohibited on all Contract Vehicles.
- 8.9 ensure all Transport Personnel are reasonably attired and prominently display the 'Council Authorised' Identification badge at all times whilst on duty.
- 8.10 ensure that Transport personnel take all reasonable steps to ensure the safety of Passengers aboard the Contract Vehicle whilst in transit and whilst boarding or alighting from the Contract Vehicle.
- 8.11 ensure that Transport personnel are able to give clear verbal instruction to all Passengers in English. In some cases it may be necessary to supply personnel who are able to speak another specified language should the need of the Passenger dictate; Where this is required, this will be clearly stated in the mini-competition for the relevant Requirement.
- 8.12 ensure that Transport personnel have an ability to communicate well with the Passengers. In the event of an emergency, this may be crucial.
- 8.13 ensure that relevant personnel attend training courses as requested and/or when organised, either by the Participating Authority or the Supplier;
- 8.14 ensure that Transport personnel wear high-visibility clothing whilst on duty outside the Contract Vehicle for their own safety;
- 8.15 ensure that Transport personnel are not related to any of the Passengers or any of the other personnel travelling in the Contract Vehicle whilst the Services are being provided unless agreed in writing by the participating authority.
- 8.16 ensure that Transport personnel avoid collecting Passengers from the house. Parents / carers of the Passenger are expected to bring the Passenger to the Contract Vehicle or to the designated pick-up point. Any concerns about the safety of the pick up arrangement, including the school site must be reported.
- 8.17 ensure that Transport Personnel report any behavioural problems they encounter to the Supplier and the Participating Authority, so that the issues can be dealt with as appropriate;

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8.18 ensure that Transport personnel understand and fulfil all safeguarding responsibilities, including reporting any concerns they have regarding the Passengers' wellbeing in accordance with the Participating Authority's safeguarding policies.

8.19 ensure that Transport Personnel do not administer medication under any circumstance unless authorised to do so by the Participating Authority;

8.20 ensure that Transport Personnel phone the appropriate emergency service - for an ambulance in medical emergencies, the Fire Service in case of any fire emergency and the Police as deemed necessary;

8.21 ensure that a responsible adult (parent/carer/guardian), in accordance with the applicable Code of Conduct, collects all SEN Passengers and Mainstream students unless otherwise authorised in writing by the Participating Authority

8.22 ensure that Transport personnel are aware of all emergency procedures relating to the safe carriage of Passengers on the Contract Vehicle

9. DRIVERS

The Supplier shall be responsible for ensuring that all Drivers meet and / or comply with each of the following requirements:

9.1 the Driver shall have a minimum of three (3) years driving experience and be appropriately licensed.

9.2 the Drivers shall be responsible for ensuring all Passengers are satisfactorily secured by lap and diagonal seat belts on every journey.

9.3 if the Contract Vehicle is a motor car, the Driver shall not allow any Passenger under the age of eight (8) years to be conveyed in the front seats.

9.4 if the Contract Vehicle is equipped with eight (8) Passenger seats or less, the Driver shall be responsible for ensuring that child proof locks are in use for all Passengers under sixteen (16) years of age conveyed in the rear seats.

9.5 the operation of the vehicle doors shall, at all times, be under the Driver's control, or that of a nominated responsible adult.

9.6 the Driver shall be familiar with the route(s) they is allocated to.

9.7 the Driver shall only transport Passengers between the agreed destinations, as per the route agreed by the Participating Authority.

9.8 the Drivers shall immediately report to the operator office any incident or accident (no matter how minor) that occurs when Passengers are on board.

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9.9 the Driver shall be properly trained to use, and will apply, any equipment required under the Service Agreement

If, for any reason, the Council considers (acting reasonably) that a person is unfit to undertake the duties of a Driver, then the Participating Authority shall have the right to ask for that person to be replaced by someone it considers more suitable and the Supplier shall comply with such request.

The Supplier shall remain responsible for any failure by a Driver to comply with the requirements in this Section.

10. PASSENGER ASSISTANTS

If, for any reason, the Participating Authority considers that a person is unfit to undertake the duties of a Passenger Assistant, then the Participating Authority shall have the right to ask for that person to be replaced by someone it considers more suitable and the Supplier shall comply with such request.

The Supplier shall be responsible for ensuring that all Passenger Assistants meet and / or comply with each of the following requirements:

10.1 The Passenger Assistant shall maintain a “vehicle log book” in which specific details relating to the Passengers conveyed can be recorded and in which all incidents that occur on the journeys must be recorded. The information recorded in the “vehicle log book” will be treated as confidential and must not be relayed to any unauthorised individual.

10.2 The Passenger Assistant shall be First Aid trained to at least the standard of the “Appointed Person” First Aid Training Course;

10.3 If requested, the Passenger Assistant shall attend periodic Passenger Assistant training at a time and venue specified by the Participating Authority and / or the Supplier. For some Requirements, Passenger Assistants may need training in particular specialist procedures or techniques and the Supplier shall only use Passenger Assistants who have the requisite training.

10.4 The Passenger Assistants shall **not** administer medication, unless they have had specific training and are authorised to do so by the Participating Authority.

10.5 the Passenger Assistant shall report:

10.5.1 to a member of staff at the Establishment if Passengers fall ill whilst travelling to that destination;

10.5.2 To the Passengers parent, carer or guardian if a Passenger falls ill whilst travelling home from the Establishment;

10.6 the Passenger Assistants shall contact the Passengers’ parent/carer/guardians if there is a delay in the schedule of more than fifteen (15) minutes from the establishment.

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10.7 the Passenger Assistant shall contact the Establishment if there is a delay in the schedule of more than fifteen (15) minutes on a journey to the establishment.

The Supplier shall remain responsible for any failure by a Passenger Assistant to comply with the requirements in this Section.

11. CONTRACT VEHICLES

The Supplier is responsible for ensuring that all Contract Vehicles fully comply with the following requirements:

11.1 at all times, the Contract Vehicle must have a current, valid MOT certificate and road tax and the Supplier must maintain appropriate insurance. The Participating Authority will make regular checks of MOT and insurance documents, and the Supplier shall provide all such information required by the Participating Authority for the purposes of these checks.

11.2 Contract Vehicles must, at all times, comply with the Department of Transport (as the same may be reconstituted or renamed from time to time) legislative requirements and be able to deliver the contract in full. Vehicles must be compliant with British Safety Standards or equivalent

11.3 Contract Vehicles must, at all times, be maintained in a proper and roadworthy condition and kept clean and comfortable. The Contract Vehicle should provide suitable adequate heating and ventilation or air-conditioning to allow comfortable transport for the number of Passengers being conveyed and must provide suitable protection against wet and inclement weather. Vehicles must comply with the number of seats required by the Service Agreement and Requirement.

11.4 Any Public Service Vehicle must, at all times, comply with the relevant Operators Licensing requirements and, in all other respects, with the requirements of Part II of the Public Passenger Vehicles Act 1981 or be operated under a Section 19 permit;

11.5 If a Licensed Taxi (Hackney Carriage) or a Licensed Private Hire car, the Contract Vehicle must, at all times, comply with the requirements of the Hackney Carriage Licence / Private Hire Licence issued under the Metropolitan Public Carriage Act 1869, the Local Government (Miscellaneous Provisions) Act 1976, The Private Hire Vehicles (London) Act 1998 or the Transport Act 1985 as appropriate (or any amendments to, or replacement of, those Acts that come into force) and /or any Regulations made from time to time. The Participating Authority will make regular checks of licence documents and the Supplier shall provide all such information as may be required by the Participating Authority for these checks.

11.6 All Contract Vehicles must display the appropriate licensing plate or disk. Private Hire vehicles with exemptions from displaying any plates are not suitable for the provision of the Services under the DPS.

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- 11.7 All Contract Vehicles must be of suitable size and layout so that a Passenger Assistant must have clear and direct access to any Passenger allocated with the need for a Passenger Assistant. This access should not be blocked by folding seats, baggage/equipment or wheelchairs. Space should be available for the safe storage of wheelchairs and/or other equipment required to accompany the Passenger. This equipment must be conveyed in a safe and secure manner.
- 11.8 The Supplier must ensure that where a child safety seat is required, it is properly fitted in accordance with the manufacturer's instructions and the Driver fulfils the responsibility for ensuring that the Passenger is properly secured in the child safety seat.
- 11.9 Contract Vehicles must not, under any circumstances, be equipped with, or convey Passengers in, inward side facing seats. Seats must be suitable for the Passenger to be transported and conform in all aspects to British Safety Standards.
- 11.10 if constructed or adapted to convey up to and including sixteen (16) Passengers, the Contract Vehicle be fitted with fully functional lap and diagonal seat belts on all Passenger seats. Transport personnel must ensure Passengers are fully secure prior to departure.
- 11.11 Contract Vehicles must have all seat belts installed, maintained and used in accordance with current legislation.
- 11.12 if a large bus constructed or adapted to convey seventeen (17) or more Passengers, the Contract Vehicle must be fitted with Driver operated automatic doors such that the door operation is under the control of the Driver at all times.
- 11.13 All Contract Vehicles must display appropriate signs carrying the EU approved "child logo" which will be issued, upon request, by the Participating Authority.
- 11.14 An Accident/Incident recording pack must be kept on board all Contract Vehicles to be used in respect of the Services and Transport personnel must be made aware that this pack must be used in the event of any incident or accident.
- 11.15 The Supplier must ensure that Contract Vehicles do **not** display any publicity material without the prior approval of the Participating Authority, nor any publicity or livery on behalf of any other company.
- 11.16 Contract Vehicles that are constructed or adapted to convey passengers in wheelchairs or buggies must be equipped with either tail-lift or ramp facilities that comply with British Safety Standards. In addition, all wheelchair lifting equipment must conform to the Lifting Operations and Lifting Equipment Regulations 1998 ("**LOLER**") and the Providing and Using Work Equipment Regulations 1998 ("**PUWER**") and have an annual weight test. Suppliers shall provide copies of the six (6) monthly certificates signed by a competent person as defined within the legislation upon request of the participating authority.

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- 11.17 If constructed or adapted to convey Passengers in wheelchairs or buggies, Contract Vehicles must be equipped with suitable tracking to secure the wheelchair or buggy in a forward facing position. All Contract Vehicle floor tracking must be laid longitudinally and comply with all current legislation. The Supplier will be responsible for ensuring that this tracking is kept clean at all times.
- 11.18 If constructed or adapted to convey Passengers in wheelchairs or buggies, Contract Vehicles must provide sufficient wheelchair and passenger restraints to transport all wheelchair Passengers identified in the Requirement. The Supplier must be aware of the type of wheelchair or buggy to be transported and is responsible for providing the correct type of wheelchair and passenger restraint, either identified in the manufacturer's specification or supplied by the Participating Authority. If the Supplier is in any doubt as to the Wheelchair Tie Down and Occupant Restraint System ("WTORS") to be used, the Supplier must contact the Participating Authority for clarification.
- 11.19 If the Contract Vehicle is a motor car, it must be fitted with childproof locks (or central locking override, switch controlled by the Driver) on rear passenger doors to prevent opening by Passengers when the Contract Vehicle is in motion. Such devices must be engaged when Passengers are on board

12. SAFEGUARDING

12.1 HM Government 'Working Together to Safeguard Children' (2006) requires all organisations to follow the procedures for protecting children from abuse. Therefore, the Supplier must follow the safeguarding procedures which are established by the Participating Authority. The Supplier is also expected to ensure that they have appropriate procedures in place for responding to situations where they believe a child has been abused, or is at risk of abuse. These procedures should also cover circumstances in which a member of staff is accused of, or suspected of, abuse.

12.2 The Supplier's responsibilities are to:

12.2.1 ensure all Transport personnel providing the Services have been recruited following the safer staffing guidelines including, but not limited to completion of an application form, a recorded face to face interview and receipt of references. Prior to assigning a member of staff to a route details of the driver and passenger assistant must be sent to the Authority using the DBS web form.

12.2.2 ensure that, where enforced by the Participating Authority, all Transport personnel engaged in the delivery of the Services have Council Authorised Identification clearance **before** transporting any Passengers under a Service Agreement.

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- 12.2.3 ensure any Driver or Passenger Assistant who is not police or DBS checked, in accordance with the guidelines above, will not be engaged in the provision of any of the Services under any Service Agreement.
- 12.2.4 ensure that Driver and Passenger Assistant ID badges are available for inspection at all times;
- 12.2.5 ensure that the safeguarding responsibilities apply equally to any replacement or temporary Transport personnel utilised by the Supplier in the provision of the Services.
- 12.2.6 ensure that all personnel are aware of their responsibilities and role in the safeguarding of the Passengers being transported.
- 12.2.7 ensure that all Transport Personnel clearly understand the need to maintain appropriate boundaries in their dealings with young people and Vulnerable Adults.
- 12.2.8 ensure that all Transport Personnel are aware that innocent comments and/or contact between young people/Vulnerable Adults can be misconstrued.
- 12.2.9 ensure that Transport Personnel never have inappropriate or unnecessary physical contact with young people or Vulnerable Adults
- 12.2.10 ensure that all Transport Personnel are aware of the potential dangers of being in a 1-1 situation with Passengers; this includes but is not limited to giving lifts to, or having other contact with, Passengers outside of normal transport arrangements;
- 12.2.11 ensure that Transport Personnel do not engage in private or personal correspondence with young people or Vulnerable Adults by any means, including text messages, internet mediums including (but not limited to) online gaming, messaging services and social networking sites such as Facebook & Twitter etc. or personal email.
- 12.2.12 convey to Transport Personnel that they must always be prepared to explain their actions and accept that “relationships” with Passengers will be open to comments and scrutiny
- 12.2.13 ensure that all personnel are aware that they should report any safeguarding concerns they have, regarding the well being of any of the Passengers on transport, to the Council.
- 12.3 Safeguarding Passengers is of paramount importance to the Participating Authority. The Supplier shall be aware of best practice in this area and implement where necessary.

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13. PERFORMANCE AND QUALITY MANAGEMENT

13.1 Robust performance management is key to the achievement of the Participating Authority's aims. To this end, the Supplier must have:

13.1.1 a clearly defined organisational structure, including the day to day operational structure and the overarching management structure that steers the relationship between the council PA and the Supplier;

13.1.2 in place processes and procedures for monitoring actual performance against the service requirements and standards set out in this Specification.

13.2 The Supplier's organisational structure must clearly demonstrate the Supplier's ability to adequately manage the Supplier's performance under all Service Agreements. As a minimum, the Supplier should provide the following information to the Council PA (including updating any changes to such information):

13.2.1 the named on-site or local Service Manager(s);

13.2.2 the named Contract Manager, who will be responsible for attending the stipulated review meetings and for providing attendance at ad hoc meetings as requested.

13.3 During regular reviews of the Services, the Council PA will carefully consider whether the relationship is driven by trust and co-operation, rather than by the contract alone. Both parties are responsible for ensuring an open and honest relationship.

13.4 The Supplier must provide operational reports to the Participating Authority, as required, to include information such as: timeliness, using correct drop off points, etc.

14. COMPLAINTS

14.1 The Supplier shall have its own complaints procedure, details of which will be supplied to the Participating Authority. The Supplier's complaints policy will comply with the Participating Authority's complaints procedure (as the same may be amended and notified to the Supplier from time to time) whenever a complaint is made by any third party directly to the Participating Authority.

14.2 The Supplier must keep a record in a form as stated below, of any complaints received (whether received orally or in writing, and whether from members of the Participating Authority, Passengers or their parents, carers or guardians, members of the public or others) and of the action taken by the Supplier to remedy or fully investigate each such complaint. Such records shall be kept available for inspection by the Participating Authority at all reasonable times.

14.3 The Supplier's record of complaints must include:

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14.3.1 the nature of the complaint; 14.3.2 the name of the complainant; 14.3.3 the date and time the complaint was received; 14.3.4 the action taken to remedy the complaint;

14.3.5 the names of the Suppliers employees involved in the complaint and the remedy.

14.4 The Supplier must deal with any complaints received from whatever source in a prompt, courteous and efficient manner.

THE PARTICIPATING AUTHORITY'S RESPONSIBILITIES

15. GENERAL

15.1 The Participating Authority expects to work in partnership with the Supplier and to communicate with them in an honest and courteous manner, acting in a reasonable manner at all times.

15.2 Each Participating Authority shall:

15.2.1 Supply the Supplier with, or reimburse them for, the provision of any specialist equipment required (provided that the Participating Authority shall, at all times, retain ownership of such equipment unless otherwise specified for individual equipment);

15.2.2 Give the Supplier reasonable time, unless directed by the legislation, to comply with any new legislation or regulations, or policies and procedures introduced by the Participating Authority;

15.2.3 identify appropriate training courses, which the Supplier should organise and ensure Transport personnel attend if required;

15.2.4 Actively encourage the Supplier to raise the awareness amongst their Transport Personnel of the Services and to support and enhance the provision of the Services by their Personnel by offering additional training to them;

16. SERVICE INFORMATION

16.1 The Participating Authority will supply The Supplier with accurate relevant information about the Passengers to be transported, including:

16.1.1 Name, address & telephone number;

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16.1.2 Dates, times and destinations of travel;

16.1.3 Details of any special requirements or special equipment required, that the Participating Authority is advised of;

16.1.4 Details of behavioural issues or any other issues relevant to the Passenger, that the Participating Authority is advised of

16.1.5 Details of any care plan agreed between parents/carers, Establishment and the responsible medical practitioner in cases where pupils have specific conditions, that the Participating Authority is advised of. This will specify the steps to be taken to support the normal care of the Passenger as well as the appropriate responses to emergency situations, and should be carried on the Contract Vehicle at all times

16.1.6 Give details of the transport arrangements that have been made to the Passenger's parent(s), carer(s) or guardian(s).

17. SAFEGUARDING

The Participating Authority will:

17.1 Administer the Council Authorised Identification Scheme to ensure all Transport personnel have enhanced level DBS checks, and issue appropriate identification when this process is complete. The Participating Authority will not be liable for any costs associated with the DBS checking process;

17.2 Issue the Participating Authority Authorised Identity Badge or notification of unsuitability within ten (10) Working Days of the receipt of an enhanced DBS disclosure. (Additional information may be requested by the Participating Authority about an individual's background in order to make a decision on suitability);

17.3 Abide by the Participating Authority's safeguarding policy and procedures following notification of any allegations or complaints;

17.4 Instruct the Supplier to suspend the Driver / Passenger Assistant concerned from the delivery of any of the Services should an allegation be received, while the investigation takes place. In some instances the Participating Authority will withhold details of the allegation in order to investigate the matter through the appropriate channels;

17.5 Notify the Supplier of the conclusion of any investigations, although the details of the investigation may be withheld where required in order to protect the personal data rights of affected individuals;

17.6 Notify/forward on any safeguarding concerns raised by the Supplier on to the appropriate team within the Participating Authority.

CONTRACT MANAGEMENT

18. PERFORMANCE AND QUALITY MANAGEMENT

The Participating Authority will:

- 18.1 Facilitate regular review meetings and ensure open channels of communication between the Participating Authority and the Supplier;
- 18.2 Monitor and enforce the terms and service levels applicable to each Service Agreement;
- 18.3 Adopt the Contract Management Process and 'Performance Points Scheme' to assist in monitoring the Supplier's performance under the DPS arrangements.
- 18.4 Undertake formal reviews of performance, service delivery and the relationship between the Participating Authority and the Supplier
- 18.5 Investigate any complaints received about the operation of the service

19. FINANCIAL DEDUCTIONS

- 19.1 It is the responsibility of the Supplier to inform the Participating Authority, at the earliest opportunity, of a foreseeable difficulty in providing any journey required under a Service Agreement. The Supplier shall inform the Participating Authority immediately of any unforeseen difficulty that means the Services (or any part of the Services) will not operate.
- 19.2 In the event of adverse weather conditions or industrial action the following payment rules shall apply:
 - 19.2.1 The full morning rate will be paid for any scheduled morning journey if a Contract Vehicle has set out but is then unable to complete the journey because of adverse weather conditions or the receiving Establishment is closed.
 - 19.2.2 No payment will be made for the return journey if it was known that the journey was not required.
 - 19.2.3 For subsequent days or in the event of industrial action at an Establishment, when it is known that the journey is not required because the Establishment is closed, no payment will be made.
 - 19.2.4 For school journeys, the Supplier is required to familiarise themselves with the school closures system which provides online information of the latest school closures and email/text alerts. In these exceptional circumstance, the Supplier must rely on this information to determine whether the journey is required.

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20. PERFORMANCE MANAGEMENT AND RECORDING

- 20.1 Authorised Transport Officers from each Participating Authority that has ordered Services via the DPS will manage and monitor the Supplier's performance using the Transport Performance Points Scheme set out in Tables 1 & 2 below. Failure to provide the Services in accordance with this Specification may result in financial deductions and / or the Supplier being suspended from bidding for new mini-competitions.
- 20.2 Each Participating Authority shall operate the Transport Performance Points Scheme independently so that any suspension from participating in Mini-Competitions shall only apply to the relevant Distribution Group.
- 20.3 The Participating Authority shall notify any performance issues arising under a Service Agreement, as well as any Performance Points, financial deductions to be applied to the Supplier via email. If the Supplier is to be suspended, the Participating Authority shall issue a suspension notice in accordance with the terms of the Supplier Agreement.
- 20.4 Information provided to the Participating Authority from a member of staff of an Establishment shall, for the purposes of the Transport Performance Points Scheme, be considered as information provided by an officers or agents of the Participating Authority, and so the Participating Authority will not have to investigate their complaints in order to note poor performance and/or issue negative Performance Points.
- 20.5 Complaints from parents/guardians/carers will be investigated by the Participating Authority. If the complaint about the Supplier is upheld following the Participating Authority's investigation, the complaint will be recorded as negative performance by the Supplier. All complaints will be recorded but may also be noted to be unsubstantiated or unfounded.
- 20.6 The Supplier is required to regularly feedback on their own performance regarding timeliness and use of the correct pick up / drop off locations. The Participating Authority requires Providers to be open and honest about their performance and if discrepancies are found between feedback from the Supplier and the Establishment, the onus will be on the Supplier to provide evidence to demonstrate that the Supplier has met the standards set out in this Specification. Where the Supplier has been open and honest about their performance and notified the Participating Authority of any issues, this will be taken into consideration as part of the decision about whether or not to apply any Performance Points and / or financial deductions.
- 20.7 The Participating Authority is keen to encourage positive feedback about the Services, and so a performance survey will be sent to all Establishments to allow positive comments to be gathered and measured, this will generally be annually but may be carried out at higher frequencies dependant on the need of the Participating Authority. A similar survey will be sent to a sample of the Supplier's passengers parents / guardians.

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21. CONTRACT MANAGEMENT RELATIONSHIPS

21.1 Each Supplier will be allocated a Contract Manager by the Participating Authority. Each Supplier must also nominate a specified contact within their organisation (“**Supplier’s Manager**”). The Contract Manager and the Supplier’s Manager (“**Managers**”) will be responsible for the formal management of the Service Agreement, monitoring performance and risks, ensuring ongoing value for money and approving changes to the Route Schedule in accordance with the Service Agreement Terms.

21.2 The relationship between the Managers is a key relationship for each Service Agreement, and each shall ensure regular communication if there are performance issues or clarifications that need explanation.

21.3 The Participating Authority may instruct the Supplier to attend review meetings. Where so instructed, the review meeting must be attended by the Supplier’s Manager. The purpose of the review meeting is to discuss any specific issues as well as negative or positive feedback received in respect of the Supplier. The Supplier may also be required to ensure that operational staff are in attendance at a review meeting so that knowledge of specific issues that are to be discussed is available. The necessary attendees will be notified by the Participating Authority to the Supplier in advance of the review meeting taking place.

21.4 Operational issues may be notified and resolved by a Council’s Authorised Officer, and these issues and complaints will be recorded. The Contract Manager will monitor these reports and where necessary discuss these issues or complaints to ensure that they are being addressed and resolved within the Supplier’s organisation.

22. AUDITS

22.1 the Supplier may be audited by the Participating Authority at any time. Each Participating Authority shall be entitled to manage any issues identified through the audit using the performance points scheme.

22.2 The Participating Authority may also make recommendations through the audit that may be followed up in order to ensure compliance to improve service delivery.

23. TRANSPORT PERFORMANCE POINTS SCHEME

23.1 The list of negative Performance Points is based on a 10 point scale where 10 is the most serious offence. The scheme will operate on a one (1) year rolling basis. Performance Points will be removed on the anniversary of the points being issued.

23.2 Where the supplier accrues forty (40) or more performance points the Participating Authority may require that a performance improvement plan is agreed and implemented. At this stage the Participating Authority may limit the supplier’s ability to bid for new routes.

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23.3 Where seventy-five (75) negative points have been accrued in a rolling year period, the Supplier will be required to attend a meeting to formally explain their performance. The Participating Authority may at this stage limit or remove the Supplier's ability to bid for new routes or permanently remove service agreements they currently operate. If a significant improvement is not witnessed following these sanctions the Supplier may be removed permanently from all Participating Authority service agreements.

23.4 Financial deductions will also be applied alongside the Transport Provider Performance Points scheme for specific failures (see tables below).

23.5 The Council shall be entitled to amend the list of offences subject to negative Performance Points upon one (1) months written notice to the Supplier. The current list of offences is as follows:

TABLE 1: Failure by supplier

Code	Description of Offence	Points	Financial deduction (% of daily rate)
Op1	Uncontactable by telephone between 07:30 and 17:00	3	25% of the daily rate of the route the call is regarding
Op2	Failure to notify the Council of Sub contracting	5	100% of the daily contract rate
Op3	Failure to keep accurate, current and secure records of bookings and disposal of work in line with GDPR.	5	
Op4	Failure to keep valid, accurate, current records of vehicle licensing & insurance, and driver licensing and clearance (DBS and participating authorities ID scheme)	7	
Op5	Failure to provide accurate invoices (incorrect date/format, inaccurate days/numbers of journeys, etc)	7	
Op6	Failure to ensure that an instruction from an Authorised Officer is carried out	1-10	
Op7	Failure to supply suitable cover vehicles and transport personnel in the allotted time in line with your business continuity plan	7	
Op8	Upheld complaints against the service provided by the Provider	1-10 (dependant on the nature of the complaint)	

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Op9	Failure or refusal to carry out the service as instructed	8	
Op10	Failure to provide and evidence training required to meet the needs of the passengers travelling on your service agreements.	10	
Op 11	Failure to comply with compulsory Disability Awareness Training (3 hour training). Required for all staff on ESCC HTST	10	50% of the daily contract rate staff are assigned to.
Op12	Consistent failure to ensure that a contract is completed with 15 minutes of the stated time on the contract	5	
Op13	Failure to ensure that consistent crews are used on a route.	5	
Op 14	Failure to provide accurate crew information for ESCC ID Badges required for all staff working on ESCC HTST routes	10	Missing or inaccurate driver or PA information will incur a 25% deduction of the daily contract rate for each route affected.
Op15	Failure to supply an incident report – verbally within 2 hours and an incident report form within 48 hours	10	
Op 16	Failure to report concerns relating to the safe transport of passengers including but not limited to safeguarding concerns	10	50% of the daily contract rate
Op17	Failure to notify of change of contract details (including nonattendance or leaving)	5	
Op 18	Failure of notification of all Crew Changes (prior to them taking place to Parent, Transport Hub and School)	10	
Op 19	Failure to arrange or co-operate with HTST crew Familiarisation Visits prior to new or altered routes commencing.	10	100% of the daily contract rate will be deducted for each visit not undertaken unless otherwise agreed with the Transport Hub
16 seat plus vehicles only			

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Op16	Failure to supply a vehicle sufficient for the passenger capacity in live with the Service Specification	10	
Op17	Failure to display route sign in the front windscreen	4	

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TABLE 2: Failure by Driver or Passenger Assistant

The Supplier is responsible for the fulfilment of all obligations under the Service Agreement and remains liable for the actions of their staff. The Supplier will receive negative Performance Points if any of their Drivers or Passenger Assistants are found to have failed to meet the requirements of this Specification whilst delivering the Services. The Performance Points currently applicable are as follows:

CODE	Transport Personnel Offence	POINTS APPLIED
TP1	Failure to provide a vehicle that is in roadworthy condition or suitable for customer service. Including displaying the appropriate licensing information and maintaining the vehicles interior and exterior appearance	1-10 (depending on offence)
TP2	Failure to ensure that no passenger under 8 years old will travel in the front seats (Taxis and Minibuses only)	3
TP3	Failure to use, correctly apply or maintain any other equipment used in the Council contract	5
TP4	Failure to be clean and presentable whilst working, including body odour (Clothing must be clean, smart casual as a minimum) and secure footwear suitable for driving must be worn	1
TP5	Failure to reasonably assist passengers without good cause	1
TP6	Failure to notify change (within 1 days) of any condition which may affect the ability to drive	10
TP7	Failure to notify after a criminal offence has been committed	10
TP8	Failure to have a valid Council Authorised Identification on board the vehicle whilst working on Council contracts	5
TP9	Making a false statement or withholding information to obtain/maintain a Council Authorised Identification or contract	10
TP10	Driving in a manner contrary to the Road Traffic Act (or other legislation) whilst working on Council contracts	5
TP11	Using threatening or offensive language or behaviour	5
TP12	Failure to deliver the service agreement as specified (including but not limited to unauthorised passengers, late arrivals and serving addresses other than those specified)	5
TP13	Failure to abide by an instruction of an Authorised Officer	2

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TP14	Failure to ensure that child passengers are handed over to an appropriate responsible adult	8
TP15	Failure to drop off or collect passengers at the designated point at establishments	5
TP16	Smoking/vaping whilst on duty during a Council contract	3
TP17	Any other offence as deemed by the appropriate Authorised Officer	1-5 (dependant on offence)
TP18	Working outside of any conditions imposed on their Council Authorised Identification	5
TP19	Passenger Assistants sitting in the front of the vehicle during a Council contract when passengers are onboard	3
TP20	Leaving the vehicle unattended whilst passengers are on board	3
TP21	Failure to Abide by the relevant codes of conduct for transport personnel	1-5 (dependant on offence)

GENERAL INFORMATION

24. USEFUL CONTACTS :

East Sussex County Council Transport Team:

Specialist 01273 335 067

Mainstream 01273 335 088

Adult Social Care 01273 335 090

Contact details for other Participating Authorities' shall be issued with the minicompetition documents.

25. GLOSSARY OF TERMS AND ABBREVIATIONS

The Act means the Public Passenger Vehicles Act 1981 and/or any amendments to it, or replacement of it, and any Regulations made under it.

The Council means East Sussex County Council;

Council Authorised Identification means the authorised identification card issued to Drivers following a vetting process undertaken by the Participating Authority.

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Contract Vehicle	means any vehicle used by the Supplier in the performance of the Services.
Driver	means a person employed or engaged by the Supplier to drive a Contract Vehicle;
Establishment	means the school, academy or other educational institution, day centre or other establishment to and from which the Passenger is to be conveyed for the relevant Requirement
Participating Authority	means the local authority commissioning the Services and will be either East Sussex County Council, Brighton and Hove City Council, Surry County Council or West Sussex County Council;
Passenger	means the individual(s) to be transported as detailed in the Route Schedule;
Passenger Assistant	means an adult, with appropriate training (as may be detailed in the Requirement) who travels with the Passenger to ensure the Passenger's identified needs are met;
Public Service Vehicle or PSV	means a Public Service Vehicle within the meaning at Parts I and II of The Act.
Requirement	means the specific Services required by the Participating Authority under a Service Agreement, as set out in the Route Schedule.
Route Schedule	means a document detailing the route number, route details, timetable requirements and authorised passengers, issued by the Participating Authority to the Supplier.
Service Agreement	means the contract between the Supplier and the Participating Authority for the provision of the Services covered by the relevant Requirement.
Supplier	means the DPS Supplier delivering the Services;
Supplier's Personnel	means the Supplier's partners, directors, employees, agents and sub-contractors.
Transport Personnel	means the Supplier's Driver(s) and or Passenger Assistant(s) delivering the Services;
Vulnerable Adult	has the meaning set out in the Safeguarding Vulnerable Groups Act 2006.

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APPENDIX A

Code of Conduct for Transport personnel transporting Children



Operator Guide -
Childrens.pdf

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APPENDIX B

Code of Conduct for Transport personnel transporting Adults



ASC Passenger
Assistant Escort Guida

APPENDIX C

THE Council Accident Report Form



Accident&Incident
Report Form.docx

SCHEDULE 3 – MINI-COMPETITION AWARD CRITERIA

The following criteria and weightings shall be applied to any Mini Competition conducted under the Supplier Agreement:

Mini Competition Award Criteria	Mini Competition Award Criteria Weighting %	Sub-criteria	Sub-criteria Weighting %
Quality	0% - 30%	To be determined by the Participating Authority	To be determined by the Participating Authority
Price	70% - 100%	To be determined by the [Council OR Participating Authority	To be determined by the Participating Authority

The Council reserves the right for each Participating Authority to vary the Mini Competition Award Criteria Weighting as set out above and / or to define the sub-criteria, including weightings, as part of the Mini Competition process.

SCHEDULE 4 – TEMPLATE AWARD LETTER

This Document will form the basis for service agreements.

[TO BE SENT ON THE PARTICIPATING AUTHORITY’S HEADED PAPER]

[ADDRESS OF SERVICE PROVIDER]

[INSERT]

[INSERT]

[INSERT]

[INSERT]

[DATE]

Dear Sirs

I am writing further to the mini-competition held under the ESCC Dynamic Purchasing System for Client Transport Services, for the attached Requirement.

I am pleased to confirm the Participating Authority’s acceptance of your Tender Submission for the Requirement, further details of which are as set out below and in the attached Route Schedule.

Participating Authority:	
Supplier:	
Supplier Address for Notices:	[As above OR Insert if different]
Commencement Date:	
Initial Period:	
Extension Period (if any):	

The issuing of this Award Letter forms the Service Agreement between the Participating Authority and the Supplier. The Service Agreement Terms (as set out in Schedule 4 of the Supplier Agreement between East Sussex County Council and the Supplier) and the Route Schedule attached to this Award Letter, together with Schedule 9 (Data) and Schedule 10 (TUPE) are automatically bound into this Service Agreement.

Yours faithfully

SCHEDULE 5 – CALL OFF TERMS

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WHEREAS:

- (A) The Council has procured a Dynamic Purchasing System for the provision of Client Transport Services (divided into two (2) Categories and multiple Service Categories) (the “DPS”).
- (B) The Participating Authority wishes to engage a DPS Provider to provide the Services and has identified the Supplier in accordance with the Service Agreement Order Procedure set out in the Supplier Agreement. The Supplier is willing and able to provide the Services in accordance with these Service Agreement Terms.
- (C) The Service Agreement governs the relationship between the Participating Authority and the Supplier for the provision of the Services by the Supplier.

IT IS HEREBY AGREED as follows:

SECTION 1: PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

1.1. In the Service Agreement, the definitions and rules of interpretation in this clause apply (unless the context requires otherwise):

“A&E Criteria”	means the accreditation and enrolment criteria applied by the Council for appointment to the DPS;
“Authorised Officer”	means the person(s) appointed by the Participating Authority to manage the Service Agreement as the same may be replaced or delegate their functions from time to time;
“Award Letter”	means the notification issued by the Participating Authority to confirm award of the Supplier Agreement to the Supplier, substantially in the form set out in Schedule 4 of the Supplier Agreement;
“Bribery Act”	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
“Categories”	as defined in the Supplier Agreement;



“Charges”	means the charges/fees payable by the Participating Authority in accordance with the Service Agreement calculated in accordance with clause 5 (Payment);
“Commencement Date”	means the date on which the Services are to commence, as set out in the Award Letter;
“Contract Period”	means the Initial Period plus any Extension Period (if applicable);
“Contract Year”	means a period of twelve (12) months, commencing on the Commencement Date and each anniversary thereof, with the final Contract Year ending on the Expiry Date;
“Council”	means East Sussex County Council of County Hall, St Anne’s Crescent, Lewes, East Sussex, BN7 1UE;
“Conviction”	means any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to the Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education reform Act 1988);
“CTSA 2015”	as defined in clause 34.3;
“Data Controller”	has the same meaning as is set out in the Data Protection Legislation;
“Data Processor”	has the same meaning as is set out in the Data Protection Legislation;
“Data Protection Impact Assessment”	means an assessment carried out pursuant to Article 35 of the General Data Protection Regulation;
“Data Protection Legislation”	means the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Data Protection Act 2018 and the General Data Protection Regulation, together with any Law implemented in connection with or replacement of such Law, including guidance, codes of practice and other publications issued by the Supervisory Authority;

“Data Security Breach”	means any breach of security or confidentiality leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data;
“Data Subject”	has the same meaning as is set out in the Data Protection Legislation;
“Dispute”	as defined in clause 29.1;
“Default”	as defined in clause 8.1;
“Default Notice”	means a notice issued by the Participating Authority in accordance with clause 8;
“DPS”	as defined in Recital (A);
“DPS Provider”	means a provider that has applied for and been appointed by the Council to the DPS;
“DPS Services”	means the services, supplies and/or works described in the Specification;
“Expiry Date”	means the end of the Contract Period, or, in the event of early termination of the Service Agreement, the Termination Date;
“Extension Period”	as defined in clause 2.2;
“Force Majeure Event”	means war, natural flood, exceptionally adverse weather conditions, strike or lockout (other than a strike or lock-out which is limited to the Supplier’s Representatives), civil disorder, Act of God, power cuts or delays or other wholly exceptional events outside the control of the Parties which could not have reasonably been foreseen or avoided;
“FOIA”	means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
“General Data Protection Regulations / GDPR”	means Regulation (EU) 2016/679 on the protection of natural persons with regards to the processing of Personal Data and on the free movement of such data, and repealing Directive 95/46/EC;

- “Good Industry Practice” means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged as the case may be in the same type of undertaking as that of the Supplier under the same or similar circumstances at the relevant time for such exercise;
- “Index” means the Index of Retail Prices prepared by the Office for National Statistics or any successor Ministry or department and published by the Office for National Statistics as the same may be replaced or updated from time to time;
- “Information Laws” means the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Data Protection Legislation and any codes of practice and guidance made pursuant to the same as amended or replaced from time to time;
- “Initial Period” as set out in the Award Letter;
- “Insolvency Event” means in relation to the Supplier:
- (a) any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into (or, in the case of such a voluntary arrangement, being proposed);
 - (b) a supervisor, receiver, administrator, administrative receiver or other encumbrancer of a similar nature taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven (7) days) upon the whole or any material part of the Supplier’s assets;
 - (c) a court makes an order that the Supplier be wound up or a resolution for a voluntary winding up of the Supplier is passed;
 - (d) ceasing or threatening to cease to carry on business or being or being deemed to be unable to pay its debts when they become due within the meaning of Section 123 Insolvency Act 1986;
 - (e) being an individual(s), has a bankruptcy order made against him/her or compounds with his/her creditors or comes to any arrangements with any creditors; or
- any steps are taken in respect of or relating to the Supplier by Monitor, the Secretary of State for Health or a Trust Special Administrator pursuant to the provisions of the National Health Service Act 2006;

“Intellectual Property Rights”	means any and all patents, trademarks, service marks, copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether now or in the future subsisting in the United Kingdom or any other part of the world together with all or any goodwill and accrued rights of action;
“Journey”	means the transportation of Passengers from point A to point B as detailed in Requirement;
“Law”	means any applicable statute or any delegated or subordinate legislation, duly applicable guidance code of practice, direction, judgment or determination with which the Participating Authority and/or the Supplier is bound to comply and any EU laws or regulations that are retained in domestic law in accordance with the European Union (Withdrawal) Act 2018;
“Mediator”	shall have the same meaning as set out in the Supplier Agreement;
“Mini-Competition”	means the mini-competition organised by the Participating Authority under which the Supplier was appointed to provide the Requirement;
“Month”	means a calendar month and the term “Monthly” shall be interpreted accordingly;
“Necessary Consent”	means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents required by Law or necessary from time to time for the performance of the Services including without limitation all planning permissions and waste management licences;
“Operational Change”	means a change to the Route Schedule which, for the avoidance of doubt, shall not constitute a Variation to the Service Agreement;
“Parties”	means the Participating Authority and the Supplier;
“Participating Authority”	means the local authority that has issued the Award Letter;
“Personal Data”	has the same meaning as is set out in the Data Protection Legislation;
“PC Regulations”	means the Public Contracts Regulations 2015;

“Prohibited Act”	<p>means:</p> <p>(a) directly or indirectly offering, promising or giving any person working for or engaged by the Participating Authority a financial or other advantage to:</p> <ul style="list-style-type: none">i. induce that person to perform improperly a relevant function or activity; orii. reward that person for improper performance of a relevant function or activity; <p>(b) directly or indirectly requesting, agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;</p> <p>(c) committing any offence:-</p> <ul style="list-style-type: none">i. under the Bribery Act;ii. under legislation creating offences concerning fraudulent acts;iii. at common law concerning fraudulent acts relating to the Contract or any other contract with the Participating Authority; oriv. defrauding, attempting to defraud or conspiring to defraud the Participating Authority; or <p>committing an offence under sub-section (2) of section 117 of the Local Government Act 1972;</p>
“Quality Standard(s)”	<p>means an appropriate and current British Standards Specification or British Standard Code of Practice issued by the British Standard Institution or any similar European Union standard applying to goods or services relating to the Services or equivalent together with any additional standards set out in the Specification;</p>
“Regulated Activity”	<p>has the meaning contained in the Safeguarding Vulnerable Groups Act 2006, as amended;</p>
“Relevant Conviction”	<p>means a Conviction that is relevant to the nature of the Services to be provided;</p>
“Remediation Notice”	<p>as defined in clause 8.2;</p>

“Replacement Services”	means any services that are identical or substantially similar to any of the Services and which the Participating Authority receives in substitution for any of the Services following the termination or expiry of this Contract (in whole or in part), whether those services are provided by the Participating Authority or by any Replacement Service Provider;
“Replacement Supplier”	means any third party contracted to provide Replacement Services to the Participating Authority from time to time;
“Representative”	means any employee, officer, worker, agent or service provider engaged by a Party in connection with the Services including any Sub-Contractor;
“Required Insurances”	as defined at clause 16 (Insurance);
“Requirement”	means the supplemental specification issued by the Participating Authority as part of the Mini-Competition which sets out the Services to be provided under the Service Agreement;
“Route Schedule”	means a document detailing the route number, route details, timetable requirements and authorised Passengers, issued by the Participating Authority to the Supplier with the Award Letter;
“Service Agreement”	means the written agreement, concluded between the Participating Authority and the Supplier, consisting of the Award Letter, the Route Schedule, these Service Agreement Terms and Schedules 8 (Data Processing Activities) and 9 (TUPE Provisions) of the Supplier Agreement, and any other documents incorporated by or referred to in the Award Letter;
“Service Agreement Order Procedure”	means the procedure for commissioning Services from the DPS, as set out in the Supplier Agreement;
“Service Agreement Terms”	means the terms and conditions set out in this document (Schedule 4 of the Supplier Agreement);
“Service Category”	as defined in the Supplier Agreement;
“Services”	means the DPS Services to be provided by the Supplier under the Service Agreement as more particularly described in the Requirement and the Route Schedule;
“Service User(s)”	means any person(s) other than the Client to whom the Supplier provides DPS Services and / or services the same as or equivalent to the Services;

“Specification”	means the specification set out in Schedule 2 (Specification) of the Supplier Agreement detailing the requirements and performance Standards applicable to the DPS Services;
“Staff”	means all persons employed by the Supplier to perform its obligations under this Contract together with the Supplier’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under this Contract;
“Sub-Contract”	means any sub-contract entered into by the Supplier or by any SubContractor for the purpose of the performance of any obligation on the part of the Supplier under this Contract;
“Sub-Contractor”	means the contractors or service providers engaged by the Supplier to provide goods, services or works to, for or on behalf of the Supplier for the purposes of providing the Services to the Participating Authority;
“Supervisory Authority”	means the office of the regulator appointed in the United Kingdom as the data protection supervisory authority, known currently as the Information Commissioner’s Office;
“Supplier”	means the DPS Provider detailed in the Award Letter, who shall be responsible for the provision of the Services and shall include their legal personal representatives, successors and permitted assigns. Where the Supplier is an individual or partnership or organisation the expression shall include the personal representatives or employees of that individual or of the partners;
“Supplier Agreement”	means the agreement entered into between the Supplier and the Council to confirm the Supplier’s appointment to the DPS;
“Supplier’s Assets”	as defined in clause 13.1;
“Supplier’s Manager”	means the person appointed by the Supplier to act as the representative of the Supplier for all purposes connected with the Service Agreement (or their authorised representative);
“Supplier’s Premises”	as defined in clause 14.1;
“Supplier Agreement”	means the Agreement entered into between the Council and the Supplier to govern the terms of the Supplier’s appointment to the DPS;
“Technology”	As defined in the Supplier Agreement;

“Termination Date”	means, in the event of early termination of the Service Agreement, the date on which the termination takes effect;
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
“TUPE Provisions”	means the provisions relating to the transfer of employees under TUPE at the start or end of the Service Agreement as set out in Schedule 9 (TUPE Provisions) of the Supplier Agreement and which are incorporated into and form part of the Service Agreement;
“VAT”	means value added tax or any similar or substituted tax;
“Vulnerable Adult”	means any adult to whom an activity which is a Regulated Activity relating to vulnerable adults by virtue of any part of paragraph 7(1) of Schedule 4 of the Safeguarding Vulnerable groups Act 2006 is provided;
“Working Days”	means Monday to Friday inclusive of each week, excluding Christmas Day, Good Friday and Bank Holidays in England;

1.2. Reference in the Service Agreement to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument.

1.3. In the Service Agreement:

1.3.1. time shall, during the summer time be British summer time or otherwise Greenwich Mean Time;

1.3.2. reference to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall (unless the reference expressly states otherwise) include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;

1.3.3. words importing one gender shall include all other gender identities; words in the singular shall include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa;

1.3.4. clause, Appendix and paragraph headings and notes are for ease of reference only and do not affect the interpretation of the Service Agreement;

1.3.5. a reference to a clause, appendix, section or part is a reference to a clause, appendix, section or part of the Service Agreement unless expressly stated otherwise;

1.3.6. the appendices to these Supplier Agreement Terms form part of the Service Agreement and shall have effect as if set out in full in the body of the Service Agreement and any reference to the Service Agreement includes the appendices;

1.1.1 the words “include”, “includes” “including” “for example” and “in particular” and words of similar effect shall be construed as if they were immediately followed by the words “without limitation”;

1.3.7. a reference to writing or written includes emails and correspondence generated through the Technology.

1.4. Any decision, act or thing that the Participating Authority is required or authorised to take or do under the Service Agreement may be taken or done by any person authorised, either generally or specifically, by the Participating Authority to take or do that decision, act or thing, provided that upon receipt of a written request the Participating Authority shall inform the Supplier of the name of any person so authorised.

2. COMMENCEMENT, DURATION AND EXTENT OF CONTRACT

2.1. The Service Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with the provisions of the Service Agreement, will remain in force for the Contract Period.

2.2. Before the end of the Initial Period or before the end of any previous extension of the Contract Period (as the case may be) the Participating Authority may extend the Contract Period by a further period or periods (as set out in the Award Letter) by giving written notice to the Supplier of its wish to extend the Service Agreement and the required length of such extension (an “**Extension Period**”):

2.3. Unless otherwise agreed by the Parties, any Extension Period shall be on the same terms and conditions, including the Service Agreement Price, as the Service Agreement Terms.

3. ENTIRE AGREEMENT AND CONTRACT DOCUMENTS

3.1. Except where expressly provided otherwise, the Service Agreement constitutes the entire agreement and understanding between the Parties relating to the subject matter of the Service Agreement and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters and all prior contracts, negotiations, representations or understandings whether written or oral.

3.2. In the event of, and only to the extent of, any conflict between the documents forming the Service Agreement and / or between the Service Agreement and the Supplier Agreement, the conflict shall be resolved in accordance with the order of precedence set out in clause 7.2 of the Supplier Agreement.

1. SECTION 2 – THE SERVICES

4. PROVISION OF THE SERVICES

4.1. During the Contract Period the Supplier shall provide the Services with all reasonable skill, prudence and foresight and in accordance with:

4.1.1. the provisions of the Service Agreement (including the Specification and the Requirement);

4.1.2. the requirements of all Necessary Consents;

4.1.3. all applicable Laws;

4.1.4. Good Industry Practice; and

4.1.5. all reasonable instructions of the Authorised Officer acting in good faith and in accordance with the Service Agreement.

4.2. The Supplier shall, as a minimum, meet the Quality Standard(s) throughout the Contract Period.

- 4.3. The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Participating Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 4.4. The Supplier shall as soon as practicable notify the Participating Authority of any circumstance which might prejudice the Supplier's ability to perform the Services whether temporarily or permanently.
- 4.5. Where the Supplier is unable to perform the Services or any part of them at any time, the Supplier shall immediately inform the Authorised Officer and confirm the same in writing giving details of the circumstances, reasons and likely duration of the delay in provision of the Services. Provision of information in accordance with this clause 4.4 shall not release or excuse the Supplier from any of its obligations under the Service Agreement.
- 4.6. Subject to clause 34.17 (Force Majeure) where the Supplier is unable to perform any of its obligations under the Service Agreement then the Participating Authority may employ another Supplier to provide that part of the Services and recover its additional costs (if any) reasonably and properly incurred in doing so from the Supplier.
- 4.7. Nothing in the Service Agreement shall prevent the Participating Authority from instructing another Supplier to undertake any part of the Services in particular where:
- 4.7.1. the Supplier is unable to respond for any reason, or
- 4.7.2. the Participating Authority is entitled to suspend the Services in accordance with the Service Agreement.

5. PAYMENT

5.1. Subject to the requirements of this clause 5 (Payment), in consideration of the provision of the Services the Participating Authority shall pay to the Supplier the Charges.

5.2. Calculation of the Charges

5.2.1. The Charges shall be calculated as follows:

Charges payable = Journey + Passenger Assistant + Admin - Agreed

in the relevant Payment Period	Costs	Costs	Costs	Deductions
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Where:

“Journey Costs”	=	Cost per Journey	X	Scheduled no. of Journeys
“Passenger Assistant Costs”	=	Passenger Assistant Fee	x	Scheduled no. of Journeys requiring a Passenger Assistant
“Admin Costs”	=	As set out in the Award Letter		
“Agreed Deductions”	=	Performance Deductions	+	Non-delivery Deductions
“Performance Deductions”		Financial deductions issued in accordance with the Transport Performance Points Scheme		

“Non-delivery Deductions arising from non-delivery of the scheduled Journeys, **Deductions”** e.g. due to Passenger sickness or inset days.

5.3. Indexation

5.3.1. On 1 April each Contract Year, the Charges shall be increased by a percentage not exceeding the increase (if any) in the Index (using the most recently available edition) immediately preceding such price review or, in the case of the first review, since the Commencement Date. For the avoidance of doubt, such uplift shall apply to all elements of the Charges.

5.3.2. Any agreed increase to the Charges in accordance with clause 5.3 shall be confirmed in writing by the Participating Authority on or before 1 April in the relevant Contract Year.

5.4. Invoicing and Payment of the Charges

5.4.1. At the end of each Payment Period, the Supplier shall submit an invoice via the Technology in respect of the Services delivered by the Supplier during that Payment Period.

5.4.2. The invoice referred to in clause 5.4.1 shall, unless otherwise agreed between the Parties, be rendered on the Supplier's own invoice form and shall show:

5.4.2.1. an invoice date, invoice number and Service Agreement number;

5.4.2.2. the Payment Period to which the invoice relates;

5.4.2.3. the Services for which payment is claimed (broken down by Journey);

5.4.2.4. if the Supplier is VAT registered:

5.4.2.4.1. any VAT payable, with a breakdown showing the net figure, the VAT amount and the gross figure; and

5.4.2.4.2. a VAT registration number;

5.4.2.5. the Supplier's full business name and address; and

5.4.2.6. the name and address of the Participating Authority.

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5.4.3. The Participating Authority shall be entitled to amend its invoicing procedures upon providing one calendar month's notice to the Supplier.

5.5. Verifying Invoices

5.5.1. The Participating Authority shall notify the Supplier in writing within fourteen (14) Working Days of the date of the relevant invoice if it disputes any of the Charges payable under an invoice submitted pursuant to clause 5.4. Such disputes shall be resolved in accordance with the provisions of section 10 (Dispute Resolution).

5.5.2. Where the Participating Authority fails to comply with clause 5.5.1, the invoice shall be regarded as valid and undisputed fourteen (14) Working Days after the date on which it was received by the Participating Authority.

5.5.3. The Participating Authority shall make all payments to the Supplier via the Bankers' Automated Clearing Service ("BACS").

5.6. Late Payments, over-payments and Disputed Invoices / Charges

5.6.1. Subject to clause 5.6.2 (Disputed Sums), where the Participating Authority fails to settle an invoice in full within thirty (30) days of the date the invoice was verified by the Participating Authority in accordance with clause 5.5, the Supplier shall be entitled to charge interest on any amount outstanding in accordance with clause 5.6.5 (Interest on Overdue Payments).

5.6.2. If the Participating Authority considers that an overpayment has been made due to an error in an invoice submitted by the Supplier, and the error arises as a result of the Supplier's failure to provide sufficient information to the Participating Authority in accordance with these Service Agreement Terms and the Specification, then, notwithstanding that an invoice has been verified in accordance with clause 5.5 (Verifying Invoices) the Participating Authority shall serve a notice on the Supplier indicating the amount(s) the Participating Authority considers to have been overpaid and the reasons why the Participating Authority considering that such amounts are an over-payment.

5.6.3. Where any Party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the Dispute as to the sum that remains unpaid shall be referred for resolution in accordance with section 10 (Dispute Resolution).

5.6.4. Interest due on any sums in dispute shall not accrue until the earlier of thirty (30) days after:

5.6.4.1. resolution of the Dispute between the Parties; or

5.6.4.2. receipt of the decision of the Mediator in accordance with section 10 (Dispute Resolution).

5.6.5. Either party shall pay interest on any overdue undisputed sum properly invoiced under the Service Agreement at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

5.7. Miscellaneous

5.7.1. Where the Supplier fails without due cause to provide verifiable records to the reasonable satisfaction of the Authorised Officer to evidence the amounts

stated in the invoice then the Participating Authority shall be entitled to withhold payment until such time as such verifiable records are provided.

5.8. Set-off

5.8.1. Whenever any sum of money shall be recoverable from or payable by the Supplier to the Participating Authority under the Service Agreement, the same may be deducted from any sum then due or which may become due to the Supplier under the Service Agreement or any other contract with the Participating Authority.

5.9. Taxes

5.9.1. The Participating Authority shall pay to the Supplier such VAT that may be chargeable by the Supplier in connection with the provision of the Services and the Supplier shall issue a tax invoice in respect thereof.

5.9.2. The Supplier shall indemnify the Participating Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Participating Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Service Agreement. Any amounts due under this clause 5.9.2 shall be paid by the Supplier to the Participating Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Participating Authority.

6. VARIATIONS TO THE SERVICES

- 6.1. No Variation of the Service Agreement shall be effective unless it is in writing and signed by the Parties (or their duly authorised senior representatives).
- 6.2. Unless the Variation expressly provides for an increase in payment, the Service Agreement Price shall not be increased as a result of a Variation.
- 6.3. The Participating Authority shall be entitled to implement the following Operational Changes:
 - 6.3.1. adding or removing Passenger's from the Route Schedule;
 - 6.3.2. varying the pick-up and drop-off times and locations for any Journey;

6.3.3. varying the Scheduled number of Journeys required;

6.3.4. removing the requirement for a Passenger Assistant where no longer required by the Passengers listed in the Route Schedule or adding a Passenger Assistant where required by new Passengers added to the Route Schedule;

6.4. For the avoidance of doubt, Operational Changes shall be issued by the Participating Authority as an instruction via the Technology. A formal Variation to the Service Agreement shall not be necessary for any Operational Changes.

2. SECTION 3 – REVIEW

7. COUNCIL MEETINGS

7.1. The Participating Authority and Supplier’s Manager shall not hold regular meetings. However, the Supplier shall, if requested by the Participating Authority, attend a meeting to discuss any matter arising under the Service Agreement.

8. PERFORMANCE MONITORING

8.1. The Participating Authority may investigate any case where the Supplier may have or appears to have failed to perform the Services in whole or in part in accordance with the provisions of the Service Agreement (a “**Default**”).

8.2. Where the Participating Authority is satisfied that in any particular case the Supplier has committed a Default, it may instruct the Supplier in writing to remedy the failure (a “**Remediation Notice**”). The Remediation Notice shall:

8.2.1. specify the nature of the Default; and

8.2.2. instruct the Supplier to remedy the Default within a reasonable period, as determined by the Participating Authority (which unless otherwise stated shall be twenty-four (24) hours from the Supplier’s receipt of the Remediation Notice).

For the avoidance of doubt, the Remediation Notice shall be issued via the Technology and / or via email.

8.3. Where the Supplier fails to comply with any Remediation Notice issued by the Participating Authority, the Participating Authority may issue a Default Notice to the Supplier:

8.3.1. specifying the nature of the Default; and

- 8.3.2. instructing the Supplier to remedy the Default within a reasonable period, as determined by the Participating Authority (which unless otherwise stated shall be twenty-four (24) hours from the Supplier's receipt of the Default Notice).
- 8.4. If the Supplier fails to remedy any Default specified in a Default Notice within the period specified, the Participating Authority may either:
- 8.4.1. issue a further Default Notice every twenty-four (24) hours until the Participating Authority is satisfied that the Default concerned has been remedied; or
- 8.4.2. following notification to the Supplier, take action to rectify the Default itself (including by instructing an alternative provider to rectify the same) and recover its additional costs of doing so from the Supplier as a debt.
- 8.5. Without prejudice to clause 8.4, where any failure by the Supplier to perform the Service in whole or in part in accordance with the provisions of the Service Agreement is one which materially and adversely affects the performance of the Services, or one which results in material damage to the reputation of the Participating Authority, notwithstanding that a Remediation Notice and/or Default Notice(s) has been issued pursuant to this clause 8 (Performance Monitoring), the Participating Authority shall be entitled, by service of written notice on the Supplier, to terminate the Service Agreement forthwith.

9. SERVICE COMPLAINTS

- 9.1. The Supplier shall develop a system for managing any complaints it receives in relation to the Services in accordance with the requirements of the Specification. The Supplier shall immediately investigate any complaint it receives in relation to the Services and take appropriate corrective action. The system for dealing with complaints and the steps taken by the Supplier shall be made available upon request to the Participating Authority for review.

10. SUPPLIER'S RECORDS

- 10.1. In addition to the information to be supplied to the Participating Authority in accordance with the Specification, the Supplier shall provide the Participating Authority with information and data reasonably requested by the Participating Authority to enable it to be satisfied as to whether or not any terms of the Service Agreement are being breached and/or whether any Offence set out in the Transport Performance Point Scheme has been committed, within such reasonable timescale given by the Participating Authority or, where no timescale is provided, within no more than twenty eight (28) days of the request.

11. FINANCIAL INFORMATION, AUDITS AND COMPLIANCE WITH A&E CRITERIA

11.1. The Supplier shall, whenever so required by the Participating Authority, provide the Participating Authority with such financial information and data reasonably requested by the Participating Authority to enable the Participating Authority to:

11.1.1. comply with the Code of Practice on Local Authority Accounting in the United Kingdom 2019/20 issued by the Chartered Institute of Public Finance and Accountancy (as the same may be updated or replaced from time to time);

11.1.2. examine, evaluate and be satisfied as to the Participating Authority's minimum standards of economic and financial standing, technical and professional ability and general standing required of the Supplier with regard to the provision of the Services.

11.2. The Supplier shall promptly notify the Participating Authority in the event that any licence or other Necessary Consent required for the provision of the Services is withdrawn, revoked, suspended or equivalent.

3. SECTION 4 – HEALTH AND SAFETY

12. HEALTH & SAFETY

12.1. The Supplier shall comply and ensure its Representatives comply at all times with the Health and Safety at Work etc. Act 1974 and all other Laws pertaining to health and safety of employees and other affected persons including, but not limited to, the Management of Health and Safety at Work etc. Regulations 1999, the Reporting of Injuries, Diseases & Dangerous Occurrences Regulations 2013 and all other health, safety and welfare requirements applicable to the Services including those detailed in the Specification.

4. SECTION 5 – PREMISES AND ASSETS

13. ASSETS

13.1. Except as otherwise specified in the Specification, the Supplier shall be responsible at its own cost for providing all equipment, vehicles, plant and materials necessary and/or used by the Supplier in connection with the provision of the Services during the Contract Period (the "**Supplier's Assets**").

- 13.2. The Supplier shall maintain all Supplier's Assets in a safe condition so that they are fit for the purpose of delivering the Services and as a minimum comply with the requirements of the Service Agreement, all applicable Laws and any manufacturers servicing and maintenance requirements.
- 13.3. The Supplier shall be responsible for the security of all equipment and materials used by the Supplier in connection with the provision of the Services and the Participating Authority shall not (as far as permitted by law) be liable for loss, damage or injury in respect of the same.
- 13.4. The Council shall retain ownership of any vehicle equipment loaned to the Supplier in accordance with the Specification.

14. SUPPLIER PREMISES AND RIGHT OF ACCESS

- 14.1. The Supplier shall provide all premises and/or sites necessary to provide the Services (the "Supplier's Premises").
- 14.2. The Supplier shall at all times during the Contract Period permit the Participating Authority and its Representatives access on reasonable notice during the hours of 9.00am to 5.00pm (save in the case of emergency where no notice shall be required) to the Supplier Premises for the purpose of:
- 14.2.1. monitoring and inspecting work being performed to provide the Services;
- 14.2.2. interviewing the Supplier's Representatives engaged in connection with the provision of the Services; and
- 14.2.3. inspecting the Supplier's Assets, systems and procedures used by the Supplier to provide the Services.

5. SECTION 6 – WARRANTIES AND ACKNOWLEDGEMENTS

15. INDEMNITIES

- 15.1. The Supplier shall indemnify the Participating Authority and keep the Participating Authority indemnified against all actions, proceedings, costs, claims, demands,

liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of contract, including but without limitation:

15.1.1. any claim by a third party for damage occurring as a result of the Supplier's performance of the Services;

15.1.2. any breach of its obligations as set out in Section 8 (Personnel) of the Conditions of Contract; or

15.1.3. any breach of Law or Necessary Consents,

to the extent that any such loss, claim or liability is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or SubContractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of contract or Law by the Participating Authority.

16. INSURANCE

16.1. The Supplier shall at its own cost take out and maintain the insurances listed at clause 16.2 (the "**Required Insurances**") and any other insurances required by Law with reputable insurers who are authorised by the Financial Conduct Authority to conduct insurance business or equivalent.

16.2. The Required insurances referred to above are:

16.2.1. public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Services; and

16.2.2. employer's liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Services.

16.3. The Required Insurances must remain in place for the Contract Period and be effective in each case not later than the date on which the relevant risk commences.

16.4. As and when reasonably required in writing by the Participating Authority, the Supplier shall provide the Participating Authority with copies of current insurance certificates or other evidence demonstrating to the satisfaction of the Participating Authority that the requirements of this clause 16 (Insurance) are being met.

16.5. Neither party shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or an additional insured person.

16.6. Within thirty (30) days of any claim arising which:

16.6.1. is in excess of fifty thousand pounds (£50,000); or

16.6.2. will, or is likely to be, politically sensitive to or for the Participating Authority,

on any of the insurances referred to in this clause 16 (Insurance), the Supplier shall notify the Participating Authority of the same including full details of the incident giving rise to such claim.

17. LIMITATION OF LIABILITY

17.1. Subject to clauses 15, 17.4.1 and 17.5, neither party shall be liable to the other party (as far as permitted by Law) for indirect special or consequential loss or damage in connection with the Service Agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, use, goodwill or business opportunities whether direct or indirect.

17.2. Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to the Service Agreement.

17.3. Any clause limiting the Supplier's liability does not apply in relation to the commission of any Prohibited Act.

17.4. Subject to clause 17.5, the Supplier's total aggregate liability:

17.4.1. is unlimited in respect of:

17.4.1.1. the indemnities in clause 19.3 (Data Protection), clause 23.3 (Intellectual Property) and Schedule 10 (TUPE Provisions) of the Supplier Agreement;

17.4.1.2. any breach of clause 18.1.5 (Prohibited Acts);

17.4.1.3. the Supplier's wilful default.

17.4.2. in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the Service Agreement is unlimited.

17.5. Notwithstanding any other provision of the Service Agreement neither party limits or excludes its liability for:

17.5.1. fraud or fraudulent misrepresentation;

17.5.2. death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors;

17.5.3. breach of any obligation as to title implied by statute; or

17.5.4. any other act or omission, liability for which may not be limited under any applicable Law.

17.6. Nothing in the Service Agreement shall impose any liability on the Participating Authority in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Participating Authority to the Supplier that may arise by virtue of either a breach of contract or by negligence on the part of the Participating Authority or the Participating Authority's employees, servants or agents.

18. SUPPLIER WARRANTIES

18.1. The Supplier warrants and represents that:

18.1.1. it has the full capacity and authority to lawfully enter into and perform the Service Agreement and it is executed by a duly authorised representative of the Supplier;

18.1.2. there are no actions, suits or proceedings or regulatory investigations pending or, to the Supplier's knowledge, threatened against or affecting the Supplier before any court or administrative body or arbitration tribunal that might affect the

ability of the Supplier to meet and carry out its obligations under the Service Agreement;

18.1.3. it has operated, and will continue to operate, in material compliance with applicable Laws and regulations;

18.1.4. any information obtained by the Supplier during the Contract Period shall only be used for the purposes contemplated under the Service Agreement;

18.1.5. it has not committed any Prohibited Act in entering into the Service Agreement or any other agreement with the Participating Authority and will not commit any such acts in the performance of or with regard to the extension of the term of the Service Agreement or such other agreement.

18.2. For the avoidance of doubt the fact that any provision within the Service Agreement is expressed as a warranty shall not preclude any right of termination the Participating Authority may have in respect of breach of that provision by the Supplier.

6. SECTION 7 – INFORMATION AND IPR

19. CONFIDENTIALITY AND TRANSPARENCY

19.1. Subject to clause 19.2, the Parties shall keep confidential all matters relating to the Service Agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

19.2. Clause 19.1 shall not apply to any disclosure of information:

19.2.1. required by Law, provided that clause 20 (Freedom of Information) shall apply to any disclosures required under the Information Laws;

19.2.2. that is reasonably required by persons engaged by a party in the performance of such party's obligations under the Service Agreement;

19.2.3. where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 19.1;

19.2.4. by the Participating Authority of any document to which it is a party and which the Parties have agreed contains no commercially sensitive information;

19.2.5. to enable a determination to be made under Section 9 (Dispute resolution);

19.2.6. which is already lawfully in the possession of the receiving Party prior to disclosure by the disclosing Party;

19.2.7. by the Participating Authority to any other department, office or agency of the Government; and

19.2.8. by the Participating Authority relating to the Service Agreement and in respect of which the Supplier has given its prior written consent to disclosure.

19.3. The Supplier acknowledges that the Participating Authority is subject to transparency obligations which require the Participating Authority to publish certain contract information and materials. Accordingly, and notwithstanding any other term of the Service Agreement, the Supplier hereby gives its consent for the Participating Authority to publish the Service Agreement (including any Appendices) in its entirety, including from time to time agreed changes to the Service Agreement (save and except such matters as the Participating Authority is by law able to exclude as being confidential, commercially sensitive, or otherwise not in the public interest to disclose), to the general public in whatever form the Participating Authority decides. The Supplier shall render such assistance and cooperate with the Participating Authority to enable such publication, including, if the Participating Authority so requires, assisting the Participating Authority at no additional costs to the Participating Authority in the redaction of such contract documents prior to publication to eliminate material considered confidential, commercially sensitive, or otherwise not in the public interest to disclose.

19.4. Subject to clause 21 (Data Protection), on or before the Expiry Date the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which contain information relating to any of the Participating Authority's Representatives or Passengers including any documents in the possession, custody or control of any Sub-Contractor, are delivered up to the Participating Authority or securely destroyed.

20. FREEDOM OF INFORMATION

20.1. The Supplier shall, at no additional cost to the Participating Authority, co-operate promptly with the Participating Authority's reasonable requests for assistance in complying with its disclosure obligations under the Information Laws, provided that where the Participating Authority receives a request for information relating to the Service Agreement which the Participating Authority reasonably considers to be commercially sensitive and/or confidential, where reasonably practicable, the Participating Authority shall not disclose the same without first:

20.1.1. notifying the Supplier in writing; and

20.1.2. allowing the Supplier such reasonable opportunity as it considers appropriate (taking into account timescales set by Law) to make representations to the Participating Authority as to disclosure of such information.

20.2. Notwithstanding any other provision of the Service Agreement, the Participating Authority shall have absolute discretion as to whether or not to apply any exemptions under the Information Laws.

20.3. In no event shall the Supplier respond directly to a request for information unless expressly authorised to do so by the Participating Authority.

21. DATA PROTECTION

21.1. Both parties shall, and the Supplier shall procure that its Representatives shall:

21.1.1. duly observe all their obligations under the Data Protection Legislation, which arise in connection with the performance of the Service Agreement; and

21.1.2. perform its obligations under the Service Agreement in such a way as to ensure that it does not cause the Participating Authority to breach any of its applicable obligations under the Data Protection Legislation.

21.2. The Supplier shall be liable for and shall indemnify (and keep indemnified) the Participating Authority against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands incurred by the Participating Authority which arise directly from a breach by the Supplier of its obligations under the Data Protection Legislation, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-

compliance with any part of the Data Protection Legislation by the Supplier or its employees, servants, agents or Sub-Contractors.

- 21.3. The provisions of this clause 21 (Data Protection) shall apply during the continuance of the Service Agreement and indefinitely after its expiry or termination.

22. DATA PROCESSOR OBLIGATIONS

22.1. With respect to the Parties' rights and obligations under the Service Agreement, to the extent that the Supplier in delivering the Services to the Participating Authority acts as a Data Processor for the Participating Authority as Data Controller the following provisions of this clause shall apply. A description of the Personal Data processed by the Supplier Provider and the processing activities undertaken by the Supplier is set out in Schedule 9 (Data) of the Supplier Agreement.

22.2. In respect of Personal Data, the Supplier shall and shall procure that its Representatives shall:

22.2.1. solely process the Personal Data for the purposes of fulfilling its obligations under the Service Agreement and in compliance with the Participating Authority's written instructions;

22.2.2. notify the Participating Authority immediately if any instructions of the Participating Authority relating to the processing of Personal Data are unlawful;

22.2.3. not transfer to or access any Personal Data from a country outside of the United Kingdom without the Participating Authority's prior written consent;

22.2.4. comply with the Participating Authority's instructions in relation to transfers of Personal Data to a country outside of the United Kingdom unless the Supplier is required pursuant to applicable Laws to transfer Personal Data outside the United Kingdom, in which case the Supplier shall inform the Participating Authority in writing of the relevant legal requirement before any such transfer occurs unless the relevant Law prohibits such notification on important grounds of public interest;

22.2.5. ensure the reliability of any Staff who have access to the Personal Data and ensure that all such Staff are subject to legally binding obligations of confidentiality in relation to the Personal Data;

22.2.6. ensure that none of the Supplier's Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Participating Authority;

22.2.7. not engage any Sub-Contractor to carry out any processing of Personal Data without the prior written consent of the Participating Authority provided that notwithstanding any such consent the Supplier shall remain liable for compliance with all the requirements of the Service Agreement including in relation to the processing of Personal Data;

22.2.8. ensure that obligations equivalent to the obligations set out in this clause 22 are included in all contracts between the Supplier and permitted SubContractors who will be processing Personal Data and who have been approved in accordance with clause 20.2.7;

22.2.9. take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data taking into account the harm that might result from such unauthorised or unlawful processing, loss, destruction or damage and the nature of the Personal Data to be protected including without limitation, all such measures that may be required to ensure compliance with the Data Protection Legislation;

22.2.10. upon request provide a written description of the technical and organisational measures employed by the Supplier pursuant to clause 20.2.9 (within the timescales required by the Participating Authority) and if the Participating Authority does not consider that such measures are adequate to enable compliance with the Data Protection Legislation, implement such additional measures as may be specified by the Participating Authority acting reasonably) to ensure compliance;

22.2.11. taking into account the nature of the data processing activities undertaken by the Supplier, provide, at no cost to the Participating Authority, all possible assistance and co-operation (including without limitation putting in place appropriate technical and organisational measures) to enable the Participating Authority to fulfil its obligations to respond to requests from individuals exercising their rights under the Data Protection Legislation, including (without limitation):

22.2.11.1. notifying the Participating Authority within two (2) Working Days, of receiving any request from a Data Subject exercising their rights under the Data Protection Legislation;

22.2.11.2. complying with the Participating Authority's instructions in relation to complying with the Data Subject's rights under the Data Protection Legislation, which may include (without limitation) providing notices to Data Subjects in a format specified by the Participating Authority, rectifying inaccurate Personal Data, ceasing or restricting processing of Personal

Data, providing access to Personal Data, permanently deleting or securely destroying Personal Data and providing copies of Personal Data in a format specified by the Participating Authority;

22.2.12. maintain a record of the Supplier's processing activities in accordance with the requirements of the Data Protection Legislation;

22.2.13. assist the Participating Authority, at no cost to the Participating Authority, in ensuring compliance with the obligations set out in Articles 32 to 36 (inclusive) of the General Data Protection Regulation (or any equivalent legislation in the UK or any subsequent legislation) taking into account the nature of the data processing undertaken by the Supplier and the information available to the Service Supplier, including (without limitation):

22.2.13.1. providing information and assistance upon request to enable the Participating Authority to notify Data Security Breaches to the Supervisory Authority and/or to affected individuals and/or to any other regulators to whom the Participating Authority is required to notify any Data Security Breaches; and

22.2.13.2. providing input into and carrying out Data Protection Impact Assessments in relation to the Supplier's data processing activities;

22.2.14. ensure that it has in place appropriate technical and organisational measures to ensure that processing of Personal Data carried out by the Supplier in connection with the Service Agreement meets the requirements of the Data Protection Legislation and ensures protection of the rights of individuals under the Data Protection Legislation;

22.2.15. notify the Participating Authority immediately and in any event within twenty four (24) hours in writing if:

22.2.15.1. the Supplier or any Sub-Contractor engaged by or on behalf of the Supplier suffers a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data; or

22.2.15.2. the Supplier or any Sub-Contractor engaged by or on behalf of the Supplier receives any Data Security Breach notification, complaint, notice or communication which relates directly or indirectly to the processing of the

Personal Data or to either Party's compliance with the Data Protection Legislation,

and in each case the Supplier shall provide full co-operation, information and assistance to the Participating Authority in relation to any such Data Security Breach, complaint, notice or communication at no cost to the Participating Authority;

22.2.16. upon termination of the Service Agreement, at the discretion of and at no cost to the Participating Authority, delete securely or return all Personal Data to the Participating Authority and delete all existing copies of the Personal Data unless and to the extent that the Supplier is required to retain copies of the Personal Data in accordance with applicable Laws in which case the Supplier shall notify the Participating Authority in writing of the applicable Laws which require the Personal Data to be retained. In the event the Personal Data is deleted or destroyed by the Supplier, the Supplier shall provide the Participating Authority with a certificate of destruction evidencing that the Personal Data has been destroyed or deleted.

22.2.17. make available to the Participating Authority at no cost to the Participating Authority all information necessary to demonstrate compliance with the obligations set out in this clause 22 and, upon request, allow the Participating Authority, the Supervisory Authority and its Representatives access to the Supplier's Premises, records and Personnel for the purposes of assessing the Supplier's compliance with its obligations under this clause 22; and

22.2.18. indemnify the Participating Authority from and against all costs, expenses (including legal and other professional fees and expenses), losses, damages and other liabilities or whatever nature (whether contractual, tortious or otherwise) suffered or incurred by the Participating Authority and arising out of or in connection with any breach by the Supplier or any Sub-Contractors of this clause 22, including (for the avoidance of doubt) any fines imposed by the Supervisory Authority on the Participating Authority in relation to a Data Security Breach, where such breach is caused wholly or in part by the Supplier.

22.3. The provisions of this clause 22 shall apply during the continuance of the Service Agreement and indefinitely after its expiry or termination.

23. INTELLECTUAL PROPERTY RIGHTS

23.1. Save as expressly granted under the Service Agreement, neither the Participating Authority nor the Supplier shall acquire any right title or interest in any Intellectual Property Rights vested in or licensed to the other party prior to or independently of the performance by the relevant party of its obligations under the Service Agreement.

23.2. The Supplier agrees that the Intellectual Property Rights under its reasonable control in any and all documents, drawings, designs, databases, data or other material in any format created by the Supplier in the course of and for the purpose of providing the Services on behalf of the Participating Authority shall be assigned to the Participating Authority. The Supplier shall execute or cause to be executed all deeds, documents and acts required to vest such Intellectual Property Rights in the Participating Authority.

23.3. The Supplier shall indemnify (and keep indemnified) the Participating Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that such liabilities have resulted directly from the Participating Authority's failure properly to observe its obligations under this clause 22.

24. PUBLICITY

24.1. The Supplier shall not advertise or publicly announce that it is supplying Services to or undertaking work for the Participating Authority without the prior consent of the Participating Authority, such consent not to be unreasonably withheld. The Participating Authority shall be entitled to publicise material relating to the Service Agreement or the services in any media deemed appropriate by the Participating Authority.

24.2. The Supplier shall not do anything or cause anything to be done which may damage the reputation of the Participating Authority or bring the Participating Authority into disrepute.

7. SECTION 8 – PERSONNEL

25. PERSONNEL

25.1. General

25.1.1. The Supplier shall ensure that all individuals employed or engaged in connection with the Services are of suitable character and are appropriately qualified, trained and experienced in the area of work which they are to perform.

25.1.2. The Supplier shall ensure that there are at all times an adequate number of individuals employed or engaged to provide the Services in accordance with the Service Agreement.

25.2. Regulated Activities and Disclosure and Barring Checks

25.2.1. The Supplier shall not employ, engage or use the service of any person who:

25.2.1.1. is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out any Regulated Activity or who may otherwise present a risk to children or Vulnerable Adults or any other person, in the provision of any part of the Services involving a Regulated Activity or access to or unsupervised contact with children or Vulnerable Adults without the Participating Authority's prior and express written consent; or

25.2.1.2. discloses that he or she has a Relevant Conviction, or who is found by the Supplier to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service (or any successor body) procedures or otherwise), in the provision of any part of the Services involving access to or processing of financial data, or access to or processing of sensitive personal data without the Participating Authority's prior and express written consent.

25.2.2. The Supplier shall (and shall procure that the relevant Sub-Contractor shall):

25.2.2.1. ensure that all Staff who, in providing the Services, will be engaged in the provision of Regulated Activity are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (or any successor body) including a check against the adults' barred list or the children's barred list, as appropriate; and

25.2.2.2. monitor the level, frequency and validity of the checks required under this clause 25.2.2 for each member of Staff in accordance with the Council's DBS Checks for Contractors Policy.

25.2.3. The Supplier warrants that at all times for the purposes of the Service Agreement it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services:

25.2.3.1. has a Relevant Conviction; or

25.2.3.2. is barred from carrying out Regulated Activity.

25.2.4. The Supplier shall immediately notify the Participating Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 25.2 have been met.

25.2.5. The Supplier shall refer information about any person carrying out the Services to the Disclosure and Barring Service (or any successor body) where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to children or Vulnerable Adults.

25.3. Removal of Supplier Staff or Representatives

25.3.1. Subject to clause **Error! Reference source not found.**, the Participating Authority may require the Supplier, by notice in writing, which shall include his reasons for the same, to reprimand or remove from the provision of the Services any Representatives specified by such notice (including without limitation the Supplier's Manager). Where required the Supplier shall forthwith remove such Representatives from the provision of the Services and provide a replacement as appropriate to ensure that the Services are carried out in accordance with the Service Agreement. Any Representatives removed from work under the provisions of this clause 25.3 may not be employed subsequently in the provision of the Services without the written consent of the Participating Authority.

26. SAFEGUARDING

26.1. The Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of a Regulated Activity provided under the Service Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

26.2. The Supplier must have systems and procedures in place to safeguard Passengers from abuse and exploitation.

26.3. The Supplier shall co-operate with representatives of the Participating Authority in any investigation carried out in relation to the Participating Authority's statutory duties including in respect of safeguarding Vulnerable Adults and children.

- 26.4. The Supplier shall adhere to, hold copies of, and ensure that it and its Representatives are familiar with and follow, the current Sussex Safeguarding Adults Policy and Procedures for Safeguarding Adults produced by the Safeguarding Adults Boards of Brighton & Hove City Council, East Sussex County Council and West Sussex County Council updated June 2018, Edition 4 (and any future amended versions of this policy) and the Sussex Child Protection and Safeguarding Procedures (or such other safeguarding procedures as may have been notified by the Participating Authority as part of the Mini-Competition); a copy of these documents, or details on where these documents can be accessed, shall be held by managers in all local offices and the Supplier must ensure that all Staff are appropriately trained on, and are aware of and follow the policy and procedures, including their responsibility to report concerns to the Participating Authority's Adult Social Care and/or Children's' Services department.
- 26.5. The Supplier shall adopt Safeguarding policies and procedures and such policies and procedures shall comply with the local Multi Agency Policies and Procedures referred to in clause 26.4, as amended from time to time. Both Parties shall work together to ensure that such safeguarding policies and procedures are kept under regular review and updated during the Contract Period to the satisfaction of the Participating Authority. The Supplier shall provide evidence to the Participating Authority that it is addressing any safeguarding concerns by no later than five (5) Working Days following a written request of the Participating Authority.
- 26.6. The Supplier's measures to safeguard Passengers shall include, but shall not be limited to:
- 26.6.1. robust employment procedures including references and Disclosure and Barring Service checks;
 - 26.6.2. safeguarding procedures compatible with the policies and procedures detailed in clause 26.4, with a clear statement of rights and zero tolerance of abuse;
 - 26.6.3. a clear and well publicised whistle blowing policy and procedure and code of conduct for Staff;
 - 26.6.4. procedures that clearly state the response to any act of discrimination and harassment;
 - 26.6.5. protocol and systems for referral of Staff/ volunteers to the Disclosure and Barring Service and / or the police when there is evidence of misconduct that has harmed, or is likely to harm, any Passenger(s) or other customers of the Supplier;

26.6.6. safeguarding training that promotes awareness and how to respond and report concerns;

26.6.7. training for staff that supports good practice in all areas described under policies and procedures; and

26.6.8. clear and accessible information describing the service standards and how to complain.

27. EQUAL OPPORTUNITIES AND HUMAN RIGHTS

27.1. In the performance of the Services and in its dealings with Passengers, Participating Authority employees and members of the general public, the supplier shall, as if it were a public body, comply and shall ensure that its Representatives comply with:

27.1.1. the Human Rights Act 1998

27.1.2. all Laws relating to equal opportunities and shall have an equal opportunities policy; and

27.1.3. the Participating Authority's equal opportunities policies and procedures as may be adopted and amended from time to time and as notified to the Supplier.

27.2. The Supplier shall take all reasonable steps to ensure that all of its Representatives do not unlawfully discriminate and comply with the Supplier's obligations under this clause 27.

28. TUPE

28.1. The Participating Authority and the Supplier agree that the provisions of Schedule 10 (TUPE Provisions) of the Supplier Agreement shall apply to the Service Agreement.

8. SECTION 9 - DISPUTE RESOLUTION

29. REFERRAL TO OFFICERS AND SENIOR REPRESENTATIVES

29.1. If any dispute arises out of or in connection with the Service Agreement, the Parties shall promptly notify each other of the matter in dispute ("**Dispute**"), which shall in the first instance be referred to an Authorised Officer and the Supplier's Manager who shall

use all reasonable skill, care and diligence to ensure that they receive the views of all Parties and consider all solutions proposed with the objective of resolving the dispute and achieving an agreed solution.

29.2. Where the Authorised Officer and the Supplier's Manager do not achieve within fourteen (14) days of notification of a Dispute a solution acceptable to all Parties involved, and provided no right of termination has been exercised, then senior representatives of both Parties shall meet promptly, and in any event within twenty one (21) days of notification of the Dispute, in good faith to discuss and seek to resolve the Dispute.

29.3. Subject to clause 5.6 (Disputed Sums), the provision of the Services and the payment of the Charges shall not be affected or suspended in the event of and during any Dispute.

30. MEDIATION

30.1. In the event that the Dispute cannot be resolved by negotiation or conciliation under clauses 29.1 and 29.2 within two (2) months or such other period as may be determined by the Participating Authority at its absolute discretion both parties shall attempt to settle it by mediation.

30.2. The procedure for mediation and consequential provisions relating to mediation shall be as set out in clause 37 (Dispute Resolution) of the Supplier Agreement, save that references to "the Council" shall be read as references to the Participating Authority.

30.3. If the Parties fail to resolve the Dispute by mediation within two (2) months of a Mediator being appointed, or such longer period as may be agreed between the Parties, then any dispute or difference between them may be referred to the courts pursuant to clause 34.21 (Law of Contract and Jurisdiction).

9. SECTION 10 – TERMINATION

31. EXPIRY & TERMINATION

31.1. Expiry

31.1.1. The Service Agreement shall terminate automatically on the Expiry Date unless it shall have been terminated earlier in accordance with the provisions of the Service Agreement. For the avoidance of doubt the Supplier shall not be entitled to any compensation on expiry.

31.2. Termination on Notice

31.2.1. The Participating Authority may terminate the Service Agreement (in whole or part) by giving notice in writing to the Supplier. The amount of notice required by the Participating Authority shall be as follows:

31.2.1.1. For 1-9 taxis and MPVS: not less than seven (7) days notice;

31.2.1.2. For 10 – 16 minibus: thirty (30) days notice;

31.2.1.3. For 16+ coaches: sixty (60) days notice.

For the avoidance of doubt, no compensation shall be payable to the Supplier where the Service Agreement is terminated in whole or part under this clause 31.2.1.

31.2.2. In the event of unplanned and / or unforeseen changes to a Requirement that is outside of the Participating Authority's control (such as the only Passenger in the Route Schedule leaves suddenly), the notice requirements set out in clause 31.2.1.2 shall be reduced to seven (7) days.

31.2.3. The Participating Authority may terminate the Service Agreement, in whole or in part, upon giving the Supplier such notice as it considers reasonable in writing to the Supplier if it reasonably believes that any of the circumstances set out in regulation 73(1) of the PC Regulations apply, such notice to expire at any time. For the avoidance of doubt the Supplier shall not be entitled to any compensation on such termination.

31.3. Termination for Supplier Default

31.3.1. The Participating Authority may terminate the Service Agreement with immediate effect by notice in writing to the Supplier in the following circumstances:

31.3.1.1. an Insolvency Event arises;

31.3.1.2. commits a breach of any of its obligations under the Service Agreement which: (1) materially and adversely affects the performance of the Services; (2) may or will cause a health and safety risk or (3) results in damage to the reputation of the Participating Authority, provided that if such breach is in the reasonable opinion of the Participating Authority capable of remedy,

the Participating Authority may only terminate the Service Agreement under this clause 31.3.1.2 if the Supplier has failed to remedy such breach within thirty (30) days (or such shorter timescale as the Participating Authority specifies and is reasonable in the circumstances) after receipt of written notice from the Participating Authority to remedy the breach;

31.3.1.3. commits a Prohibited Act;

31.3.1.4. fails to provide the Services during a continuous period of seven (7) days or for a total period of ten (10) days in any three (3) Month period during the Contract Period other than as a result of a Force Majeure Event;

31.3.1.5. fails to obtain or loses any Necessary Consent or has any Necessary Consent varied or restricted the effect of which might reasonably be considered by the Participating Authority to have a material adverse affect in the performance of the Services.

31.3.1.6. makes an assignment or novation of the Service Agreement in breach of clause 34.11 (Assignment or Novation) or sub contracts the Services or any part of the Services in breach of clause 34.12 (Sub-Contracting);

31.3.1.7. breaches any of its obligations under clause 16 (Insurance);

31.3.1.8. undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 to which the Participating Authority reasonably objects.

31.3.1.9. the Supplier is in material breach of any of its representations and warranties in clause 18 (Supplier Warranties) (notwithstanding that such warranties and representations are expressed to be warranties).

31.3.1.10. the Supplier commits a breach of clause 34.4 (Anti-Slavery and Human Trafficking); or

31.3.1.11. the Supplier Agreement is terminated for any reason.

31.4. Termination on Force Majeure

31.4.1. If a Force Majeure Event prevents either party from performing its obligations under the Service Agreement in any material respect for a period of three

(3) consecutive months then, provided the notification requirements set out in clause 34.17 (Force Majeure) have been met, without prejudice to any accrued rights or remedies under the Service Agreement, either party may terminate the Service Agreement by notice in writing to the other party having immediate effect.

32. EFFECT OF TERMINATION OR EXPIRY & DUTY TO CO-OPERATE

32.1. Where the Service Agreement is terminated the Participating Authority shall not be required to make further payments under the Service Agreement until the costs, loss and/or damage due under the Service Agreement have been calculated and when such payment become due the Participating Authority shall be entitled to withhold from such payments the costs, loss and/or damages due to it under the Service Agreement.

32.2. Notwithstanding that a party may have a right to terminate the Service Agreement, that party may elect to continue to treat the Service Agreement as being in full force and effect and to enforce its rights under the Service Agreement.

32.3. The Supplier shall co-operate fully with the transfer of responsibility for the Services (or any of the Services) to any Replacement Supplier undertaking such service, the same or similar to the Services.

10. SECTION 11 – GENERAL

33. NOTICES

33.1. Any notice required by the Service Agreement to be given or made by either Party to the other shall be in writing and shall be issued via the Technology or by email. A notice issued pursuant to this clause 33.1 shall be deemed as served at the time of transmission.

33.2. For the avoidance of doubt, where proceedings to which the Civil Procedure Rules apply have been issued, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings and service via the Technology or by email will not be accepted in relation to such matters.

33.3. For documents to be served pursuant to clause 34.2, the address of each Party shall be:

33.3.1. For the Participating Authority: As set out at the head of the Award Letter, unless otherwise notified to the Supplier.

33.3.2. For the Supplier: as set out in the Award Letter.

34. GENERAL

34.1. If the Supplier or anyone acting on its behalf or to its knowledge (whether such person is a Supplier Representative or a Council Representative) commits any Prohibited Act in relation to the Service Agreement or any other agreement with the Participating Authority or in relation to any matter or activity pertaining to any public body in the United Kingdom, the Supplier shall promptly inform the Participating Authority of the occurrence of such Prohibited Act and render all such assistance to the Participating Authority as the Participating Authority may reasonably require in investigating such acts.

34.2. The Supplier agrees and confirms that the Participating Authority's Chief Executive, Assistant Chief Executive (Monitoring Officer), Head of Assurance and Chief Finance Officer are authorised as persons to whom the Supplier's Representatives may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of its Representatives making a protected disclosure (as defined by that Act) shall not for that reason be subjected to any detriment or disadvantage. The Supplier further declares that any provision in an agreement purporting to preclude any Representative from making a protected disclosure is void.

34.3. The Supplier acknowledges that the Participating Authority has a duty under the Counter Terrorism and Security Act 2015 ("CTSA 2015") to have due regard to the requirement to prevent people from being drawn into terrorism. The Supplier shall, and shall procure that its Representatives shall, give all reasonable assistance and support to the Participating Authority in meeting its duty as a specified authority pursuant to the CTSA 2015 (and all regulations made thereunder) and the Supplier shall have regard to the statutory guidance issued under section 29 of the CTSA 2015.

34.4. In performing its obligations under the Service Agreement, the Supplier shall:

34.4.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015;

34.4.2. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

34.4.3. include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this Clause 37.4; and

34.4.4. notify the Participating Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Service Agreement.

34.5. Subject to the TUPE Provisions, it is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that the Service Agreement is not intended to, and does not, give to any person who is not a party to the Service Agreement any rights to enforce any provisions contained in the Service Agreement except for any person to whom the benefit of the Service Agreement is assigned in accordance with clause 34.11 (Assignment).

34.6. The provisions of the Service Agreement are binding on any successors in title of the Parties.

34.7. All rights and duties which the Participating Authority has as a local authority or which the Participating Authority's officers have as local authority officers including as a local planning authority and as a waste disposal authority are reserved to the Participating Authority and the Participating Authority's officers.

34.8. The Supplier is required to have in place adequate and appropriate measures to ensure, where reasonably practicable, that it is able to continue providing the Services within a predetermined time in the event of a disruption (including in the event of an emergency (as defined in part 1 of the Civil Contingencies Act 2004)) which partially or completely interrupts the Supplier's business critical functions and which would otherwise impact the Services.

34.9. The Supplier and its Sub-Contractors shall not be or be deemed to be an agent of the Participating Authority and neither the Supplier nor its Sub-Contractors shall hold themselves out as having authority or power to bind the Participating Authority in any way other than as expressly provided by the Service Agreement.

34.10. Nothing in the Service Agreement shall be construed as creating a partnership within the meaning of the Partnership Act 1890, or as a contract of employment between the Supplier and the Participating Authority.

- 34.11. The Supplier shall not assign or otherwise dispose of any of its rights or benefits under the Service Agreement other than with the prior written consent of the Participating Authority, which consent the Participating Authority may in its absolute discretion either refuse or grant either fully or subject to specified limitations. For the avoidance of doubt, such consent shall not be granted where the proposed novation or assignment does not comply with the requirements of Regulation 72(1)(d) of the Public Contracts Regulations 2015.
- 34.12. The Supplier shall not be entitled to sub-contract, sub licence or otherwise dispose of the provision of the Services or any part thereof without the prior written consent of the Participating Authority.
- 34.13. In the event that the Supplier enters into any Sub-contract in connection with the Service Agreement it shall:
- 34.13.1. remain responsible to the Participating Authority for the performance of its obligations under the Service Agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts and/or omissions of its SubContractors;
 - 34.13.2. impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to the Service Agreement and shall procure that the SubContractor complies with such terms; and
 - 34.13.3. provide a copy, at no charge to the Participating Authority, of any such sub-contract on receipt of a request for such by the Commissioner;
- 34.14. In addition, the Supplier shall include in any Sub-Contract entered into pursuant to clause 34.13 :
- 34.14.1. provisions having the same effect as clauses 5.5 and 5.6; and
 - 34.14.2. a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 5.5 and 5.6.
- 34.15. No term or provision of the Service Agreement shall be considered as waived by any Party unless a waiver is given in writing by that Party and specifically states that it is a waiver of such term or provision. No waiver shall be a waiver of a past or future Default or breach, nor shall it amend, delete or add to the terms, clauses or provisions

of the Service Agreement unless (and then only to the extent) that it is expressly stated in that waiver.

- 34.16. Each Party shall use all reasonable endeavours to ensure that any formal public statements made by a Party as to each other's activities or the performance of the Service Agreement shall only be made after consultation with the other Party, except as required otherwise by law. Neither Party shall make use of the other Party's logo without their express permission.
- 34.17. A Party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to any failure or delay in performing its obligations under the Service Agreement shall forthwith notify the other and shall inform the other of the period for which it is estimated that such failure or delay will continue. The affected Party shall take all reasonable steps to mitigate the effect of the Force Majeure Event.
- 34.18. Each of the Parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of the Service Agreement.
- 34.19. If any provision of the Service Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.
- 34.20. Termination of the Service Agreement for any reason shall not affect this clause 34.20 and the following clauses or sections, which shall continue in force after such termination: clause 1 (Definitions and Interpretation), clause 5.6.2 (Disputed Sums), clause 5.8 (Set-off), clause 10 (Supplier's Records), section 6 (Warranties and Acknowledgements), clause 19 (Confidentiality and Transparency), clause 20 (Freedom of Information), clause 19 (Data Protection), clause 28 (TUPE), section 10 (Dispute Resolution), section 11 (Termination), clause 33 (Notices), clause 34.11 (Assignment), clauses 34.12 and 34.13 (Sub-Contracting) and clause 34.21 (Governing Law and Jurisdiction).
- 34.21. The Service Agreement shall be governed by the laws of England and Wales and subject to Section 9 (Dispute Resolution), the parties submit to the exclusive jurisdiction of the courts of England.

SCHEDULE 6 – DPS VARIATION PROCEDURE

1. INTRODUCTION

- 1.1 This Schedule 6 (DPS Variation Procedure) details the scope of the variations permitted and the process to be followed where the Council proposes a variation to the Supplier Agreement and / or the DPS.
- 1.2 The Council may propose a variation to the Supplier Agreement and / or the DPS under this Schedule 6 (DPS Variation Procedure) only where the variation does not amount to a material change to the Supplier Agreement or the DPS Services.

2. PROCEDURE FOR PROPOSING A VARIATION

- 2.1 Except where paragraph 0 (Variations that are not permitted) applies, the Council may propose a variation using the procedure contained in this paragraph 2 (Procedure for Proposing a Variation).
- 2.2 In order to propose a variation, the Council shall serve each DPS Provider with written notice of the proposal to vary the Supplier Agreement and / or the DPS ("**Notice of Variation**").
- 2.3 The Notice of Variation shall contain details of the proposed variation providing sufficient information to allow each DPS Provider to assess the impact of the variation.
- 2.4 On receipt of the Notice of Variation, each DPS Provider has twenty one (21) days to respond in writing with any objections to the variation. This right of objection shall not apply to any variation set out in paragraph 0 (Permitted Variations), which the Council shall be entitled to introduce upon notice to all DPS Suppliers.
- 2.5 Where the Council does not receive any written objections to the variation within the timescales detailed in paragraph 0, or where the variation is permitted under paragraph 0, the Council may then serve each DPS Provider with a written agreement detailing the variation to be signed and returned by each DPS Provider within ten (10) Working Days of receipt.
- 2.6 On receipt of a signed agreement from each DPS Provider, the Council shall notify all DPS Providers in writing of the commencement date of the variation.

2.7 For the avoidance of doubt, any variation made pursuant to this paragraph 0 (Procedure for Proposing a Variation) need not be executed as a deed provided it is executed by a duly authorised representative of each of the Parties.

3. OBJECTIONS TO A VARIATION

3.1 In the event that the Council receives one or more written objections to a variation, the Council may:

3.1.1 withdraw the proposed variation; or

3.1.2 propose an amendment to the variation.

4. VARIATIONS THAT ARE NOT PERMITTED

4.1 In addition to the provisions contained in paragraph 0, the Council may not propose any variation that:

4.1.1 may prevent one or more of the DPS Providers from performing its obligations under the Supplier Agreement; or

4.1.2 is in contravention of any Law.

5. PERMITTED VARIATIONS

5.1 The Council shall be entitled to introduce additional types of Operational Change.

5.2 The Council shall be entitled to update the Transport Performance Points Scheme from time to time in accordance with clause 21 (Performance Management) of the Supplier Agreement Conditions.

5.3 The Council shall be entitled to add, remove or amend the Categories and / or Service Categories as required from time to time to reflect market conditions and business needs of the Council.

5.4 The Council shall be entitled to make minor changes to the Specification to reflect legislative and / or regulatory changes introduced from time to time, including but not limited to any requirements related to CCTV in taxis introduced during the DPS Term.

SCHEDULE 7: PARTICIPATING AUTHORITIES

In addition to the Council the following organisations shall be Participating Authorities for the purposes of the Supplier Agreement:

- **BRIGHTON AND HOVE CITY COUNCIL**
- **SURREY COUNTY COUNCIL**
- **WEST SUSSEX COUNTY COUNCIL**



SCHEDULE 8 – ACCESS AGREEMENT

Dated: _____ 20__

(1) EAST SUSSEX COUNTY COUNCIL

and

(2) [OTHER CONTRACTING AUTHORITY]

**Access Agreement relating to the East
Sussex County Council Dynamic Purchasing System**
for the provision of
Client Transport Services

- a. This Agreement is supplemental to the Supplier Agreement. Words and expressions defined in the Supplier Agreement shall bear the same meaning in this Agreement save where specifically provided otherwise.

(4) OPERATIVE PROVISIONS

- a. The Other Contracting Authority shall use the DPS and any Service Agreements in accordance with the terms set out therein.
- b. The Council shall not in any circumstances be liable to a Supplier for payment or otherwise in respect of any Service Agreement entered into by the Other Contracting Authority under the DPS. The Other Contracting Authority agrees to fully indemnify the Council against all claims, actions, direct costs, expenses and damages brought against the Council or suffered by the Council arising out of:
- i. this Agreement;
 - ii. any Service Agreement entered into by the Other Contracting Authority pursuant to the DPS; or
 - iii. the Other Contracting Authority's administration of the Transport Performance Points Scheme,

which are due to the act or omission of the Other Contracting Authority and except where such actions, claims, costs, expenses and damages are brought against or suffered due to the negligence of the Council.

- c. The Council, to the extent permitted by law, excludes any liability whatsoever for any actions, claims direct costs, expenses and damages brought against the Other Contracting Authority or suffered by the Other Contracting Authority arising out of the Other Contracting Authority's use of the DPS or a Service Agreement.
- d. Whilst the Council has taken steps to ensure that the DPS is fit for purpose, the Other Contracting Authority acknowledges that it has read or will read the Supplier Agreement in full and has taken or will take any professional advice as it considers necessary before placing any Service Agreements under the DPS.
- e. The Council agrees, subject to the terms set out in this Agreement, to grant to the Other Contracting Authority the right to enter into Service Agreements under the DPS subject to payment of the set up fee as set out in clause 3.2 below.

- f. The Council reserves the right to terminate this Agreement where the Other Contracting Authority fails to comply with the terms of this Agreement. For the avoidance of any doubt, any termination of this Agreement shall have no effect on any Service Agreement or other contractual relations that may exist between the Supplier and the Other Contracting Authority at the time of such termination.
- g. The Other Contracting Authority acknowledges that it shall be solely responsible for the administration of the Transport Performance Points Scheme in respect of the Distribution Group established for the Other Contracting Authority.
- h. The Council has procured for the Other Contracting Authority a right to enforce the following clauses of the Supplier Agreement against the Supplier directly, in accordance with the Contracts (Rights of Third Parties) Act 1999: clause 3 (Scope of Supplier Agreement); clause 5 (Service Agreement Order Procedure); clause 14 (Social Value); clause 20 (Data Processing Obligations); clause 21 (Performance Management); and clause 22 (Suspension of Supplier's Right to Participate in Mini-Competitions).

(5) THE TECHNOLOGY, IMPLEMENTATION COSTS AND ANNUAL LICENCE FEES

- a. The Council has entered into a contract with the Technology Provider for the provision of the Technology and supporting professional services ("**Technology Contract**"). The Technology Contract permits the Council to make the Technology available to the Other Contracting Authority to facilitate their use of the DPS.
- b. Under the Technology Contract, the Council has paid a fee for implementation of the Technology to meet the Council's requirements ("**Implementation Fee**"). The amount of the Implementation Fee shall increase to reflect the work required by the Technology Provider to extend the Technology to the Other Contracting Authority ("**Increased Implementation Fee**"). The amount of the Increased Implementation Fee shall be determined in accordance with clause 1.1.32 of the Technology Contact.
- c. The Council also pays an annual fee for licences to use the Technology ("**Annual Licence Fee**"). The Annual Licence Fee payable shall be increased to reflect additional licences granted to the Other Contracting Authority ("**Increased Annual Licence Fee**").
- d. On or before the date of this Agreement, the Other Contracting Authority shall pay to the Council its share of the Increased Implementation Fee. For the avoidance of doubt, if additional Participating Authorities subsequently join the DPS, this may impact on the parties share of the Increased Implementation Fee. The Council shall be responsible for returning to the Other Contracting Authority any overpayment of the Increased Implementation Fee in those circumstances.



- e. The Council shall invoice the Other Contracting Authority on or before each anniversary of the DPS Commencement Date for the Other Contracting Authority’s share of the Increased Annual Licence Fee.

(6) GOVERNING LAW AND JURISDICTION

- a. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and interpreted in accordance with the law of England and Wales.
- b. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Agreement or its subject matter or formation.

IN WITNESS whereof the parties hereto have executed this Agreement as a deed on the day and the year before written.

EXECUTED as a DEED by affixing hereto)
 the COMMON SEAL of **EAST SUSSEX**)
COUNTY COUNCIL in the presence of:-)

.....
 Authorised Signatory

EXECUTED as a DEED by affixing hereto) the
 COMMON SEAL of [**OTHER**)
CONTRACTING AUTHORITY] in the)
 presence of:-)

.....
 Authorised Signatory

SCHEDULE 9 – DATA

1.1 Personal Data

Please:

- put a tick against those categories of personal data which apply to the data that may processed by the Supplier under a Service Agreement; and
- add further categories of personal data under the column 'Other', if applicable

Type of personal data being processed under this Contract	Please tick where applicable
Name	X
Contact details	X
Bank details	X
Identification number	X
Location data	X
Online identifier (email / IP address)	X
Other (Please insert details)	N/A

1.2 Special Category Data

Please tick any of the boxes which apply to any of the personal data that may be processed by the Supplier under a Service Agreement:

Type of Special Category Data	Please tick if applicable:
Race (data which identifies the race of the data subject, including the data subject's image)	X
Ethnic origin (data which identifies the ethnic background of the individual, including the data subject's image)	X
Political opinions (data which identifies the political opinion of the data subject)	N/A
Religion (data which lists the religious beliefs of the data subject)	X
Trade Union Membership (data which lists the TU membership of the data subject)	N/A
Genetics (data relating to the genetics of the data subject)	X
Biometrics (Biometric data, where used for ID purposes)	N/A
Health (records relating to a data subject's physical or mental health)	X
Sexuality (data relating to whether the data subject is gay or straight)	N/A

Criminal Offence Data	Please tick if applicable:
Data relating to allegations against the data subject	X
Data relating to proceedings against/involving the data subject	X

Data relating to convictions against the data subject	X
--------------------------------------------------------------	---

1.3 Data Subjects

Categories of Data Subjects	Please tick if applicable:
Council service-users (i.e. Passengers)	X
Council service-users' (Passengers) next of kin	X
Council employees	X
Council employees' next of kin	N/A
Other (Please insert details)	N/A

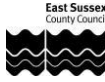
1.4 What data processing takes place?

Please tick all boxes relevant to the Supplier's processing of Participating Authority Data:

Processing Operations	Please tick if applicable:
Using data provided by the Participating Authority	X
Collecting new data from Data Subjects	X
Transforming data by adding new data collected from service users (Passengers) to data provided by the Participating Authority	N/A
Sharing data with anyone other than the Participating Authority	N/A
Erasure or destruction of personal data	X
Other	N/A

1.5 Where will the Supplier's processing of the Participating Authority Data take place? ²

² The EEA comprises: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the UK, Norway, Lichtenstein and Iceland.



Location of Processing Operations	Please tick if applicable:
UK	X
European Economic Area (including UK) and/or those countries which have been approved by the European Commission from time to time as having	X

adequate protections for individuals' rights and freedoms for their personal data	
Outside EEA (European Economic Area)	

1.6 The Supplier's Sub-Contractors: Please complete table:

Identity of Supplier's Sub-contractors, if applicable	<i>This section will be completed using the sub-contractor information provided at the point of submission of the invitation to tender documents.</i>
Purposes for the processing of the data:	<i>This section will be completed using the sub-contractor information provided at the point of submission of the invitation to tender documents.</i>
Duration of the processing of Participating Authority Data by SubContractor:	<i>This section will be completed using the sub-contractor information provided at the point of submission of the invitation to tender documents.</i>

Those countries and territories given a finding of adequacy as of July 2018 are as follows: Andorra, Argentina, Guernsey, Isle of Man, Israel, Jersey, New Zealand, Switzerland and Uruguay.

SCHEDULE 10 – TUPE PROVISIONS

1. INTERPRETATION

- 1.1 Words and expressions defined in the Supplier Agreement and the Service Agreement Terms shall bear the same meaning in this Schedule save where specifically provided otherwise. Where a term has a different meaning under the Service Agreement Terms than under the Supplier Agreement, the meaning in the Service Agreement Terms shall apply for the purposes of each Service Agreement.
- 1.2 The rules of interpretation set out in clauses 1.2 to 1.5 of the Service Agreement Terms apply to this Schedule.
- 1.3 The definitions and rules of interpretation in this paragraph apply in the Service Agreement:

“Acquired Rights Directive”	means Directive 77/187/EEC as amended and updated.
“Effective Date”	means the dates on which the Services (or any part of the Services), transfer from any Third Party Employer to the Supplier or Sub-Contractor and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Supplier or Sub-Contractor.

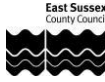
<p>“Employee Liability Information”</p>	<p>means the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:</p> <ul style="list-style-type: none"> (a) the identity and age of the employee; (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applies, within the previous two (2) years; (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two (2) years or where the transferor has reasonable grounds to believe that such action may be brought against the Supplier arising out of the employee's employment with the transferor; and
	<ul style="list-style-type: none"> (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.
<p>“Employment Liabilities”</p>	<p>means all claims, including without limitation claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses;</p>

<p>“Relevant Employees”</p>	<p>means those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Participating Authority or a Replacement Supplier by virtue of the application of TUPE;</p>
<p>“Relevant Transfer”</p>	<p>means a relevant transfer of the Services for the purposes of TUPE, including upon or as a result of expiry or termination of the Service Agreement;</p>
<p>“Supplier’s Final Staff List”</p>	<p>means the list of all the Supplier's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date;</p>
<p>“Supplier’s Provisional Staff List”</p>	<p>means the list prepared and updated by the Supplier of all the Supplier's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list, and in the format requested by the Participating Authority;</p>
<p>“Service Transfer Date”</p>	<p>means the date on which the Services to be provided to the Client (or any part of them), transfer from the Supplier or Sub-contractor to the Participating Authority or any Replacement Supplier (as the case may be);</p>
<p>“Staffing Information”</p>	<p>means in relation to all persons detailed on the Supplier's Provisional Staff List, in an anonymised format, such information as the Participating Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services;</p>
<p>“Subsequent Transfer”</p>	<p>means, following the commencement of the Service Agreement, circumstances whereby the identity of the party providing the Services (or any part of the Services) to the Client changes (whether as a result of termination of the Service Agreement, or part or otherwise) resulting in a transfer of the provision of the Services to the Client in whole or in part from the Supplier to the Participating Authority or Replacement Supplier (as the case may be);</p>
<p>“Third Party Employee”</p>	<p>means employees of Third Party Employers whose contracts of employment transfer with effect from the Effective Date to the Supplier or Sub-contractor by virtue of the application of TUPE;</p>

“Third Party Employer”	means a service provider engaged by the Participating Authority to provide some or all of the Services to the Participating Authority before the Effective Date and whose employees will transfer to the Supplier on the Effective Date;
“TUPE”	means the Transfer or Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended.

2. EMPLOYMENT EXIT PROVISIONS

- 2.1 Where a Subsequent Transfer constitutes a Relevant Transfer then the Participating Authority or Replacement Supplier will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 2.2 The Supplier shall and shall procure that any Sub-Contractor shall:
- 2.2.1 on receiving notice of termination of the Service Agreement (on whatever grounds and in whatever circumstances) or otherwise; and/or
- 2.2.2 at such times as required by TUPE,
- provide promptly (and in any event within fourteen (14) days of request) and at no cost to the Participating Authority, in respect of any person engaged or employed by the Supplier or any SubContractor in the provision of the Services, the Supplier's Provisional Staff List and the Staffing Information together with any additional information required by the Participating Authority (notwithstanding this may be beyond the information required to be provided under TUPE), including information as to the application of TUPE to the employees. The Supplier shall notify the Participating Authority, within fourteen (14) days of the event (and in any event before the Service Transfer Date), of any material changes to the information supplied, discovery of further relevant information or on receipt of a request for or clarification or amplification by the Participating Authority.
- 2.3 At least twenty eight (28) days prior to the Service Transfer Date, the Supplier shall and shall procure that any Sub-Contractor shall prepare and provide to the Participating Authority and/or, at the direction of the Participating Authority, to the Replacement Supplier, the Supplier's Final Staff List, which shall be complete and accurate in all material respects. The Supplier's Final Staff List shall identify which of the Supplier's and Sub-Contractor's personnel named are Relevant Employees.
- 2.4 The Participating Authority shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any DPS Provider or other prospective Replacement Supplier for any services that are substantially the same type of services as (or any part of) the Services.
- 2.5 The Supplier warrants to the Participating Authority and the Replacement Supplier that the Supplier's Provisional Staff List, the Supplier's Final Staff List, the Employee Liability Information and the Staffing Information (the “**TUPE Information**”) will be true and accurate in all material respects and that no



persons are employed or engaged in the provision of the Services to the Client other than those included on the Supplier's Final Staff List.

- 2.6 The Supplier shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 2.7 The Participating Authority regards compliance with this paragraph 2 as fundamental to the Service Agreement. In particular, failure to comply with paragraphs 0 and 0 in respect of the provision of accurate information about the Relevant Employees shall entitle the Participating Authority to suspend payment of the Charges until such information is provided. The maximum sum that may be retained under this paragraph 0 shall not exceed to an amount equivalent to the Charges that would be payable in the Payment Period following the Supplier's failure to comply with paragraphs 0 or 0 as the case may be.
- 2.8 Any change to the TUPE Information which would increase the total employment costs of the Staff in the three (3) months prior to termination of the Service Agreement shall not (so far as reasonably practicable) take place without the Participating Authority's prior written consent, unless such changes are required by law. The Supplier shall and shall procure that any Sub-Contractor shall supply to the Participating Authority full particulars of such proposed changes and the Participating Authority shall be afforded reasonable time to consider them.
- 2.9 In the six (6) months prior to expiry or termination of the Service Agreement or from the date of service of a termination notice of the Service Agreement, the Supplier shall not and shall procure that any SubContractor shall not materially increase or decrease the total number of staff listed on the Supplier's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees or transfer or remove from the performance of the services any supervisory or managerial personnel without the Participating Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 2.10 The Supplier shall indemnify and keep indemnified in full the Participating Authority and each and every Replacement Supplier against all Employment Liabilities arising from or connected with:
- 2.10.1 any person who is or has been employed or engaged by the Supplier or any Sub-Contractor in connection with the provision of the Services; or
- 2.10.2 any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Supplier and/or any Sub-Contractor),
- 2.10.3 any failure by the Supplier and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 2.10.4 any failure by the Supplier or any Sub-Contractor to supply or delay in supplying the TUPE Information and any other information required under this Schedule 10 (or inaccuracy or incompleteness of the same) or to inform and consult in accordance with TUPE;



2.10.5 any failure or omission of any legal or statutory obligation on the Supplier;

2.10.6 any claim by any Relevant Employee arising out of any personal injury or injury at work of whatever nature prior to the termination of the Service Agreement; and

2.10.7 any other obligations of or arising under the Service Agreement,

whether any such claim arises on or after the Service Transfer Date if it has its origins before such date.

2.11 The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

2.12 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraphs 2.2 to 2.11, to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier or the Participating Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

2.13 Despite paragraph 2.12, it is expressly agreed that the parties may by agreement rescind or vary any terms of the Service Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

3. TRANSFER OF EMPLOYEES TO THE SUPPLIER FOLLOWING A RELEVANT TRANSFER

3.1 The Participating Authority and the Supplier agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer. Where a Relevant Transfer occurs, the contracts of employment (other than in relation to any benefits in respect of old age, invalidity or survivors under any occupational pension scheme) of Third Party Employees (if any) shall transfer to the Supplier or Sub-contractor. The Supplier shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE.

3.2 The Participating Authority shall procure that the Third Party Employers shall provide the Employee Liability Information for the Third Party Employees to the Supplier, and, where necessary, update such information, as required by TUPE. The Participating Authority shall give no warranty as to the accuracy or completeness of the Employee Liability Information supplied by any Third Party Employer(s).

3.3 The Supplier shall be liable for and indemnify and keep indemnified the Participating Authority and any Third Party Employer against any Employment Liabilities arising from or as a consequence of:

3.3.1 any proposed changes to terms and conditions of employment the Supplier or Sub-Contractor may consider making on or after the Effective Date;



3.3.2 any of the employees informing the Participating Authority or any Third Party Employer they object to being employed by the Supplier or Sub-Contractor pursuant to Regulation 4 (7) of TUPE;

3.3.3 any change in identity of the Third Party Employees' employer as a result of the operation of TUPE;
or

3.3.4 as a result of any proposed measures the Supplier or Sub-Contractor may consider taking on or after the Effective Date.

3.4 The Supplier shall, and shall procure that any relevant Sub-Contractor shall, be liable for and indemnify and keep indemnified the Participating Authority and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Third Party Employees, and any other person who is or will be employed or engaged by the Supplier or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, termination costs, and otherwise from and including the Effective Date.

3.5 The Supplier shall immediately on request by the Participating Authority and/or the Third Party Employer provide details of any measures that the Supplier or any Sub-Contractor of the Supplier envisages it will take in relation to any Third Party Employees, including any proposed changes to terms and conditions of employment. If there are no such measures, the Supplier will give confirmation of that fact, and shall indemnify and keep indemnified the Participating Authority and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.

3.6 The Supplier shall and shall procure that each and every Sub-Contractor shall in accordance with Regulation 6 of TUPE recognise the trade unions representing the Third Party Employees.

3.7 The Supplier shall ensure that any Sub-Contract entered into pursuant to the Service Agreement contains equivalent provisions to those set out in this Schedule.