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**CORNWALL
COUNCIL**

Passenger Transport Services via a Dynamic Purchasing System

Supplier Agreement

November 2017

Cornwall Council Transport &
Infrastructure Service via SProc.Net

BACKGROUND

- (A) The Council has placed a contract notice PTU/DPS/17 (“the Contract Notice”) in the Official Journal of the European Union to re-establish a dynamic purchasing system (“DPS”) for the provision of passenger transport services. (B) In accordance with Regulation 20 of the Regulations, the DPS is open at any time to admit new Service Providers who successfully accredit and enrol to the DPS.
- (C) The Council has contracted with a third party, Adam (formerly Matrix SCM Limited (registered company 2227962 – “Adam”) to provide a web-based platform, namely SProc.Net, or such other technology as agreed between the Parties from time to time (the “Application”), to procure Services via the dynamic purchasing system (“DPS”) method of procurement as set out in the Public Contract Regulations 2006, as amended from time to time, and for such Services to be transacted as further set out in this Supplier Agreement.
- (D) The Service Provider acknowledges and accepts that as part of the initial enrolment into the Council’s DPS through the Application, the Service Provider shall be assessed by set accreditation and enrolment criteria. If successful and then entered into the Council’s DPS, the Supplier shall then need to compete in a further bidding exercise for each Requirement placed by the Council on the Application.
- (E) (F)

IT IS AGREED as follows:-

1. GENERAL

- 1.1 All terms defined within this Supplier Agreement shall have the same meanings as the defined terms within the Condition of Contract.
- 1.2 The following documents constitute the entire agreement between the Council and the Service Provider for the performance of the Services, and shall be read and construed as part of the whole agreement relating to the Services (“Contract”):-
- (i) Any Service Agreement;
 - (ii) The Conditions of Contract;
 - (iii) The Supplier Contract;
 - (iv)
 - (v) The DPS Entry Guide – PTU/DPS/17/G.
- 1.3 The Service Provider shall provide the Services in accordance with the provisions of the Contract and to the reasonable satisfaction of the Council for the duration of the Contract.

- 1.4 Signature of the Signature Document shall constitute the Service Provider's acceptance of the Contract.
- 1.5 For the avoidance of doubt, where there is any conflict in the documents listed in clause 1.2 above, then the documents shall take precedence in the order as listed above.

2. TERM OF THE CONTRACT

- 2.1 The Supplier Agreement shall take effect on the date of signature in the Signature Document and (unless otherwise terminated in accordance with the clause 10 or extended in accordance with clause 2.2) shall terminate twelve (12) months from the date of signature.
- 2.2 2.3 The Council may exercise its option to extend the Supplier Agreement for three (3) consecutive years up to a maximum duration of four (4) years.

3. SCOPE OF SUPPLIER AGREEMENT

- 3.1 This Supplier Agreement shall govern the relationship between the Council and the Service Provider in respect of the provision of the Services by the Service Provider to the Council.
- 3.2 The Council may at its absolute discretion and from time to time order Services from the Service Provider in accordance with the ordering procedures detailed in the Supplier Agreement.
- 3.3 The Service Provider acknowledges that there is no obligation for the Council to purchase any Services from the Service Provider.

4. AWARD PROCEDURES

4.1 Awards under the DPS

- 4.1 If the Council decides to source Services through the DPS then it may:-

- 4.1.1 **Bidding for Contracts**

- award its Requirements following necessary competition. All Service Providers enrolled on the DPS will be able to bid.

- 4.1.2 **Sealed Bids**

- award its Requirements following competition where the bids are sealed, or

- 4.1.3 **Direct Award**

- in the case of urgency, award its Requirements in accordance with the terms laid down in this Supplier Agreement without reopening competition, in accordance with Regulation 26 of the Public Contract Regulations 2015.

4.2 Bidding for Contracts

- 4.2.1 When ordering Services under the Supplier Agreement the Council shall:-

- (a) (b) contact all Service Providers notifying them of the requirement;
 - (c) if necessary, supplement and refine the Requirement to the extent permitted by and in accordance with the requirements of the Public Contract Regulations 2015;
 - (d)
 - (e) award the Requirement to the Services Provider who submitted the lowest or most suitable Offer during the Open for Offers Period.

- 4.2.2 The Service Provider agrees that all Offers submitted by the Service Provider held pursuant to this Clause 4.2 shall remain open for acceptance for the

duration of the Open for Offers period plus any further period of time detailed in the Requirement.

- 4.2.3 Notwithstanding the fact that the Council has followed the procedure set out above in this Clause 4.2, the Council shall be entitled at all times to decline to make an award for its Requirement. Nothing in this Supplier Agreement shall oblige the Council to award any Requirement to any Service Provider.

4.3 Sealed Bids

- 4.3.1 When ordering Services using Sealed Bids under the Supplier Agreement the Council shall:-

- (a)
- (b) contact all Service Providers notifying them of the requirement;
- (c) supplement and refine the Requirement to the extent permitted by and in accordance with the requirements of the Public Contract Regulations 2015;
- (d) invite Offers for its Requirements in accordance with the Regulations, the DPS Entry Guide and in particular:
 - (i) inform the Service Providers capable of performing the Contract and invite them within a specified time limit ("Open for Offers Period") to submit a Offer via the Application for each specific Requirement to be awarded;
 - (ii) set an Open for Offers Period which takes into account factors such as the complexity of the subject matter of the contract, the time needed to submit Offers and the urgency of the Requirement;
 - (iii) keep each tender confidential until the expiry of the time limit for the receipt by it of Offers.
- (e) award the Requirement to the successful Services Provider who submitted the lowest or most suitable price during the Open for Offers Period.

- 4.3.2 The Service Provider agrees that all Offers submitted by the Service Provider in relation to a competition using Sealed Bids held pursuant to this Clause 4.3 shall remain open for acceptance for the duration of the Open for Offers period plus any further period of time detailed in the Requirement.

- 4.3.3 Notwithstanding the fact that the Council has followed the procedure set out above in this Clause 4.3, the Council shall be entitled at all times to decline to make an award for its Requirement. Nothing in this Supplier Agreement shall oblige the Council to award a Requirement to any Service Provider.

4.4 Direct Awards

When ordering Services under the Supplier Agreement without re-opening competition shall:-

4.4.1

- 4.4.2 award the Requirement to the Service Provider who provided the lowest price per mile or most suitable offer and is able and willing to fulfil the Requirement.

4.5 Abnormally Low Offers

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

- () requested in writing from the Service Provider details of the constituent elements of the Offer which are considered to contribute to the Offer being abnormally low;
- (a) taken account of the evidence supplied by the Service Provider; and
- (b) verified those constituent elements with the Service Provider.

and concludes that the Service Provider would not be able to carry out the Services to the required standards

5 WARRANTIES AND REPRESENTATIONS

- 5.1 The Service Provider warrants and represents to the Council that:-
 - 5.1.1 it has full capacity and authority and all necessary consents to enter into and to perform its obligations under the Contract;
 - 5.1.2 the Supplier Agreement are executed by a duly authorised representative of the Service Provider;
 - 5.1.3 as at the date of entering into this Supplier Agreement, all information, statements and representations contained for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of this 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.

6 FEE FOR SERVICES

- 6.1 The Fee charged by the Service Provider for Service Agreements awarded using Direct Award shall be the Fees agreed with the Council at the time of the Direct Award.
- 6.2 The Offers made by the Service Provider for Requirements using the DPS or Sealed Bids shall be given using the process detailed in clause 4 above.

7 STATUTORY REQUIREMENTS

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

8 RECORDS AND AUDIT ACCESS

The Service Provider shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of the Supplier Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Supplier Agreement and Service Agreements.

9 FREEDOM OF INFORMATION

The Service Provider acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2003 and that the Council may be required to disclose contents of the Contract in response to a request under the Freedom of Information Act 2000.

10 TERMINATION

10.1 Termination on Default

The Council may terminate this Supplier Agreement by serving written notice on the Service Provider with effect from the date specified in such notice where the Service Provider commits a Default under a Service Agreement and:-

- 10.1.1 the Service Provider has not remedied the Default to the satisfaction of the Council within a maximum of twenty(20) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
- 10.1.2 the Default is not, in the reasonable opinion of the Council, capable of remedy

10.2 Termination on Financial Standing

The Council may terminate this Supplier Agreement by serving notice on the Service Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Council), there is a material detrimental change in the financial standing and/or the credit rating of the Service Provider which adversely impacts on the Service Provider's ability to supply Services under this Supplier Agreement.

10.3 Termination on Insolvency and Change of Control

The Council may terminate this Supplier Agreement with immediate effect by notice in writing where the Service Provider is a company and in respect of the Service Provider:-

- 10.3.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- 10.3.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- 10.3.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
- 10.3.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- 10.3.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- 10.3.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
- 10.3.7 being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 10.3.8 any event similar to those listed in Clause 10.3.1 to Clause 10.3.7 occurs under the law of any other jurisdiction.

10.4 The Service Provider shall notify the Council immediately if the Service Provider undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The

Council may terminate the Supplier Agreement by giving notice in writing to the Service Provider with immediate effect within six (6) months of:-

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

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

but shall not be permitted to terminate where an written approval was granted by the Council prior to the Change of Control.

10.5 Termination by the Council

The Council shall have the right to terminate this Supplier Agreement, or to terminate the provision of any part of the Supplier Agreement at any time by giving a maximum of one (1) months' or shorter timescale as agreed between the parties, written notice to the Service Provider.

11 CONSEQUENCES OF TERMINATION AND EXPIRY

11.1 Notwithstanding the service of a notice to terminate this Supplier Agreement, the Service Provider shall continue to fulfil its obligations under the Contract until the date of expiry or termination of the Supplier Agreement or such other date as required under this Clause 11.

11.2 Termination or expiry of this Supplier Agreement shall not cause any Service Agreement 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 their own terms.

12 LIABILITY

12.1 Neither Party excludes or limits its liability for:-

12.1.1 death or personal injury caused by its negligence, or that of its Staff;

12.1.2 fraud or fraudulent misrepresentation by it or its Staff; or

12.1.3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

12.2 The Service Provider shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Supplier Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from, or any other loss which is caused directly or indirectly by any act or omission of the Service Provider. This Clause shall not apply to the extent that the Service Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or Default, or the negligence or Default of its Staff or by any circumstances within its or their control.

13 INSURANCE

The Service Provider shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Service Provider under this Supplier Agreement including death or personal injury, or loss of or damage to property.

14 TRANSFER AND SUB-CONTRACTING

14.1 This Supplier Agreement is personal to the Service Provider and the Service Provider shall not assign, novate or otherwise dispose of the Supplier Agreement or any part thereof without the previous consent in writing of the Council. The Service Provider shall not be entitled to sub-contract any of its rights or obligations under this Supplier Agreement.

14.2 The Council shall be entitled to novate the Supplier Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Council provided that such assignment, novation or disposals shall not increase the burden of the Service Provider's obligations under this Supplier Agreement.

15 VARIATIONS TO THE SUPPLIER AGREEMENT

Any variations to the Supplier Agreement may only be done by the Council and upon a maximum of one (1) month's written notice to the Service Provider.

NOTE: The Service Agreement is the terms under which the Service Provider abides by the Conditions of Contract; it is not the day-to-day contracted transport service which may be subject to short notice or even immediate variation.

16 RIGHTS OF THIRD PARTIES

Without prejudice to any rights granted by the Supplier Agreement to Adam or any Other Customers, a person who is not party to this Supplier Agreement ("**Third Party**") has no right to enforce any term of this Supplier Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this Supplier Agreement or vary any of its terms in accordance with the relevant provisions of this Supplier Agreement, such rescission or variation will not require the consent of any Third Party.

17 SEVERABILITY

If any provision of the Supplier Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Supplier Agreement had been executed with the invalid provision eliminated.

18 WAIVER

The failure of either Party to insist upon strict performance of any provision of the Supplier Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Supplier Agreement.

19 NOTICES

Except as otherwise expressly provided within this Supplier Agreement, no notice or other communication from one Party to the other shall have any validity under the Supplier Agreement unless made in writing by or on behalf of the Party and sent in accordance with the procedures detailed in the Application.

20 DISPUTE RESOLUTION

The Parties shall attempt in good faith to negotiate a settlement to 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 the dispute and such efforts shall involve the escalation of the dispute to the appropriate manager from each of the Parties.

21 LAW AND JURISDICTION

The Council and the Service Provider accept the exclusive jurisdiction of the English courts and agree that the Supplier Agreement is to be governed by and construed according to English Law.

SCHEDULE



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**CORNWALL
COUNCIL**

Passenger Transport Services via Dynamic Purchasing System

Terms and Conditions

November 2017

Cornwall Council Transport &
Infrastructure Service via SProc.Net

CC/SProc/Conditionsv2

Terms and Conditions

1. Definitions

1.1 In this Contract, certain words and expressions are used which are defined as follows:

"Application" means SProc.Net the web-based platform owned by Adam and being used by the Council for the running of the DPS.

"Terms and Conditions" means the terms and conditions set out in this Schedule to the Supplier Agreement.

"Contract" means the agreement entered into between the Council and the Service Provider embodying the Supplier Agreement, Terms and Conditions and Service Agreement (including any schedules or specifications attached), and the DPS Entry Guide.

"Contract Documents" means the documents comprising the Contract.

"Contract Notice" means the Contract Notice identified in the Supplier Agreement.

"Contract Standard" means such standard as complies in each and every respect with all the relevant provisions of the Contract and where and to the extent that no criteria are stated in the Contract the standard is to the entire satisfaction of the Council.

"Commencement Date" means the date of signature of the Supplier Agreement.

"Contract Period" means the period from the Commencement Date to:-
(a) the date of expiry agreed with the Council;
(b) following an extension pursuant to Clause 8.8 (Extension of Initial Contract Period), the date of expiry of the extended period; or
(c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract

"Council" means the Cornwall Council.

"Deliverables" means the Service Provider's provision of the Vehicle, Driver, Passenger Assistants etc. that are the within defined time, cost and

performance parameters, or other such parameters as specified within a Requirement, for which, payment will be made via the Application.

"Default" means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party.

"Direct Award" means the direct award of a Requirement in accordance with the procedure detailed in the Supplier Agreement.

"DPA" means the Data Protection Act 1998 and any subordinate legislation made under such 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.

"Driver" means the driver employed by the Service Provider to drive the Vehicle required for the Services.

"DPS" means the Dynamic Purchasing System for Passenger Transport being run by the Council using the Application.

"DPS Entry Guide" means the entry guide issued by the Council.

"Fee" means the sum payable to the Service Provider as agreed by the Council, calculated at the prevailing rates agreed with the Council through the Application and as quantified or amended in each respective Service Agreement or Service Receipt, including all administration, expenses and disbursements.

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this 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.

"Fraud" means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Council.

"Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Harm Test” means the harm test as defined in the Safeguarding Vulnerable Groups Act 2006).

“Hiring In” is an action by the Service Provider involving the hiring of a Vehicle from a third party which is driven by a driver in the employment of the Service Provider for the performance of the Contract.

“Indicative Tender” means the Service Provider’s tender response to the Contract Notice.

“Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Service Provider is bound to comply.

“Lot” means the lots detailed in the DPS Entry Guide;

“Low Performance Damages” means the low performance damages detailed in Schedule 1.

“Low Performance Indicators” means the low performance indicators detailed in Schedule 2.

“Adam” means Adam SCM Limited the provider of the web-based platform.

“Offer” means the Service Provider’s response and submission to provide the Deliverables to the Council on such additional terms as set out in a Requirement within the Application.

“Open for Offers” means the period during which time the Service Provider can create and submit their Offer.

“Passenger Assistant” means a person employed to accompany and assist any passengers in receipt of the Services.

“PSV Conduct Regulations” means the Public Service Vehicles (Conduct of Drivers, Inspectors Conductors and Passengers Regulations 1990).

“Regulated Activity” means a regulated activity as defined in the Safeguarding Vulnerable Groups Act 2006; together with associated amendments under the Protection of Freedoms Act 2012

“Requirement” means each specific request for Services made by the Council via the Application.

“School Transport Contract” is the provision of transport under the Education Act 2006. For the avoidance of doubt, School Transport should not be registered as a local bus service unless so required by the Council and whether the Service falls within this definition shall be stated in the Requirement.

“Self-Bill Invoice” means the invoice produced by the Service Provider using the Application.

“Services” means the services to be provided in accordance with the Requirement, its subsequent Service Agreement on these Call-Off Terms and Conditions and attached schedules.

“Service Agreement” means the Client’s acceptance of an Offer within the Application, which shall be performed in accordance with these Terms and Conditions.

“Service Provider” is the person or company named in the Supplier Agreement which is accepted by the Council.

“Service Receipt” means the Service Provider’s written confirmation, via the Application, of completion of a task, project, milestone or such other Deliverable as set out in the Service Agreement.

“Signature Document” means the short document to be signed by the Service Provider that signifies the Service Provider’s agreement to the terms of the Contract.

“Supplier Agreement” means the overarching document which governs the operation of the DPS, to which these Terms and Conditions shall apply.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

“Vehicle” means any vehicle used by the Service Provider in the provision of the Services.

1.2 Interpretation

1.2.1 The interpretation and construction of the Contract shall be subject to the following provisions:-

- 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;
- 1.2.4 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.5 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

2. Contract Period

The Supplier Agreement shall take effect on the Commencement Date and shall expire automatically upon the date the date detailed in the Requirement, unless it is terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause 11.5 (Variations to the Contract).

3. Service Provider's Status

At all times during the Contract Period the Service Provider shall be an independent Service Provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the Council save as expressly permitted by the terms of the Contract.

4 Entire Agreement

- 4.1 The Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 4.2 Nothing in Clauses 4.1 shall operate to exclude Fraud or fraudulent misrepresentation.
- 4.3 In the event of and only to the extent of any conflict between the Supplier Agreement, the clauses of the Service Agreement and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:-
 - 4.3.1 Any Service Agreement
 - 4.3.2 These Terms and Conditions;
 - 4.3.3 The Supplier Agreement;
 - 4.3.4 The DPS Entry Guide

- 4.5 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

5 Conflicts of Interest

The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff are placed in a position where (in the reasonable opinion of the Council), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or Staff and the duties owed to the Council under the provisions of the Contract.

6 Prevention of Fraud

- 6.1 The Service Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Service Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Council.
- 6.2 The Service Provider shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 6.3 If the Service Provider or its Staff commits any Fraud in relation to the Contract or any other contract with any Other Customer or the Council, the Council may:-
- 6.3.1 terminate the Contract with immediate effect by giving the Service Provider notice in writing and recover from the Service Provider the amount of any loss suffered by the Council resulting from the termination including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; and/or
 - 6.3.2 recover in full from the Service Provider any other loss sustained by the Council in consequence of any breach of this clause.

7 SUPPLY OF SERVICES

7.1 The Services

- 7.1.1 The Service Provider shall supply the Services during the Contract Period in accordance with the Council's requirements as set out in the Service Agreement, the Terms and Conditions and the attached Schedules in consideration of the payment of the Fee.
- 7.1.2 If the Council informs the Service Provider in writing that the Council reasonably believes that any part of the Services does

not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default on the part of the Council, the Service Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.

- 7.1.3 Timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

7.2 Manner of Carrying Out the Services

- 7.2.1 The Service Provider shall at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract the Service Provider shall agree the relevant standard of the Services with the Council prior to the supply of the Services and, in any event, the Service Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 7.2.2 The Service Provider shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

7.3 Application Procedures

- 7.3.1 The Service Provider acknowledges and accepts that Services shall be procured in accordance with the procedures detailed in the Whole Agreement.
- 7.3.2 The Service Provider shall submit all Offers within the Application in accordance with the procedures detailed in the Supplier Agreement.
- 7.3.3
- 7.3.4 The Service Provider agrees and acknowledges that all transactions relating to the Services between the Service Provider and the Council will take place via the Application. The Service Provider shall process any Requirements outside of the Application during this Contract, except where instructed to do so by the Council.
- 7.3.5 The Service Provider shall ensure that any and all Deliverables engaged by the Council under the terms of this Contract are submitted in accordance with these Terms and Conditions, the Requirements and consequent Service Agreement.
- 7.3.6 The Service Provider shall ensure that all necessary and appropriate accreditation and enrolment checks and details are kept up to date. For the avoidance of doubt, the Service

Provider must inform the Council of any changes to such accreditation or enrolment checks and details that occur during the course of this Contract and provide evidence of such changes. The Council reserves the right terminate this Contract if such changes to the Service Provider's accreditation or enrolment checks and details are to the detriment of the performance of or standards set in these Terms and Conditions.

- 7.3.7 The Council reserves the right to request re-submission of any accreditation or enrolment details throughout the duration of the Contract, and may perform audit checks of accreditation information.
- 7.3.8 The Service Provider acknowledges that users of the Application may submit a quality review or summary of the Service Provider's performance under this Contract. Such reviews shall comprise the opinion of those submitting such comments only and not those of the Council. The Application shall have a facility to report any abusive or derogatory comments, and the Council shall deal with such instances as the Council deems reasonably necessary.

7.4 Service Performance

- 7.4.1 The Service Provider's performance will be monitored in relation to service provision and quality. The Terms and Conditions require the operation of all the journeys described in the Requirement and failure to do so will result in Low Performance Damages being invoked in accordance with Schedule 1.
- 7.4.2 The Council recognises that unreliability can be caused by circumstances beyond the control of the Service Provider; however, failures to meet the standards detailed in the Terms and Conditions (or as more accurately set out in the appropriate Service Agreement) which in the opinion of the Council could reasonably have been foreseen or otherwise avoided by the Service Provider may incur Low Performance Damages in accordance with Schedule 1.
- 7.4.3 If the Council is alerted to the fact that the Service Provider has failed to meet the standards detailed in the Terms and Conditions and Service Agreement, the Service Provider may be required to provide evidence that any alleged irregularities did not occur. The Council shall at its sole discretion investigate the allegation and may take further action if it considers that a Default has occurred.
- 7.4.4 The Council may share information relating to allegations brought to its attention with other bodies (both within The Council and with external bodies) where the Council determines that those allegations may require the attention of a particular body. Such cases may include, but will not necessarily be

limited to, those allegations against a Service Provider and /or individuals employed by the Service User that involve safeguarding concerns or any allegations that licensing terms or legal requirements may have been breached.

- 7.4.5 A vehicle being utilised on a School Transport Contract and/or Adult Social Care Contract shall not carry or pick-up, whether for hire or reward or not, any person other than those carried therein in fulfilment of the Services, unless otherwise agreed in writing by the PTU. It is a requirement of the Terms and Conditions that all vehicles carry the current passenger lists.

7.5 Awards under the DPS

7.5.1 If the Council decides to source Services through the DPS then it may:-

- (a) Bidding for Contracts
award its Requirements following a competition
- (b) Sealed Bids
award its Requirements following a competition where the bids are sealed, or
- (c) Direct Award
in the case of urgency, award its Requirements in accordance with the terms laid down in these Terms and Conditions without reopening competition, in accordance with Regulation 14 of the Public Contract Regulations 2006.

7.6 Bidding for Contracts

7.6.1 When ordering Services, the Council shall:-

- (a) identify the Requirement;
- (b) contact all Service Providers on the Lot to which the requirement applies notifying them of the requirement;
- (c) supplement and refine the Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Public Contract Regulations 2015;
- (d) invite Offers in accordance with the Regulations and in particular:-
 - (i) inform the Service Providers capable of performing the Service Agreement within that Lot and invite them within a specified time limit ("Open for Offers Period") to submit a Offer via the Application for each specific contract to be awarded;
 - (ii) set an Open for Offers Period which takes into account factors such as the complexity of the subject matter of

the contract, the time needed to submit Offers and the urgency of the Requirement;

- (iii)
- (e) award the Requirement to the Services Provider who submitted the lowest or most suitable Offer during the Open for Offers Period.

7.6.2 The Service Provider agrees that all Offers submitted by the Service Provider held pursuant to this Clause 7.7 shall remain open for acceptance for the duration of the Open for Offers period plus any further period of time detailed in the Requirement.

7.6.3 Notwithstanding the fact that the Council has followed the procedure set out above in this Clause 7.6, the Council shall be entitled at all times to decline to make an award for its Requirement. Nothing in these Terms and Conditions shall oblige the Council to award any Requirement to any Service Provider.

7.7 Sealed Bids

7.7.1 When ordering Services using Sealed Bids under the Supplier Agreement the Council shall:-

- (a) identify the Requirement;
- (b) contact all Service Providers notifying them of the requirement;
- (c) supplement and refine the Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Public Contract Regulations 2006;
- (d) invite Offers by conducting competition for its Requirements in accordance with the Regulations, the DPS Entry Guide and in particular:
 - (i) inform the Service Providers capable of performing the Requirement within that Lot and invite them within a specified time limit ("Open for Offers Period") to submit a Offer via the Application for each specific Requirement to be awarded;
 - (ii) set an Open for Offers Period which takes into account factors such as the complexity of the subject matter of the Requirement, the time needed to submit Offers and the urgency of the Requirement;
 - (iii) keep each tender confidential until the expiry of the time limit for the receipt by it of Offers.
- (e) award the Requirement to the successful Services Provider who submitted the lowest or most suitable price during the Open for Offers Period.

7.7.2 The Service Provider agrees that all Offers submitted by the Service Provider in relation to a competition using Sealed Bids held pursuant to this Clause 7.7 shall remain open for acceptance for the duration of the Open for Offers period plus any further period of time detailed in the Requirement.

7.7.3 Notwithstanding the fact that the Council has followed the procedure set out above in this Clause 7.8, the Council shall be entitled at all times to decline to make an award for its Requirement. Nothing in these Terms and Conditions shall oblige the Council to award a Requirement to any Service Provider.

7.8 Direct Awards

7.9.1 When ordering Services under these Terms and Conditions without re-opening competition, the Council shall:-

- (a) identify the relevant Lot which its Requirement
- (b) award the Requirement to the Service Provider who provided the lowest price or most suitable Offer and who is able and willing to fulfil the Requirement.

7.9 Abnormally Low Offers

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

- (c) requested in writing from the Service Provider details of the constituent elements of the Offer which are considered to contribute to the Offer being abnormally low;
- (d) taken account of the evidence supplied by the Service Provider; and
- (e) verified those constituent elements with the Service Provider.

and concludes that the Service Provider would not be able to carry out the Services to the required standards

8 STATUTORY OBLIGATIONS AND REGULATIONS

8.1 Prevention of Corruption

8.1.1 The Service Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council or any other public body or person employed by or on behalf of the Council any gift or consideration of any kind which could act

as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the Service Agreement or any other contract with the Council or any other public body or person employed by or on behalf of the Council, or for showing or refraining from showing favour or disfavour to any person in relation to any such contract.

8.2 Discrimination

- 8.2.1 The Service Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 8.2.2 The Service Provider shall take all reasonable steps to secure the observance of Clause 8.2.1 by all servants, employees or agents of the Service Provider and all suppliers and sub-contractors employed in the execution of the Service Agreement.

8.3 The Contracts (Rights of Third Parties) Act 1999

Without prejudice to any rights granted to Adam or any Other Customer, a person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

8.4 Vehicle and Driver Licensing

The Service Provider shall comply with all necessary licensing requirements imposed by the relevant licensing agency for these Services being provided.

8.5 School Bus Signs

The Service Provider shall where applicable, comply with any appropriate requirements in relation to the display of signs and use of hazard warning lights.

9. DATA PROTECTION AND FREEDOM OF INFORMATION

9.1 DATA PROTECTION

- 9.1.1 For the purposes of this clause 9, "Data Processor", "Personal Data" and "Sensitive Personal Data" shall have the meanings given in the DPA.
- 9.1.2 The Parties acknowledge their respective duties under the DPA and shall give all reasonable assistance to each

other where appropriate or necessary to comply with such duties.

9.1.3 To the extent that the Service Provider is acting as a Data Processor on behalf of the Council, the Service Provider shall, in particular, but without limitation:

- (a) only process such Personal Data and/or Sensitive Personal Data as is necessary to perform its obligations under this Agreement, and only in accordance with any instruction given by the Council under this Agreement;
- (b) put in place appropriate technical and organisational measures against any unauthorised or unlawful processing of such Personal Data and/or Sensitive Personal Data, and against the accidental loss or destruction of or damage to such Personal Data and/or Sensitive Personal Data having regard to the specific requirements in this Agreement, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data and/or Sensitive Personal Data is affected by such unauthorised or unlawful processing or by its loss, damage or destruction;
- (c) take reasonable steps to ensure the reliability of staff who will have access to such Personal Data and/or Sensitive Personal Data, and ensure that such staff are properly trained in protecting Personal Data and Sensitive Data;
- (d) provide the Council with such information as the Council may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the DPA;
- (e) promptly notify the Council of any requests for disclosure of or access to the Personal Data and/or Sensitive Personal Data;
- (f) promptly notify the Council of any breach of the security measures required to be put in place pursuant to this clause 9.1;
- (g) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.

- (h) to the extent that any Council data is held and/or processed by the Service Provider, the Service Provider shall supply that Council data to the Council as requested by the Council.
- (i) ensure that it is registered under the DPA and the registration covers any processing required under this Agreement.

9.1.4 The Service Provider and the Council shall ensure that Personal Data and Sensitive Personal Data is safeguarded at all times in accordance with the law.

9.2 FREEDOM OF INFORMATION AND TRANSPARENCY

9.2.1 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and will assist and co-operate with the Council to enable the Council to comply with its disclosure obligations under the FOIA. Accordingly the Service Provider agrees:

- (a) that this Contract and any other recorded information held by the Service Provider on the Council's behalf for the purposes of this Agreement are subject to the obligations and commitments of the Council under the FOIA;
- (b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Council;
- (c) that if the Service Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Council) and will promptly (and in any event within 2 working days) transfer the request to the Council;
- (d) that the Council, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Service Provider and this Agreement either without consulting with the Service Provider, or following consultation with the Service Provider and having taken its views into account; and
- (e) to assist the Council in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing

copies of all information requested by an authority within 5 working days of such request and without charge.

10. SAFEGUARDING

10.1 The Service Provider shall put or have in place a safeguarding policy which reflects and complements the relevant statutory provisions relating to safeguarding children and/or vulnerable adults and;

- (a) the Council's safeguarding policies and procedures; and
- (b) the Cornwall and Isles of Scilly Safeguarding Adults Board policies and procedures including but not limited to the Multi-Agency Safeguarding Adults Policy; and
- (c) the Cornwall and the Isles of Scilly Local Safeguarding Children Board's safeguarding policies and procedures including the South West Safeguarding and Child Protection Procedures and the Local Safeguarding Children Board Guidelines for Providers;

as applicable and amended from time to time to ensure that all allegations, suspicions and incidents of abuse, harm or the risk of harm to children and / or vulnerable adults or where there is a concern about the behaviour of an individual are reported immediately to the Council's Representative and Council's Directorate of Adult Care and Support (Single Point of Access) 0300 1234 131 in respect of a vulnerable adult or the Council's Directorate of Children Schools and Families (Single Referral Unit) 0300 123 1116 in respect of a child. The Supplier's safeguarding policies and procedures should include active encouragement to staff in whistle blowing if aware of suspected abuse.

10.2 The Service Provider shall submit its safeguarding policy to the Council for approval. The Supplier must incorporate any amendments to the policy which may be advised by the Council.

10.3 The Service Provider shall

- (a) ensure that all individuals engaged in a Regulated Activity on behalf of the Supplier (including sub-contractors/suppliers) are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (DBS) including a check against the adults barred list or the children's barred list as appropriate (this check must be

- undertaken through Cornwall Council's HR Safeguarding Team via the 'EBulk' system), and
- (b) monitor the level and validity of the checks under this clause 10.3(a) for each member of staff
 - (c) comply fully with the Council's process for handling 'positive' DBS; complying fully with the resulting decision in regards to the suitability of the individual to work on Cornwall Council contracts, made solely by the Council.
- 10.4 The Service Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time
- 10.5 The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 10 have been met.
- 10.6 The Service Provider shall make a referral to the Disclosure and Barring Service when it has dismissed or removed a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned) because the person has been cautioned or convicted for a relevant offence; or engaged in relevant conduct in relation to children and/or vulnerable adults; or satisfied the Harm Test in relation to children and/or vulnerable adults.
- 10.7 The Service Provider shall advise the Council of any referrals made pursuant to clause 10.6 as soon as possible and in any event within five (5) working days. The supplier shall ensure that the contracts of employment of its staff provide for relevant staff consent for the sharing of the information/data required under this clause 10.7
- 10.8 The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.
- 10.9 The Service Provider shall comply with all statutory obligations in respect of safeguarding and shall act in accordance with the guidance issued by the Disclosure and Barring Service as amended from time to time.
- 10.10 The Service Provider shall ensure that the organisation operates a recruitment and selection procedure which aligns with the Council's safer recruitment and disciplinary standards and which meets the requirements of legislation, equal opportunities and anti-discriminatory practice and ensures the

protection of children and/or vulnerable adults. The selection of all Service Provider personnel and volunteers should be fair, safe and effective and the Supplier will be expected to comply with all national requirements for registered providers and shall ensure that all relevant safeguarding, recruitment and barring checks have been undertaken for all employees, these checks shall include:

- 10.10.1 recruitment through an appropriate application form;
- 10.10.2 face to face interviews
- 10.10.3 checking self declaration forms for relevancy to the role
- 10.10.4 checking references before confirming appointment
- 10.10.5 a probationary and supervision period for new staff
- 10.10.6 conducting personal development reviews
- 10.10.7 monitoring conduct in the role
- 10.10.8 conducting in-role risk assessments

- 10.11 If appropriate, the Service Provider shall ensure that children and/or vulnerable adults are safeguarded from any form of abuse or exploitation including physical, financial, psychological and sexual abuse, neglect, discriminatory abuse or self harm or inhuman or degrading treatment through deliberate intent, negligent acts or omissions.
- 10.12 If appropriate, the Service Provider shall procure that all personnel engaged in the delivery of the Services regularly receive appropriate safeguarding training in relation to children and/or vulnerable adults according to their job role as detailed within the Specification or discussed and agreed at subsequent contract review meetings.
- 10.13 The Service Provider shall appoint an individual of sufficient seniority for the safeguarding of children and/or vulnerable adults. This individual shall be responsible for the implementation and monitoring of the Supplier's safeguarding policies and procedures in accordance with the terms of this Agreement.
- 10.14 The Service Provider shall:
 - 10.14.1 have in place a process whereby its employees may report in confidence any alleged malpractice on the part of the Supplier as regards any part of the provision of the Services;
 - 10.14.2 not take any action against any employee pursuant to its contractual rights in respect of that employee where such employee has in accordance with the process provided pursuant to Clause 10.14 and in

good faith reported alleged malpractice on the part of the Supplier.

11. CONTROL OF THE CONTRACT

11.1 Publicity, Media and Official Enquiries

The Service Provider shall not make any press announcements or publicise the Service Agreement in any way without the Council's written consent and shall take reasonable steps to ensure that its servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with this clause 11.

11.2 Records and Audit Access

- 11.2.1 The Service Provider shall keep and maintain until six (6) years after the end of the Contract Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract.
- 11.2.2 The Service Provider shall keep the records and accounts referred to in clause 11.2.2 above in accordance with good accountancy practice.
- 11.2.3 The Service Provider shall on request afford the Council, the Council's representatives and/it auditors such access to such records and accounts as may be required by the Council from time to time.
- 11.2.4 The Service Provider shall provide such records and accounts (together with copies of the Service Provider's published accounts) during the Contract Period and for a period of six(6)years after the expiry of the Contract Period to the Council.

11.3 Sub-Contracting

- 11.3.1 The Service Provider shall not sub-contract all or any part of the Contract without the prior written agreement of the Council which consent shall be in the absolute discretion of the Council and if given shall not relieve the Service Provider from any liability or obligation under the Contract and the Service Provider shall be responsible for the acts, defaults or neglect of any sub-contractors, its employees or agents in all respects as if they were acts, defaults or neglect of the Service Provider.
- 11.3.2 In the case of an emergency, the Service Provider may hire in a Vehicle and/or Driver and/or Passenger Assistant in order to ensure the provision of the Service, and shall inform the Council of this action as soon as is reasonably practicable.

Any Hiring In arrangement must not be for longer than twenty four (24) hours without the written agreement of the Council.

- 11.3.3 Any Vehicle Hired In under the above provision must comply with the Service Agreements in all respects.
- 11.3.4 Service Providers shall inform the Council if they are considering selling or transferring their business. The Service Provider must obtain prior written approval of the Counsel to the transfer of the Contracts before the Service Provider can confirm the inclusion of the Contract with the business being sold.
- 11.3.5 All sub-contractors must be approved by the Council and must have successfully accredited and enrolled to the DPS set out under the Supplier Agreement. The Service Provider must state their intention to use a sub-contractor within their Offer and the Service Provider acknowledges that the Council reserves the right to reject any Offer in the event that they do not approve of the sub-contractor.

11.4 Waiver

The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

11.5 Variations to Contract

- 11.5.1 Any part of the Contract requirement may be altered at any time by the Council. Such changes may be communicated verbally but will always be confirmed in writing which may take the form of an e-mail.
- 11.5.2 If the Council's requirements for the Service provided under the Contract change, the Council may request the Service Provider to vary the Terms and Conditions or Service Agreement accordingly.
 - (i) Where such variation does not:
 - a) involve a change to the Requirement of, or an increase in the number or capacity of, the vehicles used to carry out the Services,
 - b) involve a change to the days of the week or periods of the year (e.g. school terms) of operation,
 - c) fundamentally alter the nature of the Requirement,

the Service Provider will be required to implement the requested alteration.

- (ii) If the variation does involve a change detailed in clause 11.5.2 above, the Council will seek to agree implementation of the requested alteration with the Service Provider, and negotiate a revised Fee where appropriate.

In any case where agreement cannot be reached between the Parties or the revised Fee is unacceptable to the Council, then the Contract or any part of the Services provided thereunder may be terminated by the Council

11.5.3 The Service Provider is deemed to have taken into account all reasonable circumstances in making its Offer, and no alteration to the Terms and Conditions, Services or Fee will be considered to accommodate any failure of the Service Provider to make adequate provision, financial or otherwise, for operation of the Call-Off Terms and Conditions.

11.5.4 If the Service Provider becomes aware of any problem in operation, or any change to the Requirements of which it has not notified to the Council, it must bring this to the attention of the Council immediately. Where it is agreed by the Council that a variation is required to rectify an unforeseen situation, a revised Service Agreement may be agreed in accordance with the provision of this clause 11.

11.6 Severability

11.6.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

11.7 Remedies in the event of inadequate performance

11.7.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Service Provider's obligations under the Contract, then the Council shall take all reasonable steps to investigate the complaint. The Council may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 10.2 (Termination on Default) of the Contract.

11.7.2 In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Service Provider, then the Council may, without prejudice to its rights under Clause 10.2 (Termination on Default), do any of the following:-

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Council that the Service Provider will once more be able to supply all or such part of the Services in accordance with the Contract;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Fee shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
- (c) terminate, in accordance with Clause 10.2 (Termination on Default), the whole of the Contract or Service Agreement as appropriate; and/or
- (d) charge the Service Provider for and the Service Provider shall pay any costs reasonably incurred by the Council (including any reasonable administration costs) in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

11.7.3 If the Service Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall instruct the Service Provider to remedy the failure and the Service Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within a time period set by the Council.

11.7.4 In the event that the Service Provider:-

- (a) fails to comply with Clause 11.7.3 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or
- (b) persistently fails to comply with Clause 11.7.3 above; the Council may terminate the Contract or Service Agreement, as appropriate, with immediate effect by

giving the Service Provider notice in writing which may include e-mail.

11.8 Extension of Initial Contract Period

Subject to satisfactory performance of its obligations under the Contract by the Service Provider during the Contract Period, the Council may, by giving written notice which may include e-mail, to the Service Provider to extend the Contract for any further period as agreed by the Parties. The provisions of the Service Agreement will apply throughout any such extended period.

12. Complaints

12.1 The Service Provider must send to the Council immediately or within a maximum of five (5) days all written comments, suggestions or complaints received about or in connection with the Service or its performance, together with any reply given.

12.2 Any complaints that the Council receives will be passed to the Service Provider for comments before any action is taken by the Council. The Service Provider must respond to such complaint within five(5) days, or such other period as may be agreed by the Council, failing which action may be taken by the Council at its sole discretion. Failure to respond to complaints will be treated as a Default and action may be taken by the Council in accordance with clause 19.2.

12.3 The Service Provider is required to give all reasonable assistance to the Council in the investigation of any complaint, and to comply with any direction given by the Council to ensure compliance with the terms of this Service Agreement.

13. LIABILITIES

13.1 Liability, Indemnity and Insurance

13.1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:-

- (a) death or personal injury caused by its negligence;
- (b) Fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

13.1.2 Subject to Clause 13.1.1, the Service Provider shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence

of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Service Provider of its obligations under the Contract, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Service Provider, or any other loss which is caused directly or indirectly by any act or omission of the Service Provider. The Service Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.

- 13.1.3 Subject to Clause 13.1.1, in no event shall either Party be liable to the other for any:-
- (a) loss of profits;
 - (b) loss of business;
 - (c) loss of revenue;
 - (d) loss of or damage to goodwill;
 - (e) loss of savings (whether anticipated or otherwise); and/or
 - (f) any indirect or consequential loss or damage.
- 13.1.4 The Council may, amongst other things, recover as a direct loss:-
- (a) any additional operational and/or administrative expenses arising from the Service Provider's Default;
 - (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Service Provider's Default; and
 - (c) the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Service Provider.
- 13.1.5 Nothing in the Contract shall impose any liability on the Council in respect of any liability incurred by the Service Provider to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Service Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Council, or the Council's employees, servants or agents.
- 13.1.6 The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover and complying with any specific legal requirements for the Services to cover all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of its obligations under the Service Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall

include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

- 13.1.7 The Service Provider shall hold employer's liability insurance in respect of its staff in accordance with any legal requirement from time to time in force.
- 13.1.8 The Service Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 13.1.9 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 13.1.10 The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract. It shall be the responsibility of the Service Provider to determine the amount of insurance cover that will be adequate to enable the Service Provider to satisfy any liability referred to in Clause 13.

13.2 Taxation, National Insurance and Employment Liability

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Service Provider shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

13.3 Warranties and Representations

- 13.3.1 The Service Provider warrants and represents that:-
 - (a) it has full capacity and Council and all necessary consents to enter into and perform its obligations under the Contract;
 - (b) the Contract is executed via the Signature Document by a duly authorised representative of the Service Provider;

- (c) in entering the Contract it has not committed any Fraud;
- (d) as at the Commencement Date, all information, statements and representations contained in the Indicative Tender for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council prior to execution of the Signature Document and it will 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;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on its ability to perform its obligations under the Contract;
- (g) the Services shall be provided and carried out by appropriately experienced, qualified and trained staff with all due skill, care and diligence;
- (h) in the three (3) years prior to the date of the Signature Document:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles; and
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations; and
 - (iii) it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

14. Health and Safety

- 14.1 The Service Provider shall comply with all and any duties and obligations arising under all health and safety legislation, including, but not limited to the Health and Safety at Work Act 1974 and subsequent regulations.
- 14.2 All drivers engaged in the operation of the Service Agreement shall adhere to an appropriate dress standard. High visibility jackets should

not be worn when driving but should be available if staff have to alight in traffic.

15. Notices

15.1 Any notice to the Service Provider shall be considered to be sufficiently served if delivered at, or sent by prepaid recorded delivery service post or e-mail (receipt message should be retained) to the address contained in the Indicative Tender. Any notice to the Council shall be considered to be sufficiently served if delivered, or sent by prepaid recorded delivery service post, or e-mail (receipt message should be retained) to the Council. In every case, the notice must state clearly the Requirement to which the notice refers. The Service Provider must obtain a receipt for any notice which is delivered by hand.

15.2

16. Employment of Staff – TUPE Regulations

16.1 The Provider acknowledges that the Council has made no assurance about the effect of TUPE and shall have formed its own view on whether TUPE applies before submitting its Tender Submission for the Services. The Service Provider agrees that the Fee shall not be varied on the grounds that TUPE does or does not apply, irrespective of the belief of the Council or the Service Provider prior to the execution of the Signature Document

16.2 The Service Provider shall provide pension rights to any transferring employees from the incumbent service provider, that are the same as or are broadly comparable to or better than those the transferring employees had prior to any transfer affected by the award of this Contract.

16.3 No compensation or remuneration shall be payable by the Council, where the nature, extent, effect or character of any obligations acquired by the Service Provider under this Contract as a result of the effects of TUPE may be different from that envisaged.

16.4 The Council does not accept any responsibility for and gives no warranty in respect of any TUPE information which has been supplied to Service Provider by the Council.

16.5 Upon receipt of any request from the Council made to the Service Provider during the Contract Period or within six (6) months before the expiry or early termination of any part of this Contract, the Service Provider shall supply to the Council or if the Council shall so require any replacement provider of the Services or the part thereof such information in respect of the terms and conditions of employment of its employees associated with the provision of the Services and all employment records relating to employees engaged by the Service Provider in the performance of the Contract as the Council shall reasonably require and in whatever form the Council shall reasonably

- require to enable the Council or any replacement provider to comply with its obligations under TUPE.
- 16.6 The Service Provider shall not in anticipation of the termination of the Contract (or any part thereof) change the identity of any of the employees engaged in providing the Services, increase or decrease the number of employees or vary any of the terms and conditions on which they are employed unless otherwise agreed in writing by the Council and shall indemnify and hold harmless the Council from and against any breach of this clause 16.
- 16.7 The Service Provider shall indemnify the Council and any replacement provider of the Services or part thereof fully in respect of any claims, losses, costs, expenses, demands and liabilities arising from the provision of information or the failure to provide information under clause 16.5.
- 16.8 If TUPE applies upon termination of a Service Agreement or this Contract:
- 16.8.1 The Service Provider shall indemnify the Council against any liability the Council may have in respect of any claim or allegation made by any employee of the Service Provider after the termination date in respect of any act or omission of the Service Provider which gives rise to redundancy, wrongful dismissal or unfair dismissal before the termination date; and
- 16.8.2 The Council shall indemnify the Service Provider against any liability the Supplier may have in respect of:
- (i) any claim or allegation that there has been or will be a substantial or detrimental change in the working conditions of an employee of the Service Provider in consequence of the transfer of the employee's employment of the Council (or to any other person under contract to the Council to provide services similar to the Services and to whom the employment of an employee of Service Provider the is transferred under TUPE; and
- (ii) any claim for redundancy, protective awards, wrongful dismissal or unfair dismissal made in connection with the transfer of the employment of an employee of the Service Provider to the Council or to such other person as is mentioned in clause 16.8.2(ii)
- 16.9 In Condition 16.8.1 'employee of the Service Provider' means an individual in the employment of the Service Provider on or before the termination date.

17. Survey and Inspection

- 17.1 The Service Provider must allow any authorised representative of the Council to board a Vehicle or visit the Operating Base without notice, to observe and record any information relevant to the performance of the Contract.

- 17.2 The Service Provider must ensure that all drivers and other staff cooperate with such representatives in the execution of their duties.

18. Payment of the Fee

18.1 Fee

The price for the operation of the Contract will be that specified in the Offer submitted to and accepted by the Council in accordance with the award procedure detailed in the Supplier Agreement.

18.2 Payment of the Fee

- 18.2.1 The Council's standard payment terms are 30 days. The Contractor will be paid the due amount within 30 days of the period to which it relates.
- 18.2.2 On receipt of an invoice, or other arrangement the Council will pay to the Contractor on a **monthly** basis the daily amount set out in the Tender Offer for the number of days operated in each month, (for School Services there is no payment for the month of August). Invoices must be submitted for each calendar month and should quote the Service number, the daily rate charged and the dates on which the Service operated.
- 18.2.3 If required by Customs and Excise Regulations, the percentage and amount of any Value Added Tax must also be identified.
- 18.2.4 The Council reserves the right to deduct from any monies owing to the Contractor under the Contract, the amount of any sum due from the Contractor to the Council, whether arising from this or any other contract between the two parties.

19 DEFAULT, DISRUPTION AND TERMINATION

19.1 Termination on insolvency and change of control

19.1.1 The Council may terminate the Contract or a Service Agreement with immediate effect by giving notice in writing where the Service Provider is a company and in respect of the Service Provider:-

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

19.1.2 The Council may terminate the Contract with immediate effect by notice in writing where the Service Provider is an individual and:-

- (a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Service Provider's creditors; or
- (b) a petition is presented and not dismissed within fourteen (14) days or order made for the Service Provider's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Service Provider's assets or a person becomes entitled to appoint a receiver, or

- similar officer over the whole or any part of his assets;
or
- (d) the Service Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
 - (e) a creditor or encumbrance attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Service Provider's assets and such attachment or process is not discharged within 14 days; or
 - (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
 - (g) the Service Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- 19.1.3 The Service Provider shall notify the Council immediately if the Service Provider undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Council may terminate the Service Agreement by notice in writing with immediate effect within six (6) months of:-
- (a) being notified that a Change of Control has occurred;
or
 - (b) where no notification has been made, the date that the Council becomes aware of the Change of Control;
- but shall not be permitted to terminate where the Council agreed in writing prior to the Change of Control.

19.2 Termination on Default

- 19.2.1 The Council may terminate the Contract by giving written notice to the Service Provider with immediate effect if the Service Provider commits a Default and if:-
- (a) the Service Provider has not remedied the Default to the satisfaction of the Council within five (5) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
 - (b) the Default is not, in the opinion of the Council, capable of remedy; or
 - (c) the Default is a material breach of the Contract, or
 - (d) the Default was non-compliance with the requirements to hold an appropriate licence and the Service Provider has failed to obtain the licence after a period

- of suspension of the Contract or Service Agreement under Schedule 1, or
- (e) the Default was non-compliance with any other obligation (other than to hold any appropriate licence) contained in Schedule 1 and the Service Provider has failed to comply with instructions from the Council under clause 19(2)(1)(a).
- 19.2.2 If the Council fails to pay the Service Provider undisputed sums of money when due, the Service Provider shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within ninety (90) working days of the date of such written notice, the Service Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under clause 3.3 (Recovery of Sums Due) or clause 18.2.10 (disputed invoices).

19.3 Break

- 19.3.1 The Council shall have the right to terminate the Service Agreement PSV and wheelchair accessible Services at any time by giving a maximum of three (3) months written notice to the Service Provider or any shorter period of notice as agreed between the Parties.
- 19.3.2 The Council shall have the right to terminate the Service Agreement for non-PSV Services at any time by giving a maximum of one (1) week's written notice (this may be by e-mail) to the Service Provider or any shorter period of notice as agreed between the Parties.

19.4 Supplier Agreement

The Council may terminate the Terms and Conditions or Service Agreement by giving written notice (which may be by e-mail) to the Service Provider with immediate effect if the Supplier Agreement is terminated for any reason whatsoever.

19.5 Consequences of Expiry or Termination

- 19.5.1 Where the Council terminates the Contract or Service Agreement under Clause 19.2 (Termination on Default) and then makes other arrangements for the supply of Services, the Council may recover from the Service Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 19.2 (Termination on Default), no further payments shall be payable by the Council to the Service Provider until the

Council has established the final cost of making those other arrangements.

- 19.5.2 In the event that, where the Council terminates the Contract or Service Agreement under Clause 19.3 (Break), the Council shall indemnify the Service Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Service Provider by reason of the termination of the Contract or Service Agreement, provided that the Service Provider takes all reasonable steps to mitigate such loss. Where the Service Provider holds insurance, the Service Provider shall reduce its unavoidable costs by any insurance sums available. The Service Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Service Provider as a result of termination under Clause 19.3 (Break).
- 19.5.3 The Council shall not be liable under Clause 19.5.2 to pay any sum which:-
- (a) was claimable under insurance held by the Service Provider, and the Service Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
 - (b) when added to any sums paid or due to the Service Provider under the Contract, exceeds the total sum that would have been payable to the Service Provider if the Contract or Service Agreement had not been terminated prior to the expiry of the Contract Period.
- 19.5.4 Save as otherwise expressly provided in the Service Agreement:-
- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Service Agreement prior to termination or expiration and nothing in the Service Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Service Provider expressly stated to continue after termination.

19.6 Disruption

- 19.6.1 The Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other Service Provider employed by the Council.

- 19.6.2 The Service Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 19.6.3 In the event of industrial action by the staff, the Service Provider shall seek the Council's written approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 19.6.4 If the Service Provider's proposals referred to in Clause 8.6.3 are considered insufficient or unacceptable by the Council acting reasonably then the Contract may be terminated with immediate effect by the Council by notice in writing.

19.7 Recovery upon Termination

19.7.1 On the termination of the Contract or a Service Agreement for any reason, the Service Provider shall:

- (a) assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the replacement service provider and/or the completion of any work in progress.
- (b) promptly provide all information (including information requested by clause 16 – TUPE) concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the replacement service provider to conduct due diligence.

19.7.2 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 5.7.7 shall automatically terminate without the need to serve notice.

20. Dispute Resolution Procedure

20.1 In the event of any dispute, difference or question of interpretation arising between the Parties neither shall take any recourse to litigation until the procedure set out below has been fully exercised.

20.2 All and any disputes which shall arise between the Council and the Service Provider shall be resolved through the following dispute resolution procedure except where the Service Agreement specifies otherwise.

- (i) The matter shall be referred to a meeting of the Council and the Service Provider's representatives;
 - (ii) The Parties shall be under a duty to make full disclosure of any relevant facts and information relating to the dispute to the Parties' representatives and shall use all reasonable endeavours to resolve by agreement any dispute or difference amicably, expeditiously and in good faith.
- 20.3 If the matter remains unresolved, it shall be referred to the Council's Passenger Transport Manager for final decision. 20.4 The parties record that in the interest of good relations between them they will endeavour to resolve the issue of dispute as set out above before resorting to litigation.

21. Information to be provided by the Service Provider

The Service Provider shall provide all relevant information the Council may require so that the Council can act fairly, properly and in accordance with its statutory obligations in connection with any tendering exercise whether relating to the provision of the Service or the future provision of the same or any similar Service and whether such tendering exercise takes place before or after completion by the Service Provider of its obligations of this Contract. The Council may make a request for any such information at any reasonable time and the Service Provider shall comply with that request as soon as practically possible.

22. Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms save the Council who shall have an interest in the terms of this Contract.

23. Force Majeure

- 23.1 Either Party reserves the right to defer the date of delivery or payment or cancel the Contract or a Service Agreement or reduce the provision of the Services if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Council including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, fire, explosion, flood, epidemic, lockouts, strikes or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies or adequate or suitable materials.

23.2 If the performance of a Party's obligations under this Service Agreement is in the opinion of that Party likely to be hindered, delayed or affected by a reason falling within clause 10.8 the Party so affected shall promptly notify the other Party in writing of that fact. If such circumstances continue for a continuous period of more than 6 months, either Party may terminate this Service Agreement by written notice to the other Party.

24 Governing Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts and agree that the Contract is to be governed exclusively by and construed under English law.

SCHEDULE 1

Passenger Transport Services

1. Operator Licences

1.1 Service Agreements requiring PSV vehicles that carry 9 or more Passengers

- (i) The Service Provider shall at its own cost have and keep in force a Public Service Vehicle (**PSV**) Operator's Licence of the relevant classification, as required by Section 12 of the Public Passenger Vehicles Act 1981, or a Community Bus Permit issued under Sections 19 and/or 22 of the Transport Act 1985. The Service Provider shall produce the licence or permit for inspection when required to do so by the Council.
- (ii) The Service Agreement shall be suspended during any period that the Service Provider does not have a PSV Operator's Licence or

Community Bus Permit, or if any such licence or permit previously granted has been revoked or suspended for any reason, or has had conditions attached to it which prohibit or limit the operation of any Service. At the Council's discretion, it may consider that a Default has occurred and may terminate in accordance with clause 10.2

- (iii) The Service Provider must notify the Council forthwith of any change or disciplinary action to its PSV Operator's Licence or Community Bus Permit imposed by the Traffic Commissioner or any substantial change to such licence or permit sought by the Service Provider and approved by the Traffic Commissioner.
- (iv) The Service Provider must notify the Council within seven (7) days of any Public Inquiry proceedings and consequent alteration, suspension or revocation of a Licence made by the authority issuing the Licence, whether for maintenance or other reasons.
- (v) The Service Provider must comply with any and all conditions attached to any Licence, including conditions attached to any relevant Planning Consent, and failure to do so may, at the Council's discretion be considered to be a Default and result in termination of the Service Agreement.

1.2 Service Agreements requiring non-PSV vehicles that carry 8 or fewer passengers

- (i) The Service Provider shall at its own cost have and keep in force either:
 - a Hackney Carriage Licence issued in accordance with section 37 of the Town Police Clauses Act 1847 or section 47 of the Local Government (Miscellaneous Provisions) Act 1976 or
 - a Private Hire Operator's Licence issued in accordance with section 48 of the Local Government (Miscellaneous Provisions) Act 1976, as appropriate in the circumstances or

NOTE:

- Cornwall Council also engages with recognised Volunteer Bureaux and Community Transport Groups where drivers must hold relevant driving licences and insurance.
- (ii) The Service Provider must notify the Council forthwith of any change to, or disciplinary action taken in respect of a Licence held, including changes of address or operating centre. The Service Provider must comply with any and all conditions attached to any Licence, including conditions attached to any relevant Planning Consent, and failure to do so may, at the

Council's discretion, result in termination of the Service Agreement.

- (iii) The Service Agreement may be suspended during any period that the Service Provider does not have a Hackney Carriage or Private Hire Operator's Licence, or if any such Licence or Permit previously granted has been revoked or suspended for any reason, or has had conditions attached to it which prohibit or limit the operation of any Services. At the Council's discretion, the Service Agreement may be terminated due to Default under clause 19.2

2. Major Emergencies

If a "Major Peacetime Emergency" is declared by the Council, the Service Provider may be asked to make available to the Council the Vehicles and Drivers utilised for the Service Agreement, and if necessary cease operation of the Services. In such circumstances, the vehicles and drivers would operate as directed by the Council or an officer from the Council's Emergency Planning Unit. All additional costs incurred by the Service Provider in such circumstances will be met by the Council. The Service Provider shall supply to the Council a telephone number and name of the person to be contacted in the emergency on a twenty four (24) hour basis. When necessary, staff support for planning, training and exercise purposes should be made available, estimated at no more than one (1) day per annum. The Council's Emergency Planning Unit maintains a contact directory of appropriate agencies and all Service Providers' details will be entered therein. The directory is published annually to Emergency Services and Local Authorities.

3. Vehicles

- 3.1 All Vehicles must be maintained in a fit and roadworthy condition, comply with all relevant legislative requirements, and meet the

requirements set out in the Service Agreement. For guidance on accessibility legislation (Disability Discrimination Act 1995 as amended), Service Providers should refer to Public Service Vehicle Accessibility Regulations 2000.

- 3.2 All Vehicles must meet appropriate European Union (EU) directives for Carbon Dioxide (CO₂) emissions. The minimum standard is Euro 4 (2006 registration) unless specified otherwise in the Service Agreement or with written agreement of the Council.
- 3.3 The Service Provider must:
 - (i) ensure that any premises used for the purpose of maintaining Vehicles, whether Hired In, sub-contracted or otherwise, are suitable for the purpose, compliant with relevant local authority permissions and off the public highway.
 - (ii) permit the Council to inspect such premises and vehicle maintenance records at any reasonable time.
 - (iii) ensure that any maintenance agreement with a third party provides that the Council may inspect the premises used to ensure compliance with this Service Agreement.
- 3.4 The Vehicle(s) used must not be of lesser seating capacity than that specified, unless agreed by the Council.
- 3.5 Vehicle doors must allow entry and exit on the nearside of the vehicle, and no door in the rear face of the vehicle is acceptable other than as an emergency exit or where it forms the necessary access by ramp or lift for a wheelchair user. All doors, and the area immediately outside, must be within the clear view of the driver.
- 3.6 The Service Provider must ensure that all vehicles are in a clean condition both internally and externally at the commencement of every day's operation of the Services, and as far as practicable kept in a clean condition at all times. Vehicles must also have adequate heating and ventilation appropriate to the climatic conditions.
- 3.7 If so required, the Service Provider must, at its own expense, make available any Vehicles for inspection by the Council or another person nominated by him, at a time and place to be agreed with the Council.

- 3.8 Where the Vehicle has a capacity of 16 or fewer passengers, passengers must not be carried in sideways facing seats.
- 3.9 Where the Vehicle has a capacity of 16 or fewer passengers, three-point seat belts must be fitted to all seats, supplied by a reputable manufacturer; seat belts, seat and mountings must have been tested to comply with the industry standard.
- 3.10 Smoking must be prohibited throughout all vehicles at all times including when not working under Contract. Appropriate notices must be displayed to this effect. This ruling also applies to the use of any electronic cigarette or vaping devices.
- 3.11 If a Vehicle has a defect which could affect the safety of passengers or other road users, the Service Provider must cease to use that Vehicle immediately and until the defect has been rectified, at the Service Provider's expense, provide a suitable replacement. The Council will notify the authority licensing the Vehicle and/or the Department for Transport Driver and Vehicle Service Agency (DVSA) of any significant defects found.
- 3.12 Specialist equipment may be supplied by the Council for the use of specified passengers. The Service Provider is required to fit, monitor and maintain this equipment in an appropriate condition. The Service Provider shall also ensure that all relevant staff are trained in the use of any specialist equipment. All Council equipment must be returned to the Council at the end of the Contract.
- 3.13 Reversing Cameras must be fitted to all Vehicles at the Service Provider's expense, where the Service Agreement states that such is required.
- 3.14 Any CCTV surveillance systems must comply fully with the Information Commissioners Office Code of Practice. It is the responsibility of the Service Provider to ensure that the vehicle complies with the Code of Practice and the requirements of the Information Commissioners Office.
- 3.15 PSV vehicles must display "School Bus" signs as prescribed by the Road Vehicles Lighting (Amendment) Regulations 1994. The Service Provider must supply and fit the signs, and arrange that they are displayed only when the Vehicles are engaged in carrying schoolchildren. Vehicles operating these Services may also display

- Hazard Warning Lights when stationary to allow schoolchildren to board or alight.
- 3.16 Except as detailed in clause 3.16, all PSV Vehicles used on the Service Agreement must have power-operated doors under the control of the Driver, and within his clear view, on all passenger entrances and exits, other than emergency exits. Any doorway, excluding the emergency exit, the foremost edge of which is more than one metre to the rear of the Driver's seat, must be fitted with an interlock device to prevent the opening of the doors except when stationary, and prevent the Vehicle from moving off with the doors open. The Driver must have a good view of and direct access to the passenger saloon(s).
- 3.17 Where the Vehicle has a maximum capacity of 16 or fewer passengers, a manual entrance/exit door adjacent to the driver, and to which he has direct and unobstructed access, will be acceptable. Wheelchair-accessible Vehicles with a side or rear-mounted passenger lift or ramp may have a manually operated door at that entrance/exit, provided that there is a warning indicator in the Driver's cab to indicate when the door is open.
- 3.18 Where a Vehicle is fitted with childproof locks on the rear doors, these must be used while the Vehicle is carrying children and/or vulnerable adults.
- 3.19 Appropriate Licence plates must be permanently affixed to the Vehicle, which, together with a valid Excise Duty disc should be clearly displayed.

4. Drivers

- 4.1 The Service Provider must ensure that all Drivers of Vehicles possess a current driving licence of the relevant category for that type of Vehicle, and that it is carried by the Driver during the operation of the Services. The driver must produce his current licence for inspection by any authorised officer of the Council on demand. If the licence cannot be produced on demand, the Service Provider must submit written evidence that the Driver holds the appropriate licence. The Driver is

- required to give his name and address, and other proof of identity sufficient to establish his identity, to the authorised officer on request.
- 4.2 All Drivers must be medically able to carry out the work for which they are employed and it is the responsibility of the Service Provider to ensure this is so.
 - 4.3 Drivers must neither smoke nor be under the influence of drugs or alcohol at any time during the operation of the Service, or on any placement journey prior to the operation of the Services, or on Council premises.
 - 4.4 All Drivers must wear the I D badge issued by the Council when operating the Service and ensure that these are clearly visible. 4.5 Where the Service Agreement requires the carriage of a Passenger Assistant employed by the Council, the Service Provider must ensure that any Driver operating the Service follows the reasonable instructions of the Passenger Assistant to carry out minor variations to the Service Agreement on an irregular basis.
 - 4.6 If no Passenger Assistant is carried on the Vehicle, the Driver must carry out the procedures set out in clauses 6, as far as is reasonably practicable.
 - 4.7 All Drivers must undertake Training Courses arranged by the Council. The Training sessions are for 'Contract Compliance' and 'Safeguarding'. Drivers will be allowed a grace period of three (3) months in which to enroll on the said courses.
 - 4.8 aAll PSV Drivers engaged in the provision of the Service must hold the Driver CPC qualification which will include elements for Contract Compliance and Safeguarding as directed by the Council.

5. Codes of Conduct

- 5.1 The Service Provider must ensure that all staff engaged in the provision of the Services are provided with a copy of, and observe all the provisions of, the 'Driver & PA Code of Conduct (Mainstream)', and the 'Driver & PA Code of Conduct (SEN)', which details expected behaviour and conduct and mechanism for reporting incidents back to

the Council. The Council shall issue revised codes of conduct from time to time.

- 5.2 Only in a specific case where authority has been given by the Council may a child aged under 16 and/or a vulnerable adult be refused travel. In cases of misconduct, the Service Provider must ensure that a child aged under 16 and/or a vulnerable adult is not refused entry to, or removed from, a Vehicle except under the most extreme circumstances. In such a case, the child aged under 16 and/or vulnerable adult must be delivered into the care of his parent/guardian or a Police officer, or a responsible and appropriate member of the Council's staff (e.g. a teacher).

6. Provision of Passenger Assistants

- 6.1 If required, the Service Provider must, at his own expense, provide a Passenger Assistant to travel with the Vehicle at all times when passengers are on board.
- 6.2 The Council reserves the right to instruct the Service Provider at its sole discretion not to use any person as a Passenger Assistant where it considers that this person is unsuitable to undertake the position in accordance with this Service Agreement.
- 6.3 All Passenger Assistants must undertake Training Courses arranged by the Council. The Training sessions are for 'Contract Compliance' and 'Safeguarding'.

The Council will also recognise the Passenger Assistant Training Standard (PATs) qualification as equivalent to those courses offered by the Council.

Training will initially be provided without charge by the Council. However, the Council will not meet any wages cost, or cost of covering the Passenger Assistant's duty, which the Service Provider may incur as a result of this attendance. The Service Provider may be required to arrange for the Passenger Assistant to attend for supplementary training, and also to meet with establishment staff and/or the carers of any of the passengers to be briefed on their special needs.

- 6.4 All Passenger Assistants will be required to have passed the training courses described in paragraph 6.3 not later than three (3) months

after the start of the Service. During this interim period, the Passenger Assistant may only work on Services where the Driver has attended the aforementioned training. If in the opinion of the Council, a Passenger Assistant's performance is unsatisfactory, the Passenger Assistant may be required to undertake a further training course or the Council may at its sole discretion instruct the Service Provider not to use the Passenger Assistant in the provision of the Services.

- 6.5 Passenger Assistants must clearly display the identity badge supplied by the Council at all times when on duty, and failure to do so will be regarded as a breach of these Conditions. Any person acting as a Passenger Assistant must provide his or her name and address, and other proof of identity sufficient to establish his identity, to any officer of the Council on request.
- 6.6 The Service Provider shall procure that when the Passenger Assistant is delivering Services under this Contract:
- (i) When picking up passengers from their homes, the Passenger Assistant must call at the door to (a) identify himself and the employing Service Provider, (b) establish the identity of the passenger; (c) assist the passenger, as requested, to transfer on to the Vehicle.
 - (ii) On arriving at a School or Social Care establishment, the Passenger Assistant must assist the passengers, as requested, to enter the establishment, and report their arrival to the Headteacher or Officer-in-charge or their representative.
 - (i) When picking up passengers from a School Care establishment, the Passenger Assistant must (a) identify himself and the employing Service Provider to the Headteacher or Officer-in-charge or their representative, (b) establish the identity of the appropriate passengers from the Headteacher or Officer-in-charge or their representative, (c) assist the passengers, as requested, to transfer on to the Vehicle.
 - (ii) When returning a passenger to his home, the Passenger Assistant will assist the passenger, as requested, to the front door and wait until the passenger is accepted into the care of the parent or responsible adult.

6.7 The Passenger Assistant must:

- (i) care for the passengers whilst they are on the vehicle, recognising and taking account of physical and mental conditions. This includes using appropriate language and behaviour;
- (ii) ensure that passengers are seated securely in the vehicle, using seat belts or harnesses;
- (iii) for wheelchair passengers, secure and pay attention to both the security of the passenger as well as the chair itself – using belts, harnesses and restraints according to the individual needs of the passenger;
- (iv) report to the Headteacher or Officer-in-charge any significant change in the condition or behaviour of any of the passengers observed on the vehicle. The PA must then advise their employer who in turn must advise the Council. NOTE: Any such matters must only be reported to the employer and, in turn, the Council, and information passed must be treated with utmost confidentiality.
- (v) if required, record the attendance or absence of passengers on daily log sheets provided by the Council;
- (vi) be aware that information regarding passengers and their families is confidential, and must not be disclosed to anyone, except as professionally required.

6.8 The Service Provider must provide Passenger Assistants who are mature and of good character, medically fit and have a manner appropriate to the supervision of children and/or vulnerable adults. The recommended minimum age for a PA is 21. If lifting of a passenger is required, this will be specified in the Service Agreement, and the Service Provider must ensure that the Passenger Assistant provided is capable of safely undertaking this duty. The Service Agreement may specify a male or female Passenger Assistant, and the Service Provider must ensure that any such requirement is complied with.

6.9 It is the responsibility of the Service Provider to effect appropriate insurance cover against injury to Passenger Assistants in the performance of their duties, and the Council will accept no liability for any injury sustained under any circumstances.

- 6.10 Passenger Assistants must neither smoke nor drink alcohol at any time during the operation of the Service, or on any placement journey prior to the operation of the Service, nor on Council premises.
- 6.11 Passenger Assistants must comply with their company's dress code. High visibility jackets should be worn when the Passenger Assistant finds it necessary to alight on the public highway.

7. Carriage of Passengers in Wheelchairs

- 7.1 Vehicles carrying passengers seated in wheelchairs must meet the following specification:
- (i) With any wheelchairs to be carried fixed in position, there must be a minimum gangway width of 300mm to at least two exits from every seat or wheelchair position.
 - (ii) Suitable independent restraint systems must be fitted for both wheelchair and passenger. The restraint system must be installed and operated in accordance with the manufacturer's instructions.
 - (iii) The wheelchair and passenger restraint systems must comply with the Department of Transport's Code of Practice VSE 87/1.
 - (iv) Passengers must not be carried in wheelchairs facing sideways.
 - (v) Vehicles may be fitted with ramps or power operated lifts to facilitate entry and exit for passengers in wheelchairs, but vehicles with a floor height of more than 610mm must be fitted with a power operated lift, and not a ramp. All such equipment must be installed, operated and maintained in accordance with the manufacturer's instructions, and power operated lifts must comply with BS6109 (#2), Category A.
 - (vi) If a powered lift is fitted, an emergency manual method of lowering the lift must be provided. Regular checks in accordance with the Lifting Operations and Lifting Regulations 1998 (LOLER) are required and evidence of this check should be submitted annually to the Council.
 - (vii) Stowed ramps or lifts must not prevent service and emergency doors from being operated from inside and outside the Vehicle. Internally stored lifts must fold down as designed to allow access to the emergency exit when the door is open.
 - (viii) When ramps are fitted, the ramp surface must be of non-slip material, and raised edges must be provided on each side of the ramp. Ramps must not flex unduly when in use, and preferably be solid across their entire width.
 - (ix) Doorways for use by passengers in wheelchairs must be at least 800mm wide up to a height of 800mm, and 600mm wide above that height. The height of the doorway must be a minimum of 1300mm.

- There should be a minimum floor to ceiling height of 1350mm in any part of the Vehicle to be occupied by passengers in wheelchairs.
- (x) If a Vehicle has a maximum carrying capacity of one passenger in a wheelchair (and up to four seated passengers) the minimum doorway width is 700mm, the minimum doorway height is 1170mm and the minimum internal height is 1300mm.
 - (xi) If the Service Agreement requires the carriage of passengers in specially adapted seats, these must comply with the recommendations of the Medical Devices Agency Guidance Note MDD92/07.

7.2 Service Providers should note that the Council operates a wheelchair "passport" system which identifies the wheelchair type and the appropriate method of restraint for the chair and the occupant. The Council recommends wheelchair restraint systems manufactured by Unwins and Koller of Yeovil. Tracking should be 330mm (13" approx) wide. Service Providers wishing to use restraints and/or tracking of alternative manufacturers must demonstrate that the restraints and tracking are compatible and meet safety standards. For minibuses, the recommended minimum spacing required for a passenger in a wheelchair is 1300mm (51" approx) length by 750mm (29.5" approx) wide by 1500mm (59" approx) high.

7.3 Due to the nature of the passengers being conveyed, any diversion from the normal daily routine may cause unnecessary distress, so Service Providers are required to attach a high degree of importance to the regular and punctual provision of reliable transport by endeavouring to supply regular drivers and passenger assistants on Services for Special Schools and Adult Care & Support Centres. The Service Provider must ensure that all personnel involved in the provision of the Service are made aware of the potential sensitivity of passengers with special needs, and their families, and the need to ensure that appropriate terminology and language is used at all times and that confidentiality must be maintained.

8. Accidents and Breakdowns

8.1 Any accident or incident involving a Vehicle operating under contract to the Council must be reported by telephone to the Council at the first opportunity. The Service Provider must as soon as is practicable, and in any case within three days, send to the Council a written report of any personal injury or accident involving a Vehicle, or a passenger

travelling in or boarding or alighting from a Vehicle, together with a report of any action the Service Provider has taken or proposes to take to prevent its recurrence.

- 8.2 In the event of an accident or breakdown causing delay to a Vehicle , the Service Provider must take all reasonable measures (at his own expense) both to minimise the delay to passengers on board the Vehicle concerned, and to operate the remainder of that Vehicle's schedule, adhering as closely as possible to the timetable. Any undue delay either in restoring the Services or in resuming the journey of delayed passengers will be treated as a breach of the Service Agreement and may lead to Low Performance Damages. The time to deal with a breakdown; remedy the situation or effect a replacement vehicle should not normally exceed 30 minutes.
- 8.3 All vehicles must carry a means of communication in order that the driver (or passenger assistant) can readily call for assistance. Such facilities are to be used in the event of accident, breakdown or delays over 15 minutes and in the case of School or SocialCare Transport, to notify the relevant school or establishment of the circumstances.
- 8.4 The Service Provider shall supply the Council with the telephone number and name of the person to be contacted in an emergency outside office hours.

9. Severe Weather Procedures and other school closure

- 9.1 Bus companies should be on the Council's circulation list for daily e-mail notification of proposed treatments on the county road network and weather forecast. If you do not receive this information and would like to be added to the circulation list, please advise the Council.
- 9.2 It is for a Headteacher to decide whether his/her school is to close. The Headteacher must then advise the School Emergency Team at County Hall who in turn notifies the Council's Passenger Transport Unit (PTU) and local radio stations BBC Radio Cornwall, and Pirate FM, as well as social media.
- 9.3 It is for a Service Provider to decide whether to operate on a day when road conditions are considered hazardous. If a School is open and a Service Provider decides not to run or modify its various services; the Service Provider should inform the School and then the PTU.

Communication with the PTU can be by e-mail to ptu@cornwall.gov.uk or by direct telephone line 01872 323562 which has an answer-phone facility out of office hours.

- 9.4 In the unlikely event of a vehicle being stranded in especially adverse conditions, it is of paramount importance that information is given to the PTU without delay. Passengers must be encouraged to stay with the Vehicle where their safety can be assured and their whereabouts known.
- 9.5 If a school is closed due to severe weather, the Service Provider shall be paid for the first day of closure and shall receive 75% of the Fee for a further four (4) days, but in the event of continued closure, it shall be at the sole discretion of the Council whether to pay the Service Provider for the duration of the closure.
- 9.6 If a school is closed for any other unplanned reason, the Service Provider shall be paid for the first day of closure and shall receive 75% of the Fee for a further four (4) days, but in the event of continued closure, it shall be at the sole discretion of the Council whether to pay the Service Provider for the duration of the closure.

10. Timetable

If a proposed timetable is given in the Requirement, it is to give a good indication of the time required to travel the route although no account is taken of varying traffic conditions. If you wish to propose changes in the running time you should take care to ensure that the proposed running times are realistic and avoid the contract being subject to low performance damages under Service Performance. If in the view of the PTU the proposed running times are unrealistic this may be sufficient reason for not accepting the Offer.

11. Days of Operation

When preparing an Offer, the Service Provider should assume there are 190 School days per an academic year although these may be spread over 195 term dates. school days within a financial year (01 April to 31 March) will vary depending upon the dates of the Easter holidays. The opening days of Adult Care Centres and Colleges are more variable and the Requirement will indicate the number of days per year.

14. Key Performance Indicators And Low Performance Damages

- 14.1 The scale of Key Performance Indicators and Low Performance Damages are shown in the table below. Low Performance Damages indicating a percentage apply to Contracted Services – the cost being the percentage of the daily rate payable. 14.2
- 14.3 In agreeing to abide by this Service Agreement, the Service Provider accepts that the costs of low performance damages set out in the table represent a genuine pre-estimate of the Council's loss.

15 Warnings

- 15.1 If the Council is satisfied that the Service Provider has failed to meet the required standards for lost mileage, quality of service or under any other clause of this contract, it may issue a formal warning. Where, on renewal, the contract is re-awarded to the same operator, any warnings which had been issued within the last nine months of the previous contract period may be taken into account if warnings are issued on the new contract.
- 15.2 For most matters, a Low Performance Damages points system is operated which will trigger the issue of a formal warning:-
- if a total of 100 points is accrued by the Service Provider in any period of two months, or a total of 200 points is accrued in any period of six months.
- 15.3 A total of three formal warning letters within a 12 month period will lead to the termination of the Services Agreement and Articles of Agreement or four (4) warnings during the whole period of the contract.
- 15.4 Points will not be counted towards more than one warning.

Scale of Key Performance Indicators and Low Performance Damages

	Nature of failure	Points	Notes	Maximum Performance costs for failure to meet Service Agreement standards
				Penalty
A	Failure to operate journey or no replacement vehicle provided within 30 minutes	50	Necessitating Council to effect alternative provision	150% of Daily Rate
B	Failure to operate both School journeys	50	Necessitating Council to effect alternative provision	200% Daily Rate
C	Failure to display current Road Fund Licence or Operator Disc	50	DVSA and/or Taxi Licensing alerted	
D	Use of smaller vehicle than contracted resulting in overcrowding	50	Necessitating Council to effect alternative provision	150% of Daily Rate
E	Use of vehicle that fails to meet Vehicle specification detailed in the Requirement	50	Necessitating Council to effect alternative provision	150% of Daily Rate
F	Use of unauthorised Driver or Passenger Assistant		i.e. No DBS check	Contract terminated
G	Failure to carry Passenger Assistant as required		Special Needs or Social Care Contract	Contract terminated
H	Failure to use required safety equipment.		Special Needs or Social Care Contract	Contract terminated
I	Driver or Assistant smoking during contract			Contract terminated
J	Carriage of Unauthorised Passenger	50	Dependent upon nature of incident, the Council's decision will be final.	Contract terminated; otherwise 50% of Daily Rate.
K	Failure to display correct route information and/or statutory school signs	25		
L	Failure to respond to complaint or report	25		
M	Failure to submit financial data as required	25		

