



Dated: _____ 2020

(1) **SURREY COUNTY COUNCIL**

AND

(2) SUPPLIER (insert name)

Dynamic Purchasing System (DPS) Supplier Agreement
for the provision of Assisted Passenger Transport Services for vulnerable children and adults.

Legal Services
County Hall Penrhyn Road Kingston upon Thames Surrey, KT1 2DN
(Legal Ref: FM004.718440)

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SECTION 1: ARTICLES OF AGREEMENT

This **DPS Supplier Agreement** is made the _____ day of _____ 2020

BETWEEN:

(1) SURREY COUNTY COUNCIL OF COUNTY HALL, PENRHYN ROAD, KINGSTON-UPON-THAMES KT1 2DN

(The "**Council**"); and

(2) [NAME OF SUPPLIER] (Company No. **[INSERT]**) whose registered office is at **[ADDRESS OF SUPPLIER]** (the "**Supplier**").

Individually a "Party" or together the "Parties".

BACKGROUND

(A) Pursuant to Regulation 34 of the Public Contract Regulations 2015, the Council placed a Contract Notice 2020-058903 dated 07th May 2020 in the Official Journal of the European Union advertising its intention to establish a web based Dynamic Purchasing System (DPS) for the provision of Assisted Passenger Transport Services made up of:

- (i) Home to School assisted passenger transport service for SEND and mainstream school children;
- (ii) Adult Transport Services (the "**Services**")

and invited requests to participate/applications from Suppliers to join or be admitted to the DPS.

(B) The Council engaged adam HTT Limited trading as *adam* (the "Technology Supplier") via the YPO Framework to provide a fully managed web-based technology services platform that will be used to create an electronic Dynamic Purchasing System (DPS) to be used for the procurement of the Services and managing the associated mini competition processes.

(C) On receiving the requests to participate/applications, the Council reviewed all Requests to Participate/Applications received against the Council's Selection Criteria and admitted to the DPS as DPS Suppliers all Suppliers who satisfied the Selection Criteria.

(D) The Supplier satisfied the selection criteria and was admitted onto the DPS at the end of the accreditation and enrolment process. Consequently the Supplier shall be eligible to respond to Requirements for the Services during the DPS Term.

(E) This Supplier Agreement:

(i) sets out:

- the procedure for setting up and calling off from the DPS
- the call off terms and conditions to be used for any Call-Off Contract which the Council may conclude
- the obligations of the Supplier under the DPS.
- any other additional information and provisions relating to the creation and management of the DPS



(ii) governs the relationship between the Council and the Supplier in respect of the provision of the Services by the Supplier to the Council.

(F) The Supplier acknowledges that, in entering this DPS Supplier Agreement, no form of exclusivity or volume guarantee has been granted by the Council

IT IS HEREBY AGREED BY THE PARTIES as follows:

(1) This DPS Supplier Agreement incorporates each of:

Section 1	These Articles of Agreement duly executed
Section 2	Definitions and Interpretation for DPS and Call Off Terms and Conditions
Section 3	DPS Terms and Conditions
Section 4	Schedules to Section 3 (DPS Terms and Conditions)
PART A	The Specification
PART B	Mini Competition Criteria
PART C	Call Off Terms and Conditions
	Annexes to Part C (Call Off Terms and Conditions)
Annex 1 Annex 1A Annex 1B	Variation Procedure Change Authorisation Form
Annex 2	Personnel and Management Information
Annex 3	Data Processing Schedule
Annex 4	Self- Billing Agreement
Annex 5	TUPE Provisions

1. The Supplier shall supply the Services in accordance with this agreement and any documents which are prepared and issued on the Platform following the mini competition process and the Council shall pay to the Supplier the prices agreed at the time of any call-off process.

2. This Agreement constitutes the entire agreement between the Parties hereto and supersedes all previous negotiations, representations and agreements either written or oral preceding the Agreement.

IN WITNESS whereof the parties hereto have executed this DPS Supplier Agreement as a deed the day and year first herein written

EXECUTED as a DEED by affixing)
hereto the COMMON SEAL of)

SURREY COUNTY COUNCIL

in the presence of and attested by:-)

.....
Authorised Signatory





EXECUTED as a DEED

by **[INSERT FULL BUSINESS NAME OF SUPPLIER]**

acting by and under the signature of:

Name: _____ Signature: _____

Director

Name: _____ Signature: _____

Director (or Company Secretary)

OR

EXECUTED as a DEED

by **[INSERT FULL BUSINESS NAME OF SUPPLIER]**

acting by and under the signature of:

Name: _____ Signature: _____

Director

In the presence of:

.....

Signature of Witness

.....

Name of witness

.....

Address of witness

.....

Occupation of witness



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SECTION 2: DEFINITION AND INTERPRETATION SECTION

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause 1 apply in this DPS Supplier Agreement including its Schedules, unless the context otherwise requires:

“Accreditation and Enrolment”	the evaluation of a supplier’s request to participate in the DPS and the subsequent admittance to the DPS of suppliers that fulfil the Council’s Selection Criteria.
“ADR Notice”	as defined in clause 18.1.3 of the DPS Terms and Conditions and clause 17.1.3 of the Call Off Terms and Conditions
“ADR Period”	as defined in clause 18.3 of the DPS Terms and Conditions and clause 17.3 of the Call Off Terms and Conditions
“Audit”	means an audit carried out pursuant to clause 10 (Records and Audit Access) of the DPS Terms and Conditions;
“Auditor”	means the National Audit Office or an auditor appointed by the Council as the context requires;
“Call-off Contract”	means the Service Agreement and the Call-Off Terms and Conditions set out in this Supplier Agreement including any accompanying Schedules/Annexes
“Call-off Terms and Conditions”	means the terms on which the Supplier shall provide the Services to the Council and which, together with the Service Agreement become the legally binding Call off Contract
“Call Off Variation Procedure”	means the variation procedure set out in the Call Off Terms and Conditions
“Categories”	means the categories set out in the Specification and Category shall mean any one (1) of them
“CEDR”	means the Centre for Effective Dispute Resolution;
“Change”	as defined in the Call Off Terms and Conditions
“Change Authorisation Form”	as defined in the Call Off Terms and Conditions
“Change of Control”	means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010;



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“Confidential Information”	means any information of either Party, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Parties, including Personal Data, intellectual property rights, together with all information derived from the above, any information developed by the Parties in the course of carrying out this DPS Supplier Agreement and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;
“Contract Documents”	means: <ul style="list-style-type: none">• this Supplier Agreement,• Self- Billing Agreement• Supplier Entry Guide(incorporating the Application Guide and the Operational Guide all on the Platform)• Service Agreement(s)
“Contract Charges”	means the charges exclusive of Value Added Tax payable by the Council in accordance with the relevant Call-off Contract.
“Contracting Authority”	means any contracting authority as defined in the Regulations including the Council;
“Council’s e-Invoicing System”	means the Taulia invoicing system available at the following link: https://login.eu.taulia.com/login/b312a593-81e7-439e-ae5e-5ab9f9474e46?utm_medium=internal_sso&utm_campaign=b312a593-81e7-439e-ae5e-5ab9f9474e46&utm_source=http://monolith.sp.taulia.com or such other replacement system as may be notified by the Council to the Supplier in writing;
“Data Protection Legislation”	means the Data Protection Act 2018, Privacy and Electronic Communications (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 and the General Data Protection Regulation and any legislation implemented in connection with the General Data Protection Regulation , together with any Law implemented in connection with or replacement of such Law coming into effect from time to time, and all applicable laws and regulations relating to the processing of personal data and privacy including guidance, codes of practice and other publications issued by the Information Commissioner’s Office;
“Data Subject”	shall have the meaning as set out in the Data Protection Legislation;



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“Default”	means any breach of the obligations of the relevant Party under this DPS Supplier Agreement (and/or, where applicable, a Call-off Contract) (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or its staff in connection with or in relation to the subject matter of this DPS Supplier Agreement (and/or, where applicable, the Call-off Contract) and in respect of which such Party is liable to the other;
“Dispute”	as defined in clause 18.1 of the DPS Terms and clause 17.1 of the Call Off Terms and Conditions
“Dispute Notice”	as defined in clause 18.1.1 and clause 17.1.1 of the Call Off Terms and Conditions.
“DPS Supplier”	A supplier who has successfully gone through Accreditation and Enrolment and has been admitted on to the DPS
“DPS Supplier Agreement”	means this DPS Supplier Agreement as described and set out in Section 1 - Articles of Agreement
“DPS Commencement Date”	means the 17 th of June 2020
“DPS Services”	means any and all of the services to be provided under the DPS as more particularly described in the Specification
“DPS Social Value Requirements”	means the social value equivalent to £100,000 to be delivered by Suppliers who hold Call Off Contracts in excess of £100,000.
“DPS Term”	as defined in clauses 1.6 and 1.7 of the DPS Terms and Conditions
“DPS Year”	means each consecutive period of twelve (12) Months during the DPS Term commencing on the DPS Commencement Date;
“EIR”	means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and / or codes of practice issued by the Information Commissioner’s Office or relevant government department in relation to such legislation;
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and / or codes of practice issued by the Information Commissioner’s Office or relevant government department in relation to such legislation;
“GDPR”	means the General Data Protection Regulation ((EU) 2016/679);
“GDPR Schedule”	Means the Data Processing Schedule set out in Annex 3 of the Call Off Terms and Conditions
“Good Industry Practice”	means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and



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	ordinarily be expected from a skilled and experienced person engaged as the case may be in the same type of undertaking as that of the Supplier under the same or similar circumstances at the relevant time for such exercise;
“Guidance”	means any guidance issued or updated by the UK government from time to time in relation to the Regulations;
“Holding Company”	shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto;
“Information”	has the meaning given under section 84 of the FOIA;
“Information Commissioner’s Office”	means the office of the Information Commissioner, being the regulator appointed in the UK as the data protection supervisory authority;
“Initial Term”	as defined in clause 1.6 of the DPS Terms and Conditions;
“Insolvency Event”	<p>in relation to the Supplier, means:</p> <ul style="list-style-type: none">(a) any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into (or, in the case of such a voluntary arrangement, being proposed);(b) a supervisor, receiver, administrator, administrative receiver or other encumbrancer of a similar nature taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged with seven (7) days) upon the whole or any material part of the Supplier’s assets;(c) where a court makes an order that the Supplier be wound up or a resolution for a voluntary winding up of the Supplier is passed;(d) the Supplier ceasing or threatening to cease carrying on business or being or being deemed to be unable to pay its debts when they become due within the meaning of Section 123 of the Insolvency Act 1986;(e) the Supplier, being an individual(s), has a bankruptcy order made against him or compounds with his creditor or comes to any arrangements with any creditors;



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<p>“Intellectual Property Rights”</p>	<p>means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off;</p>
<p>“Law”</p>	<p>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;</p>
<p>“Management Information”</p>	<p>means the Personnel and Management Information specified in Annex 2 of the Call Off Terms and Conditions.</p>
<p>“Mini-Competition”</p>	<p>means the process described in clause 3 of the DPS Terms and Conditions and carried out in relation to the award of a Call-off Contract.</p>
<p>“Mini-Competition Award Criteria”</p>	<p>means the award criteria to be applied for Mini Competitions and to be set out in every Requirement;</p>
<p>“Month”</p>	<p>means a calendar month;</p>
<p>“Notice of Variation”</p>	<p>as defined in the Call Off Terms and Conditions</p>
<p>“Offer”</p>	<p>means the Supplier’s tender response/submission for the desired Services in response to the Council’s Requirement pursuant to the Mini Competition.</p>
<p>“Open for Offers Period”</p>	<p>means the period during which time the Supplier can create and submit their Offer within the Platform pursuant to the Mini Competition.</p>
<p>“OJEU Notice”</p>	<p>means the contract notice 2020-058903 dated 7th May 2020 published in the Official Journal of the European Union;</p>
<p>“Parent Company”</p>	<p>means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged in the same or similar business to the Supplier;</p>
<p>“Party”</p>	<p>means the Council and / or the Supplier;</p>



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“Performance Improvement Plan”	as defined in clause 15 of the DPS Terms and Conditions.
Performance Points	means the measure of performance applied by the Council as set out in the Specification.
“Personal Data”	shall have the same meaning as set out in the Data Protection Legislation;
“Platform”	means the proprietary web-based end-to-end procurement, transaction and management system via www.sproc.net, or any other similar website notified to the Customer by the Technology Supplier from time to time.
“Prohibited Act”	as defined in clause 9 of the DPS Terms and Conditions and clause 8 of the Call Off Terms and Conditions.
“Relevant Employees”	means the employees who are subject to a Relevant Transfer under TUPE Regulations
“Relevant Transfer”	means a relevant transfer for the purposes of TUPE;
“Requirement”	means an initial request for Services/invitation to tender issued via the Platform by the Council pursuant to this DPS Supplier Agreement incorporating the Specification;
“Regulations”	means the Public Contracts Regulations 2015 (SI 2015/102) as amended from time to time;
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this DPS Supplier Agreement or any other affairs of the Council and " Regulatory Body " shall be construed accordingly;
“Replacement Services”	means services that are identical or substantially similar to any of the Services to be provided by the Supplier, which the Council receives from a Replacement Supplier who has already been admitted to the DPS, following the termination or expiry of any Service Agreement with the Supplier.
“Replacement Supplier”	means a DPS Supplier of Replacement Services appointed by the Council from time to time on expiry or termination of any and all Call Off Contracts.
“Requests for Information”	means a request for information or an apparent request under the Code of Practice on Access to Government Information, the FOIA or the EIR relating to this DPS Supplier Agreement and “ Requests for Information ” shall be construed accordingly;
“Schedule/s”	Means all Sections, Parts and Annexes incorporated into this DPS Supplier Agreement as set out in the Articles of Agreement



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“Selection Criteria”	means the requisite criteria that the Supplier must meet and maintain throughout the term of the DPS in order to successfully complete their Accreditation and Enrolment onto the DPS;
“Self-Billing Agreement”	an agreement between the Supplier and the Council, whereby the Council generates electronic invoices on behalf of the Supplier for the billing of the appropriate price and payment.
“Service Agreement”	means the acceptance of a supplier’s final Offer in response to the Council’s corresponding Requirement and incorporating the terms of this DPS Supplier Agreement.
“Social Value Schedule”	means the Council’s Social Value policy available at: https://www.surreycc.gov.uk/business-and-consumers/supplying-the-council/social-value-and-procurement/social-value-and-procurement
“Specification”	means the service specification for this DPS as set out in Section 4 Part A of this DPS Supplier Agreement and “Specification” shall be interpreted accordingly;
“Staff”	means all persons employed by the Supplier together with the Supplier’s servants, agents, suppliers and Sub-Contractors in the performance of its obligations under this DPS Supplier Agreement or any Call-off Contract;
“Sub-Contract”	means any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the DPS Services from that third party;
“Sub-Contractor/s”	means the contractors or Suppliers that enter into a Sub-contract with the Supplier;
“Suspension Notice”	as defined in clause 15.1 of the DPS Terms and Conditions;
“Technology Supplier”	means adam HTT Limited t/a adam (registered company #07718565), the owner and Supplier of the technology services Platform;
“TUPE”	means the Acquired Rights Directive and Transfer of Undertakings(Protection of Employment Regulations) 2000 and any re-enactments or amendments thereof
“Working Day(s)”	means any day other than a Saturday, Sunday or public holiday in England and Wales;



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- 1.2 The interpretation and construction of this DPS Supplier Agreement shall be subject to the following provisions:
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 1.2.2 words importing the masculine include the feminine and the neuter and vice versa;
 - 1.2.3 the words 'include', 'includes' 'including' 'for example' and 'in particular' and words of similar effect shall be construed as if they were immediately followed by the words 'without limitation';
 - 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 1.2.5 reference to any statute, order, regulation or other similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended or re-enacted by any subsequent statute, order, regulation or instrument;
 - 1.2.6 headings are included in this DPS Supplier Agreement for ease of reference only and shall not affect the interpretation or construction of this DPS Supplier Agreement;
 - 1.2.7 the Schedules form part of this DPS Supplier Agreement and shall have effect as if set out in full in the body of this DPS Supplier Agreement and any reference to this DPS Supplier Agreement shall include the Schedules;
 - 1.2.8 references in this DPS Supplier Agreement to any clause, sub-clause or Schedule without further designation shall be construed as a reference to the clause, sub-clause or Schedule (as applicable) to this DPS Supplier Agreement so numbered;
 - 1.2.9 references in this DPS Supplier Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this DPS Supplier Agreement so numbered;
 - 1.2.10 reference to a clause is a reference to the whole of that clause unless stated otherwise;
 - 1.2.11 time shall, during the summer time be British summer time but otherwise Greenwich mean time; and
 - 1.2.12 in the event and to the extent only of any conflict between the clauses of this DPS Supplier Agreement and any of the Schedules, the clauses shall prevail over the Schedules.



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SECTION 3: DPS TERMS AND CONDITIONS

Supplier's Appointment

- 1.3 The Council hereby appoints the Supplier as a DPS Supplier.
- 1.4 The Supplier shall be eligible to be considered for the award of Call Off Contracts for DPS Services falling within the Categories during the DPS Term in accordance with the terms of this Supplier Agreement.
- 1.5 The Supplier shall at all times during the DPS Term maintain the organisational and technical ability and capacity to provide the DPS Services for the Relevant Categories in accordance with the Supplier Agreement and the applicable Selection Criteria.

DPS Commencement and Duration

- 1.6 This DPS Supplier Agreement shall commence on the DPS Commencement Date and shall remain in force from the DPS Commencement Date and expire on the 31st of March 2024 (the “**Initial Term**”) unless the Initial Term is extended pursuant to clause 1.7 below or this DPS Supplier Agreement is terminated earlier in accordance with its terms.
- 1.7 Subject to clause 1.6, the Council shall (at its sole discretion) be entitled to extend this DPS Supplier Agreement beyond the Initial Term for a further period (an “**Extension**”) to expire on the 31st of March 2026 subject to earlier termination.
- 1.8 If the Council wishes to extend this DPS Supplier Agreement beyond the Initial Term, it shall give the DPS Suppliers written notice of its intention to do so three months prior to the expiry of the Initial Term.
- 1.9 If the Council does not wish to extend this DPS Supplier Agreement beyond the Initial Term, this DPS Supplier Agreement shall end automatically without notice on the expiry of the Initial Term without notice.
- 1.10 If the Council provides the Supplier with a notice pursuant to clause 1.8, this DPS Supplier Agreement shall be extended by the period set out in the notice. Unless otherwise agreed by the Parties, any such Extension shall be on the same terms and conditions as this DPS Supplier Agreement.

2. THE DPS ACCREDITATION AND ENROLMENT PROCESS

- 2.1 The Council shall offer all potential suppliers unrestricted, direct access to all appropriate documents, including the template Contract Documents and Selection Criteria and any additional documents relating to the provision of the Service by electronic means from the date of publication of the contract notice to the date when the system ceases to be operated.
- 2.2 From the DPS Commencement Date the DPS will be continually open to new joiners throughout the DPS Term. The parties agree that the same process used to qualify the Supplier and all other suppliers on to this DPS shall be used to qualify all and any Suppliers being considered for admission into the DPS during the DPS Term. The relevant process is set out in clauses 2.3 to 2.6 below:



- 2.3 The Council shall publish an OJEU Notice with a request to participate and a submission date included thereby giving all suppliers on the open market the opportunity to submit a 'request to participate' in the DPS via the Platform in order to progress through the Accreditation and Enrolment process.
- 2.4 Once the submission date has passed, the Council shall complete the evaluation/review of all the requests to participate within 10 working days from the date of its submission (or such longer period as the Council may determine) using the Selection Criteria
- 2.5 All suppliers who submitted a request to participate and passed the Council's review of the request to participate by satisfying the Selection Criteria, shall be admitted and enrolled on to the DPS.
- 2.6 This process shall be continually carried out all through the DPS Term and as many suppliers as successfully go through Accreditation and Enrolment shall be admitted and enrolled on to the DPS.

3. DPS MINI COMPETITION AND CALL-OFF PROCEDURE

- 3.1 Whenever the Council decides to procure the Services via the DPS, it shall order DPS Services from the Supplier in accordance with the procedure set out in this clause 3 and the Supplier Entry Guide. The procedure is set out below:
 - 3.1.1 The Council shall initiate the Mini Competition process by issuing Requirements for the Services on the Platform and asking DPS Suppliers who meet the Requirements set out to submit Offers.
 - 3.1.2 The DPS Suppliers shall submit their Offers on the Platform in accordance with the procedures detailed in the Supplier Entry Guide and this DPS Supplier Agreement, as may be further supplemented within the applicable Requirement.
 - 3.1.3 The DPS Suppliers shall submit their Offers on the Platform in a timely manner and no later than the deadlines established within the requisite Requirement or shall otherwise be excluded from the procurement process on the Platform.
 - 3.1.4 The Offers submitted shall be evaluated using the Council's published Evaluation Criteria.
 - 3.1.5 Once the evaluation is completed, the Council shall select the Offer that best meets the Requirement and its appropriate award criteria as may have been specified in the Requirement and related documentation.
 - 3.1.6 Thereafter the Council shall enter into a Call Off Contract with the DPS Supplier whose Offer was selected. Once agreed by the parties via the Platform, the Service Agreement becomes a legally binding agreement between the successful DPS Supplier and the Council and must be adhered to by the Parties.
- 3.2 Notwithstanding the fact that the Council has followed the procedure set out in this DPS Supplier Agreement or the Supplier Entry Guide, the Council shall always be entitled to decline to make an award for its Requirement/s.
- 3.3 The Supplier shall ensure that the Services are provided in accordance with the Requirements, the consequent Call Off Contract and the Contract Documents overall. Further, on request at any time, the Supplier must be able to evidence compliance with the same.
- 3.4 Where a Requirement is issued to the Supplier, it shall state the type of or part of the Services required including the Council's necessary timescales for delivery of those Services
- 3.5 If an Offer appears to be abnormally low, the Council may reject the Offer but only if it has:



- requested in writing from the Technology Supplier details of the constituent elements of the Offer which are considered to contribute to the Offer being abnormally low;
- taken account of the evidence supplied by the Supplier; and
- verified those constituent elements with the Supplier;

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

- 3.6 The Council may update the Supplier Entry Guide at any time throughout the DPS Term provided that the Council provides all suppliers with fair and open access to such changes with reasonable advance notice.
- 3.7 The amount of time provided to the Supplier to respond to a Requirement shall be detailed within the request to participate or other related documentation.
- 3.8 The Council reserves the right to request re-submission of any Selection Criteria or other Accreditation or Enrolment details throughout the duration of the Contract, and may perform audit checks of any such or existing Accreditation or Enrolment information.

4. CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS

- 4.1 The Supplier shall perform all its obligations under this DPS Supplier Agreement and all Call-off Contracts entered into with the Council:

4.1.1 in accordance with:

4.1.1.1 the requirements of this DPS Supplier Agreement;

4.1.1.2 Good Industry Practice; and

4.1.1.3 all applicable Laws;

4.1.2 with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;

4.1.3 in the case of Call-off Contracts, in accordance with the terms and conditions of the respective Call-off Contract/s.

- 4.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this DPS Terms and Conditions and any Call-off Contract (including any documents thereof), such conflict or inconsistency shall be resolved according to the following order of priority:

4.2.1 the Call-Off Contract with any Annexes

4.2.2 any other document referred to in the Call Off Contract and Call-off Terms

4.2.3 the DPS Terms and Conditions (including the Schedules);

4.2.4 any other document referred to in this DPS Supplier Agreement;



5. DPS WARRANTIES AND REPRESENTATIONS

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

- 5.1.1 all information submitted within the Accreditation and Enrolment is correct and accurate at the time of submission and shall ensure that all necessary and appropriate Accreditation and Enrolment checks and details are kept up to date throughout the DPS Term. In the event that the Supplier's status or compliance to any of the Selection Criteria changes throughout the DPS Term, then the Supplier shall inform the Council immediately and the Supplier acknowledges that the Council reserves the right to, at its sole discretion, suspend or expel the Supplier from the DPS, dependent upon the nature of such changes, particularly if such changes are to the detriment of the performance or standards of this DPS Supplier Agreement.
- 5.1.2 it has full capacity and authority, and all necessary consents (including, where its procedures so require, the consent of its Parent Company), to enter into and to perform its obligations under this DPS Supplier Agreement;
- 5.1.3 this DPS Supplier Agreement is executed by a duly authorised representative of the Supplier;
- 5.1.4 in entering into this DPS Supplier Agreement it has not committed any Prohibited Act;

6. E-INVOICING

6.1 The Supplier shall be required to register on the Council's e-Invoicing System on or before the DPS Commencement Date.

7. FINANCIAL INFORMATION AND COMPLIANCE WITH SELECTION CRITERIA

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

- 7.1.1 to comply with the Code of Practice on Local Council Accounting in the United Kingdom 2018/19 issued by the Chartered Institute of Public Finance and Accountancy (as the same may be updated or replaced from time to time);
- 7.1.2 examine, evaluate and be satisfied that the Council's Selection Criteria and any other minimum standards of economic and financial standing, technical and professional ability and general standing required of the Supplier with regard to the provision of the Services are consistently met throughout the DPS Term.

8. PUBLICITY AND BRANDING

8.1 Unless otherwise directed by the Council, the Supplier shall not:

- 8.1.1 make any press announcements or advertise this DPS Supplier Agreement in anyway; or



8.1.2 use the name or brand of the Council in any promotion or marketing or announcement

without the prior consent of the Council.

8.2 The Council shall be entitled to publicise this DPS Supplier Agreement in accordance with any legal obligation on the Council, including any examination by the Auditor or otherwise.

8.3 The Supplier shall not do anything or cause anything to be done which may damage the reputation of the Council and / or bring the Council into disrepute.

9. CORRUPT GIFTS AND FRAUD

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

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

9.1.1.1 for doing or not doing any act in relation to the obtaining or performance of this DPS Supplier Agreement or any other contract with the Council; or

9.1.1.2 for showing or not showing favour or disfavour to any person in relation to this DPS Supplier Agreement or any other contract with the Council;

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

9.1.3 fix or adjust the amount of the Mini-Competition by or in accordance with any agreement or arrangement with any other person;

9.1.4 communicate to any person other than the Council the amount or approximate amount of his proposed Mini-Competition prices (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the tender or for insurance purposes);

9.1.5 enter into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any tender submitted for a Mini-Competition;

9.1.6 commit any offence under:

9.1.6.1 the Bribery Act 2010;



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

9.1.6.3 legislation creating offences in respect of fraudulent acts;

9.1.6.4 common law in respect of fraudulent acts;

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

9.1.7 defraud or attempt to defraud or conspire to defraud the Council,

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

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

10. RECORDS AND AUDIT ACCESS

10.1 The Supplier shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of this DPS Supplier Agreement (or any longer period as may be agreed between the Parties), full and accurate records and accounts of the Call-off Contracts entered into and the amounts paid to the Supplier thereunder.

10.2 The Supplier shall keep the records referred to in clause 10.1 in accordance with Good Industry Practice.

10.3 The Supplier shall afford the Council and / or the Auditor such access to such records and accounts as may be required from time to time.

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

10.5 The Council shall use reasonable endeavours to ensure that the conduct of any Audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to a Call-off Contract, save insofar as the Supplier accepts and acknowledges that the conduct of an Audit carried out by the National Audit Office is outside of the control of the Council.

11. CONFIDENTIALITY

11.1 Each Party shall:

11.1.1 keep confidential the Confidential Information of the Parties and safeguard it accordingly;

11.1.2 not disclose the other Party's Confidential Information to any other person without the



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owner's prior written consent; and

11.1.3 use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

11.2 Clause 11.1 shall not apply to any disclosure of information:

11.2.1 required by any applicable Law or to any disclosures required under the FOIA, the EIR or the Data Protection Legislation;

11.2.2 where such disclosure is expressly permitted by the terms of this DPS Supplier Agreement;

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

11.2.4 by the Council of any document to which it is a party and which the Parties have agreed contains no Confidential Information;

11.2.5 to enable a determination to be made under the Dispute Resolution procedure;

11.2.6 which is independently developed without access to the other party's Confidential Information;

12. DATA PROTECTION

12.1 Both parties shall, and the Supplier shall procure that its Staff shall, comply with all applicable requirements of the Data Protection Legislation.

13. FREEDOM OF INFORMATION AND TRANSPARENCY

13.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIR.

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

13.2.1 provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its disclosure obligations under the FOIA and EIR (including responding to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations (as applicable));

13.2.2 transfer to the Council all Requests for Information relating to this DPS Supplier Agreement or Call Off Contract that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

13.2.3 provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the



Council requires, within five (5) Working Days (or such other period as the Council may specify) of the Council's request for such Information; and

13.2.4 not respond directly to a Request for Information unless expressly authorised to do so by the Council.

13.3 The Supplier acknowledges that the Council may be required under the FOIA and the EIR to disclose information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Council shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but the Council shall be responsible for determining in its absolute discretion whether any Confidential Information and / or any other information is exempt from disclosure in accordance with the FOIA and / or the EIRs.

13.4 The Supplier acknowledges that, except for any information therein which is exempt from disclosure in accordance with the FOIA or the EIR, the text of this DPS Supplier Agreement (including the Schedules) is not Confidential Information.

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

14. TERMINATION

14.1 Termination on Default

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

14.1.1.1 the Supplier commits a material breach and:

14.1.1.1.1 the Supplier has not remedied the material breach to the satisfaction of the Council within twenty (20) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the material Default and requesting it to be remedied; or

14.1.1.1.2 the material breach is not, in the reasonable opinion of the Council, capable of remedy; or

14.1.1.2 two (2) or more Call-off Contracts awarded to the Supplier under this DPS Supplier Agreement are terminated as a consequence of a material breach by the Supplier;

14.1.1.3 any warranty given by the Supplier pursuant to clause 5 (DPS Warranties, and Representations) is found to be untrue or misleading;

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



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

14.1.2 For the purposes of this clause, a “material breach” means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Council would otherwise derive from:

14.1.2.1 a substantial portion of this DPS Supplier Agreement over the DPS Term. In deciding whether any breach is material, no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

14.1.3 In determining whether to exercise any right of termination pursuant to this clause, the Council shall:

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

14.1.3.2 give all due consideration, where appropriate, to action other than termination of this DPS Supplier Agreement.

14.2 Termination on Insolvency

14.2.1 Without affecting any other right or remedy available to it, the Council may terminate this DPS Supplier Agreement with immediate effect by notice in writing in the event of an Insolvency Event provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council.

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

14.3 Termination on Change of Control

14.3.1 The Supplier shall notify the Council immediately in writing if the Supplier undergoes a Change of Control and provided this does not contravene any Law shall notify the Council immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation.

14.3.2 The Council may terminate this DPS Supplier Agreement by giving written notice to the Supplier with immediate effect within six (6) Months of:

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



14.3.2.2 where no notification has been made, the date that Council becomes aware of the Change of Control, if the Council considers, acting reasonably, that such change is likely to have an adverse effect on the provision of the Services, but the Council shall not be permitted to terminate this DPS Supplier Agreement where the Council has approved the Change of Control in advance.

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

14.4 Termination on Corruption

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

14.5 Termination on Breach of Information Obligations

14.5.1 The Council may terminate this DPS Supplier Agreement and remove Supplier from the DPS by serving notice on the Supplier in writing with effect from the date specified in such notice where the Supplier is in material Default of:

14.5.1.1 clause 11 (Confidentiality);

14.5.1.2 clause 12 (Data Protection); and / or

14.5.1.3 clause 13 (Freedom of Information).

14.6 Termination on Financial Standing

14.6.1 The Council may terminate this DPS Supplier Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where the Supplier fails to meet the minimum standards of economic and financial standing set out in the SQ following any assessment carried out pursuant to clause 7 (Financial Information, Audits and Compliance with Selection Criteria).

14.7 Termination in compliance with the Regulations

14.7.1 The Council may terminate this DPS Supplier Agreement where:

14.7.1.1 the Supplier has, at the time of the award of this DPS Supplier Agreement, been in one of the situations referred to in regulation 57(1) of the Regulations, including as



a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or

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

15. SUSPENSION OF SUPPLIER'S APPOINTMENT

- 15.1 Without prejudice to the Council's rights to terminate this DPS Supplier Agreement under clause 14 (Termination), if a right to terminate this DPS Supplier Agreement arises under clause 14, the Council may suspend the Supplier's right to participate in Mini-Competitions by giving notice in writing to the Supplier ("**Suspension Notice**"). If the Council serves a Suspension Notice to the Supplier in accordance with this clause, the Supplier's appointment shall be suspended for the period set out in the Suspension Notice or such other period notified to the Supplier by the Council in writing from time to time.
- 15.2 Suspension Notice issued by the Council shall include details of any performance improvements required from the Supplier including timescales for such improvement ("**Performance Improvement Plan**"). The Supplier shall be required to comply with the Performance Improvement Plan within the timescales set out in the Suspension Notice or such other timescale as may be agreed between the Parties.
- 15.3 In the event that the Supplier fails to comply with the Performance Improvement Plan to the Council's reasonable satisfaction, the Council shall be entitled to terminate this DPS Supplier Agreement in accordance with clause 14.1 (Termination on Default).
- 15.4 The service of a Suspension Notice shall not operate as a notice to terminate or suspend any Call-off Contract already made under this DPS Supplier Agreement. Suspension of a DPS Supplier pursuant to this clause shall not cause any Call-Off Contracts to terminate or be suspended automatically. For the avoidance of doubt, all Call-off Contracts shall remain in force unless and until they are terminated or expire in accordance with the Call-off Terms.

16. CONSEQUENCES OF TERMINATION AND EXPIRY

- 16.1 For the avoidance of doubt, the Council shall be entitled to exercise any of its rights of termination set out in clause 14 (Termination) without incurring any penalty or additional costs.
- 16.2 Notwithstanding the service of a notice to terminate this DPS Supplier Agreement, the Supplier shall continue to fulfil its obligations under this DPS Supplier Agreement until the date of expiry or termination of the DPS Supplier Agreement or such other date as required under this clause.
- 16.3 Unless expressly stated to the contrary, the service of a notice to terminate this DPS Supplier Agreement shall not operate as a notice to terminate any Call-off Contract made under this DPS Supplier Agreement. Termination or expiry of this DPS Supplier Agreement shall not cause any



Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-off Contracts shall remain in force unless and until they are terminated or expire in accordance with the Call-off Terms.

- 16.4 Within thirty (30) Working Days of the date of termination or expiry of this DPS Supplier Agreement, the Supplier shall return or destroy at the request of the Council any data, personal information relating to the Council or its personnel, or Confidential Information belonging to the Council in the Supplier's possession, power or control, in its then current format and any other information and all copies thereof owned by the Council, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under this DPS Supplier Agreement or such period as is necessary for such compliance.
- 16.5 The rights of the Council (to terminate or otherwise) under clause 14 (Termination) are in addition (and without prejudice) to any other right or remedy which the Council may have to claim the amount of loss or damage suffered by the Council on account of the acts or omissions of the Supplier (or to take any action other than termination of this DPS Supplier Agreement).
- 16.6 Termination or expiry of this DPS Supplier Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this DPS Supplier Agreement before such termination or expiry.
- 16.7 The provisions of the following clauses shall survive the termination or expiry of this DPS Supplier Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination: Section 2 (Definitions and Interpretation); clause 5 (Warranties and Representations); clause 9 (Corrupt Gifts and Fraud); clause 10 (Records and Audit Access); clause 11 (Confidentiality); clause 12 (Data Protection); clause 13 (Freedom of Information); clause 8 (Publicity and Branding); clause 16 (Consequences of Termination); clause 17 (Insurance); clause 18 (Dispute Resolution); clause 21 (Third Party Rights); clause 22 (Severability); clause 23 (Entire Agreement); and clause 25 (Governing Law and Jurisdiction).

17. INDEMNITY AND INSURANCE

- 17.1 The Supplier shall indemnify the Council against all claims, demands, proceedings, actions, damages, costs, expenses and any other liabilities in respect of, or arising out of, the provision of the Services in relation to the injury to or death of any person, or loss of or damage to any property including property belonging to the Council or financial loss arising from any advice given or omitted to be given or service provided by the Supplier or any other loss which is caused directly or indirectly by any act or omission of the Supplier. This does not apply to the extent that such injury, death, loss or damage arises out of the act, default, or negligence of the Council, its employees, or other agents or suppliers (not including the Supplier).
- 17.2 The Supplier shall throughout the duration of this DPS Supplier Agreement effect and maintain the following insurances with a reputable insurance company in relation to its obligations under this DPS Supplier Agreement:

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

17.2.2 Employers' liability insurance with a minimum limit of indemnity of ten million pounds



(10,000,000)] in respect of any one (1) incident;

Together the “**Required Insurances**”.

18. DISPUTE RESOLUTION

- 18.1 If a dispute arises out of or in connection with this DPS Supplier Agreement or its performance, validity or enforceability (a “**Dispute**”) the Parties shall follow the procedure set out in this clause:
- 18.1.1 Either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (“**Dispute Notice**”), together with the relevant supporting documents. On service of the Dispute Notice, suitably senior officers of the Parties shall attempt in good faith to resolve the Dispute. For the Council, the senior officers shall be the Transport Coordination Team Manager (or equivalent) and the Assistant Director SEND&LAC Commissioning (or equivalent).
 - 18.1.2 if the dispute cannot be resolved by the Parties pursuant to clause 18.1.1 within thirty (30) days of service of the Dispute Notice, the dispute shall be referred to the Director of Education, Learning and Culture for the Council (or equivalent) and the Managing Director (or equivalent) for the Supplier who shall attempt in good faith to resolve it; and
 - 18.1.3 If the Dispute cannot be resolved by the Parties pursuant to clause 18.1.2 for any reason within thirty (30)] days, the Parties shall attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must service notice in writing (“**ADR Notice**”) to the other Party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than 7 days after the date of the ADR Notice.
- 18.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 25 (Governing Law and Jurisdiction) which shall apply at all times.
- 18.3 If the Parties fail to resolve the dispute by mediation within sixty (60) Working Days after service of the ADR Notice (the “**ADR Period**”), or the mediation terminates before the expiration of the ADR Period, the Dispute shall be finally resolved pursuant to clause 26 (Governing Law and Jurisdiction).
- 18.4 The obligations of the Parties under this DPS Supplier Agreement shall not be suspended, cease or be delayed by the reference of a Dispute to mediation or the courts pursuant to this clause 18 (Dispute Resolution) and the Supplier and its Staff shall comply fully with the requirements of this DPS Supplier Agreement at all times.



19. ASSIGNMENT AND NOVATION

- 19.1 Subject to the remaining provisions of this clause 19, the Supplier shall not be entitled assign, novate, or otherwise dispose of any or all of its rights under this DPS Supplier Agreement unless there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the Accreditation and Enrolment criteria used during the establishment of this DPS.
- 19.2 The Council may assign, novate or otherwise dispose of any or all of its rights and obligations under this DPS Supplier Agreement and any associated third party licences to any other Contracting Authority or to any other body which substantially performs any of the functions that previously had been performed by the Council and shall give notice of such assignment, novation or disposal to the Supplier.

20. VARIATION

- 20.1 Any amendments or variations to this DPS Supplier Agreement must be made via a deed of variation prepared and executed by the authorised officers of the Council and the Supplier.

21. THIRD PARTY RIGHTS

- 21.1 A person who is not a party to this DPS Supplier Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this DPS Supplier Agreement.

22. SEVERABILITY

- 22.1 If any provision, clause or part-provision of this DPS Supplier Agreement is or becomes invalid, illegal or unenforceable for any reason, by any court of competent jurisdiction, such provision shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision, clause or part-provision shall be severed and deemed deleted.
- 22.2 If any provision or part-provision of this DPS Supplier Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 22.3 If a provision of this DPS Supplier Agreement that is fundamental to the accomplishment of the purpose of this DPS Supplier Agreement is held to any extent to be invalid, the Supplier and the Council shall immediately commence good faith negotiations to remedy that invalidity.
- 22.4 Any modification to or deletion of a provision, clause or part-provision under this clause 22 (Severability) shall not affect the validity and enforceability of the rest of this DPS Supplier Agreement, which shall continue in full force.



23. ENTIRE AGREEMENT

- 23.1 This DPS Supplier Agreement (including the Schedules) and the documents referred to in it constitutes the entire agreement and understanding between the Parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the Parties relating to that subject matter, provided that nothing in this clause shall operate to exclude any liability for fraud or misrepresentation.
- 23.2 Save as provided for elsewhere in this DPS Supplier Agreement, each Party acknowledges and agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this DPS Supplier Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this DPS Supplier Agreement.

24. FORCE MAJEURE

- 24.1 Neither Party shall be liable to the other for any failure to perform its obligations under this DPS Supplier Agreement if either party is prevented, hindered or delayed in the performance of its obligations under the Supplier Agreement by any act of God, war, riot, civil commotion, explosion, fire, radiation, major incident government action, interruption in the supply of power, labour dispute (other than a dispute concerning the Service Supplier's employees or the employees of its sub-contractors), pandemic, epidemic, global pandemic or epidemic or other circumstances beyond the control of the parties which prevents a party from, or hinders or delays a party in, performing its obligations under this DPS Supplier Agreement (and which the application of due diligence and foresight could not have prevented) where such performance is rendered impossible in the circumstances of a Force Majeure Event, but nothing in this clause (Force Majeure) shall limit the obligations of the Supplier to use its best endeavours to fulfil its obligations under this DPS Supplier Agreement.
- 24.2 If either party is prevented from performing their obligations due to any of the circumstances listed in this clause for longer than 120 days either party may immediately terminate the DPS Supplier Agreement.
- 24.3 A Party cannot claim the relief from liability set out in clause 24.1 if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

25. GOVERNING LAW AND JURISDICTION

- 25.1 This DPS Supplier Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Law of England and Wales.
- 25.2 Each Party irrevocably accepts that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this DPS Supplier Agreement or its subject matter or formation (including non-contractual disputes or claims).





SECTION 4 PART A – THE SPECIFICATION



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SECTION 4 PART B – MINI COMPETITION AWARD CRITERIA

The following criteria and weightings shall be applied to all Mini Competition and Call Off procedures pursuant to the DPS. For the avoidance of doubt, the Mini Competition Award Criteria is made up of:

- Price – 95%

This is the final Offer price submitted when the Suppliers bid on the Requirement/s

- Quality 5%

This is the quality evaluation score awarded at the time of Accreditation and Enrolment and recorded on the Platform. When suppliers bid on Requirements, the final Offer price submitted, and the quality score embedded on the Platform will be used to rank the suppliers and award Call Off Contracts.

In instances where two Offers are submitted by different suppliers on the same Requirement with the same price, this quality score will be used to separate those suppliers and rank them. The supplier attaining the higher quality score at Accreditation and Enrolment will be placed above other suppliers that have submitted the same price. The Council will then review and award the tender as appropriate (please refer to the Operational guide on <http://demand.sproc.net> for more information).

Mini Competition Award Criteria	Mini Competition Award Criteria Weighting %	Sub-criteria	Sub-criteria Weighting 100%
Quality – Outcome Questions during Accreditation and Enrolment.	5%	Service Delivery – Effective Communication, Customer Service	20% (a minimum 10% is required to pass the evaluation)
		Business Continuity – Staff, Code of Conduct & Training	20% (a minimum 10% is required to pass the evaluation)
		Health & Safety – Risk Awareness, Assessment & Management	20% (a minimum 10% is required to pass the evaluation)
		Safeguarding	20% (a minimum 10% is required to pass the evaluation)
		Quality Assurance – Contract Monitoring & Management	20% (a minimum 10% is required to pass the evaluation)
Price	95%		

Evaluation of the outcome questions will be scored based on the following criteria and suppliers are required to have a minimum score of 2 on every criterion to pass the quality evaluation

Capability	Evidence Provided	Score	Remark
Provider is comprehensively able to meet the needs of the Council.	Evidence is adequate, consistent, comprehensive, compelling, directly relevant in all respects and highly credible	4	Absolute Confidence
Small risk that the Provider is able meet the needs of the Council.	Evidence has minor gaps but has evidenced the ability to meet the needs.	3	Confidence



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Moderate risk that the Provider is just suitable to meet the needs of the Council.	Evidence has moderate gaps, but is suitable	2	Adequate with minor concerns
Significant risk that the Provider will not meet the needs of the Council.	Evidence has major gaps, is unconvincing in many respects, lacks credibility, or largely irrelevant to the project.	1	Moderate Concerns
Provider will not be able to meet the needs of the Council.	No evidence or misleading evidence.	0	Major Concerns



SECTION 4 PART C - CALL OFF TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

The definitions and rules of interpretation set out in Section 2 (Definitions and Interpretation Section) above are hereby incorporated into these Call Off Terms and Conditions (Call Off Terms). These Call Off Terms shall be incorporated into all Call Off Contracts (as defined in Section 2) completed between the Council and any successful DPS Supplier (Supplier) with whom the Council wants to enter into Call Off Contracts pursuant to the processes set out in:
Section 3: DPS Terms and Conditions.

2. CONTRACT PERFORMANCE

2.1 The Supplier shall perform all its obligations under all Call-off Contracts entered into with the Council in accordance with:

- these Call Off Terms
- Good Industry Practice; and
- all applicable Laws;

and using appropriately experienced, qualified and trained personnel with all due skill, care and diligence

3. CONTRACT PRICING

3.1. In consideration of the provision of the Services by the Supplier pursuant to a Call Off Contract in accordance with these Call off Terms, the Council shall pay the Charges to the Supplier in accordance with the Self-Billing Agreement (Annex 4 of these Call Off Terms).

3.2. The Council shall raise an invoice on behalf of the Supplier once the appropriate Service Receipt has been created and agreed between the Parties within the Technology and becomes payable in accordance with the Self Billing Agreement.

3.3. The Council shall pay the Charges which have become payable within thirty (30) days of the appropriate undisputed invoice having been raised.

3.4. For the avoidance of doubt, the Supplier acknowledges and accepts that the Charges due for the Services provided under the Contract shall be paid by the Council. Any disputes regarding payment or the amount payable must first be directed to the Council.



4. WARRANTIES AND REPRESENTATIONS

4.1. its obligations under any Call Off Contract. The Supplier warrants, represents and undertakes to the Council that:

4.1.1. No claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress, or, to the best of its knowledge and belief pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Call Off Terms and / or any Call-off Contract thereunder;

4.1.2. it is not subject to any contractual obligation, compliance with which will be likely to have an effect on its ability to perform its obligations under this Call Off Terms and / or any Call-off Contract thereunder;

4.1.2.1.1. no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of their knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and

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

4.1.2.1.3. Each time a Call-off Contract is entered into, the warranties, representations and undertakings in this clause (Warranties, Representations and Guarantees) shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time that they are deemed to be repeated.

4.1.2.1.4. For the avoidance of doubt, the fact that any provision within this terms and conditions is expressed as a warranty shall not preclude any right of termination the Council may have in respect of breach of that provision by the Supplier.

4.2. The Supplier acknowledges and agrees that:

4.2.1. these warranties, representations and undertakings are material and that each and every occasion that it enters into a Call-off Contract it shall rely upon the above warranties, representations and undertakings

4.2.2. The Supplier warrants, represents and undertakes for the duration of any Call Off Contract that:

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

4.2.4. it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Supplier's obligations under this Call Off Terms;



and

4.2.5. it shall at all times comply with Law in carrying out its obligations under any Call Off Contract.

5. SERVICE PRE-REQUISITES

5.1. The Supplier shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of any Call-off Contract.

6. MONITORING AND REPORTING MEETINGS

6.1. The Council shall require the Supplier to attend performance monitoring meetings, to assess the quality and progress of the Services being provided under any Call Off Contract as set out in Appendix F of the Specification.

7. HEALTH AND SAFETY

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

8. CORRUPT GIFTS AND FRAUD

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

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

8.1.1.1. for doing or not doing any act in relation to the obtaining or performance of any Call-off Contract with the Council; or

8.1.1.2. for showing or not showing favour or disfavour to any person in relation to any Call-off Contract with the Council;

8.1.2. enter into any Call-off Contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Supplier (or anyone acting on its behalf or to its knowledge) unless (before such contract is made) particulars of any such commission have been disclosed in writing to the Council;

8.1.3. fix or adjust the amount of the Mini-Competition by or in accordance with any agreement or arrangement with any other person;



8.1.4. communicate to any person other than the Council the amount or approximate amount of his proposed Mini-Competition prices (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the tender or for insurance purposes);

8.1.5. enter into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any tender submitted for a Mini-Competition;

8.1.6. commit any offence under:

8.1.6.1. the Bribery Act 2010;

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

8.1.6.3. legislation creating offences in respect of fraudulent acts;

8.1.6.4. common law in respect of fraudulent acts;

in relation to any Call-off Contract with the Council;

8.1.7. defraud or attempt to defraud or conspire to defraud the Council,

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

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

9. CONFIDENTIALITY

9.1. Each Party shall:

9.1.1. keep confidential the Confidential Information of the Parties and safeguard it accordingly;

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

9.1.3. use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

9.2. Clause 9.1 shall not apply to any disclosure of information:

9.2.1. required by any applicable Law or to any disclosures required under the FOIA, the EIR or the Data Protection Legislation;

9.2.2. where such disclosure is expressly permitted by the terms of these Call Off Terms and



Conditions;

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

9.2.4. by the Council of any document to which it is a party and which the Parties have agreed contains no Confidential Information;

9.2.5. to enable a determination to be made under the Dispute Resolution procedure;

9.2.6. which is independently developed without access to the other party's Confidential Information; or

10. TUPE

The Supplier shall fully comply with all and any legislation relating to transfer of staff (including but not limited to TUPE Regulations) in the event that TUPE applies at the expiry or termination of any Call Off Contract pursuant to these Call Off Terms. For the avoidance of doubt, the Parties agree that in the event that TUPE applies on expiry or termination, the provisions of **Annex 5- TUPE Provisions** shall apply.

11. DATA PROTECTION

11.1. Both parties shall, and the Supplier shall procure that its Staff shall, comply with all applicable requirements of the Data Protection Legislation. The GDPR Schedule (Annex 1) must be complied with in full during the provision of the Services pursuant to a Call Off Contract

12. SAFEGUARDING

The Supplier agrees to comply fully with the Safeguarding requirements set out in the Specification when providing DPS Services under a Call Off Contract pursuant to these Call Off Terms and Conditions

13. FREEDOM OF INFORMATION AND TRANSPARENCY

13.1. The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIR.

13.2. The Supplier shall and shall procure that its Sub-contractors shall:

13.2.1. provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its disclosure obligations under the FOIA and EIR (including responding to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations (as applicable));

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



13.2.3. provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires, within five (5) Working Days (or such other period as the Council may specify) of the Council's request for such Information; and

13.2.4. not respond directly to a Request for Information unless expressly authorised to do so by the Council.

13.3. The Supplier acknowledges that the Council may be required under the FOIA and the EIR to disclose information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Council shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but the Council shall be responsible for determining in its absolute discretion whether any Confidential Information and / or any other information is exempt from disclosure in accordance with the FOIA and / or the EIRs.

13.4. The Supplier acknowledges that, except for any information which is exempt from disclosure in accordance with the FOIA or the EIR, the text of these Call Off Terms and Conditions (including the Annexes) is not Confidential Information.

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

14. COMPLAINTS HANDLING AND RESOLUTION

14.1. The Supplier shall comply fully with the Council's complaint procedure as set out in the Specification.

15. TERMINATION

15.1. Termination pursuant to the Specification/ Performance Points Scheme

15.1.1. The Parties agree that the Call Off Contracts shall be terminated in accordance with the termination provisions set out in the Specification.

15.2. Termination on Insolvency

15.2.1. Without affecting any other right or remedy available to it, the Council may terminate these Call Off Terms or any Call Off Contract with immediate effect by notice in writing in the event of an Insolvency Event provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council.

15.2.2. For the avoidance of doubt, a resolution by the Supplier or a court order that the



Supplier be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event.

15.3. Termination on Corruption

15.3.1. The Council may terminate these Call Off Terms or any Call Off Contract by serving notice on the Supplier with effect from the date specified in such notice where the Supplier commits a Prohibited Act.

15.4. Termination in compliance with the Regulations

15.4.1. The Council may terminate these Call Off Terms or any Call Off Contract where:

15.4.1.1. the Supplier has, at the time of the award of the Call Off Contract, been in one of the situations referred to in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or

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

16. CONSEQUENCES OF TERMINATION AND EXPIRY

16.1. For the avoidance of doubt, the Council shall be entitled to exercise any of its rights of termination set out in clause 15 (Termination) without incurring any penalty or additional costs.

16.2. Within [thirty (30)] Working Days of the date of termination or expiry of these Call Off Terms or Call Off Contract, the Supplier shall return or destroy at the request of the Council any data, personal information relating to the Council or its personnel, or Confidential Information belonging to the Council in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Council (in which event the Council will reimburse the Supplier's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Council, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under these Call Off Terms or any Call Off Contract or such period as is necessary for such compliance.

16.3. The rights of the Council (to terminate or otherwise) under clause 15 (Termination) are in addition (and without prejudice) to any other right or remedy which the Council may have to claim the amount of loss or damage suffered by the Council on account of the acts or omissions of the Supplier (or to take any action other than termination of these Call Off Terms or Call Off Contract).



SURREY

- 16.4. Termination or expiry of these Call Off Terms or any Call Off Contract shall be without prejudice to any rights, remedies or obligations of either Party accrued under these Call Off Terms or Call Off Contract before such termination or expiry.
- 16.5. The provisions of the following clauses shall survive the termination or expiry of these Call Off Terms or any Call Off Contract together with any other provision which is either expressed to or by implication is intended to survive termination: Section 2 (Definitions and Interpretation); clause 4 (Warranties and Representations); clause 8 (Corrupt Gifts and Fraud); clause 9 (Confidentiality); clause 11 (Data Protection); clause 13 (Freedom of Information); clause 16 (Consequences of Termination); clause 17 (Dispute Resolution); clause 20 (Third Party Rights); clause 21 (Severability); clause 24 (Entire Agreement); and clause 27 (Governing Law and Jurisdiction).

17. DISPUTE RESOLUTION

- 17.1. If a dispute arises out of or in connection with these Call Off Terms or Call Off Contract or their performance, validity or enforceability (a “**Dispute**”) the Parties shall follow the procedure set out in this clause 17:

17.1.1. Either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (“**Dispute Notice**”), together with the relevant supporting documents. On service of the Dispute Notice, suitably senior officers of the Parties shall attempt in good faith to resolve the Dispute. . For the Council, the senior officers shall be the Transport Coordination Team Manager (or equivalent) and the Assistant Director SEND&LAC Commissioning (or equivalent).

17.1.2. if the dispute cannot be resolved by the Parties pursuant to clause 18.1 within thirty (30) days of service of the Dispute Notice, the dispute shall be referred to the Director of Education Learning and Culture for the Council(or equivalent) and the Managing Director (or equivalent) for the Supplier who shall attempt in good faith to resolve it; and

17.1.3. If the Dispute cannot be resolved by the Parties pursuant to clause 18.1.2 for any reason within thirty (30) days, the Parties shall attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must service notice in writing (“**ADR Notice**”) to the other Party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than 7 days after the date of the ADR Notice.

- 17.2. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 27 (Governing Law and Jurisdiction) which shall apply at all times.

- 17.3. If the Parties fail to resolve the dispute by mediation within sixty (60) Working Days after service of the ADR Notice (the “**ADR Period**”), or the mediation terminates before the expiration of the ADR Period, the Dispute shall be finally resolved pursuant to clause 27 (Governing Law and Jurisdiction).



17.4. The obligations of the Parties under these Call Off Terms or any Call Off Contract shall not be suspended, cease or be delayed as a result of a Dispute to mediation or the courts pursuant to this clause 17 (Dispute Resolution) and the Supplier and its Staff shall comply fully with the requirements of these Call Off Terms or Call Off Contract at all times.

18. SUB-CONTRACTING, ASSIGNMENT AND NOVATION

- 18.1. Subject to the remaining provisions of this clause 18, the Supplier shall not be entitled assign, novate, or otherwise dispose of any or all of its rights under these Call Off Terms or any Call Off Contract. without the express written consent of the Council and unless there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the Accreditation criteria used during the establishment of the DPS.
- 18.2. The Council may assign, novate or otherwise dispose of any or all of its rights and obligations under these Call Off Terms or any Call Off Contract and any associated third party licences to any other contracting authority or to any other body which substantially performs any of the functions that previously had been performed by the Council and shall give notice of such assignment, novation or disposal to the Supplier.
- 18.3. The Supplier shall not be entitled to sub-contract the whole or any part of its obligations under this Call Off Terms or Call Off Contract except with the express prior written consent of the Council [such consent not to be unreasonably withheld. If given, consent to enter into a Sub-Contract shall not relieve the Supplier from any liability or obligation under these Call Off Terms and any Call Off Contract and the Supplier shall be responsible for the acts, defaults or neglect of any Sub-Contractor, its employees or agents in all respects as if they were the acts, defaults or neglect of the Supplier.
- 18.4. Where the Supplier enters into a Sub-Contract for the purpose of performing its obligations under this Call Off Terms or Call Off Contract, it shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due from the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- 18.5. The Supplier shall enter into such agreement and / or deed as the Council shall reasonably require so as to give effect to any assignment, novation or disposal made pursuant to this clause.

19. VARIATIONS

- 19.1. Any variations to these Call Off Terms or any Call Off Contract, save for any assignment or novation pursuant to any Change must be made only in accordance with the Variation Procedure set out in Annex 1A (Variation Procedure).
Variations to any Call Off Terms or any Call Off Contract shall be at the Council's sole discretion and confirmed to the Supplier via the DPS Change Authorisation Form set out in Annex 1B.

20. THIRD PARTY RIGHTS

- 20.1. A person who is not a party to these Call Off Terms shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Call Off Terms.



21. SEVERABILITY

- 21.1. If any provision, clause or part-provision of these Call Off Terms is or becomes invalid, illegal or unenforceable for any reason, by any court of competent jurisdiction, such provision shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision, clause or part-provision shall be severed and deemed deleted.
- 21.2. If any provision or part-provision of these Call Off Terms is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 21.3. If a provision of these Call Off Terms that is fundamental to the accomplishment of the purpose of these Call Off Terms is held to any extent to be invalid, the Supplier and the Council shall immediately commence good faith negotiations to remedy that invalidity.
- 21.4. Any modification to or deletion of a provision, clause or part-provision under this clause 21 (Severability) shall not affect the validity and enforceability of the rest of these Call Off Terms or Call Off Contract which shall continue in full force.

22. RIGHTS AND REMEDIES

- 22.1. The rights and remedies of the Parties provided under these Call Off Terms are in addition to, and not exclusive of, any rights or remedies provided by Law and the rights and remedies under these Call Off Terms or Call Off Contract shall be cumulative.
- 22.2. Unless a right or remedy of the Council is expressed to be an exclusive right or remedy, the exercise of it by the Council is without prejudice to the Council's other rights and remedies.

23. WAIVER

- 23.1. No failure or delay by a Party to exercise any right or remedy provided under these Call Off Terms by Law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 23.2. The rights and remedies provided by these Call Off Terms may only be waived in writing by the relevant Party in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to in such written notice.

24. ENTIRE AGREEMENT

- 24.1. These Call Off Terms and the documents referred to in it constitutes the entire agreement and understanding between the Parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the Parties relating to that subject matter,



provided that nothing in this clause shall operate to exclude any liability for fraud or misrepresentation.

24.2. Save as provided for in clause 4 (Warranties, Representations and Guarantees), each Party acknowledges and agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Call Off Terms or any Call Off Contract Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in these Call Off Terms.

25. NOTICES

25.1. Except as otherwise expressly provided within these Call Off Terms, no notice or other communication from one party to the other shall have any validity under these Call Off Terms unless made in writing by or on behalf of the Party sending the communication.

25.2. Any notice or other communication which is to be given or made under by either party under these Call Off Terms shall be in writing and in English and signed by or on behalf of the party giving it and may be given by:

25.2.1. delivering the notice by hand, in which case the notice shall be deemed to have been duly served at the time it is so delivered or left; or

25.2.2. posting the notice in a pre-paid envelope by first class, special delivery or recorded delivery post, in which case the notice shall be deemed to have been duly served at the time it would be delivered in the ordinary course of that method of posting; or

25.2.3. by email transmission in which case the notice shall be deemed to have been duly served at the time of transmission.

25.3. For the purpose of this clause, the address of each Party shall be:

For the Council:

Address: Surrey County Council, County Hall, Penrhyn Road, Kingston Upon Thames, Surrey KT1 2DN
Telephone: [INSERT]
Email: insert
For the attention of: Eamonn Gilbert / Tracey Coventry with copies to the Assistant Chief Executive

For the Supplier:

Address: [INSERT]
Telephone: [INSERT]
Email: [INSERT]
For the attention of: [INSERT]



25.4. Either Party may change its address for service by serving a notice in accordance with this clause.

26. FORCE MAJEURE

26.1. Neither Party shall be liable to the other for any failure to perform its obligations under these Call Off Terms or any Call Off Contract if either party is prevented, hindered or delayed in the performance of its obligations by any act of God, war, riot, civil commotion, explosion, fire, radiation, major incident government action, interruption in the supply of power, labour dispute (other than a dispute concerning the Supplier's employees or the employees of its sub-contractors), pandemic, epidemic, global pandemic or epidemic or other circumstances beyond the control of the parties which prevents a party from, or hinders or delays a party in, performing its obligations under this Supplier Agreement (and which the application of due diligence and foresight could not have prevented) where such performance is rendered impossible in the circumstances of a Force Majeure Event, but nothing in this clause 26 (Force Majeure) shall limit the obligations of the Supplier to use its best endeavours to fulfil its obligations under these Call Off Terms or Call Off Contract.

26.2. If either party is prevented from performing their obligations due to any of the circumstances listed in this clause for longer than 120 days either party may immediately terminate the Call Off Terms or Call Off Contract, whichever may be affected.

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

27. GOVERNING LAW AND JURISDICTION

27.1. These Call Off Terms or Call Off Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Law of England and Wales.

27.2. Each Party irrevocably accepts that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Call Off Terms or any Call Off Contract or its subject matter or formation (including non-contractual disputes or claims).

28. AGENCY AND PARTNERSHIP

28.1. The Supplier is not and shall in no circumstances hold itself out as being the agent of the Council, otherwise than in circumstances expressly permitted by these Call Off Terms.

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



ANNEX 1 TO THE CALL OFF TERMS AND CONDITIONS

ANNEX 1A: CALL OFF VARIATION PROCEDURE (CLAUSES 29 TO 34)

29. INTRODUCTION

- 29.1. This Annex 1A (Call Off Variation Procedure) details the scope of the variations permitted and the process to be followed where the Council proposes a Change.
- 29.2. The Council may propose a Change under this Annex 1A (Variation Procedure) only where the Change does not amount to a material change or is not contrary to the Law.

30. PROCEDURE FOR PROPOSING A CHANGE

- 30.1. Except where the variations are not permitted, the Council may propose a Change using the procedure contained in this clause.
- 30.2. In order to propose a change, the Council shall serve the Supplier with written notice of the proposal to vary these Call off terms or a Call off contract ("Notice of Variation").

31. THE NOTICE OF VARIATION

The Notice of Variation shall:

- 31.1. contain details of the proposed Change providing sufficient information to allow the Supplier to assess the Change and consider which changes are necessary; and
- 31.2. require the Supplier to notify the Council within twenty one (21) days of any proposed changes.
- 31.3. On receipt of the Notice of Variation, the Supplier has twenty one (21) days to respond in writing with any objections to the Change.
- 31.4. Where the Council does not receive any written objections to the Change within the timescales detailed in clause 31.3 above, the Council may then serve the Supplier with a written agreement detailing the Change substantially in the form set out in Annex 1B- the **Change Authorisation Form** to be signed and returned by the Supplier within ten (10) Working Days of receipt.
- 31.5. On receipt of the signed Change Authorisation Form from the Supplier, the Council shall notify the Supplier in writing of the commencement date of the Change.
- 31.6. For the avoidance of doubt, any variation made pursuant to the above Procedure for Proposing a Variation need not be executed as a deed provided it is executed by a duly authorised representative of each of the Parties.



32. OBJECTIONS TO A VARIATION

32.1. In the event that the Council receives written objections to a Change, the Council may:

- 32.1.1. withdraw the proposed Change; or
- 32.1.2. propose an amendment to the Change.

33. VARIATIONS THAT ARE NOT PERMITTED

33.1. In addition to the provisions contained above, the Council may not propose any variation that:

- 33.1.1. may prevent the Supplier from performing its obligations under these Call Off Terms or any Call Off Contract; or
- 33.1.2. is in contravention of any Law.



ANNEX 1B CHANGE AUTHORISATION FORM

TITLE:	DATED: [to be completed after signed by both parties]
REF:	IMPLEMENTATION DATE:
KEY MILESTONE DATE(S) (if any):	
DETAILED DESCRIPTION OF CHANGE:	
AMENDMENTS TO THE TERMS OF THE CALL OFF CONTRACT OR THESE TERMS:	
Signed for and on behalf of the Council:	Signed for and on behalf of the Supplier:
_____ Authorised Signatory	_____ [INSERT APPROPRIATE SIGNATURE CLAUSE]
_____ Authorised Signatory	



ANNEX 2: PERSONNEL AND MANAGEMENT INFORMATION

34. KEY PERSONNEL

The Key Personnel to be appointed by the Supplier as at the DPS Commencement Date are:

<u>ROLE</u>	<u>NAME</u>
Supplier's Manager	[INSERT]
[INSERT]	[INSERT]

35. MANAGEMENT INFORMATION

The Supplier shall submit the following Management Information to the Council:

Type	Contents	Frequency	Submission Date
[INSERT]	[INSERT]	<i>[weekly / monthly / quarterly / annually]</i>	[INSERT]



ANNEX 3: DATA PROCESSING SCHEDULE

DEFINITIONS

Party: a Party to this Agreement

Agreement: Call Off Contract incorporating this GDPR Schedule

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;

Processor Personnel: means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement

GDPR CLAUSE DEFINITIONS:

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018: Data Protection Act 2018

GDPR: the General Data Protection Regulation (*Regulation (EU) 2016/679*)

Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing

LED: Law Enforcement Directive (*Directive (EU) 2016/680*)

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and



resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in any clause relating to security.

Sub-processor: any third Party appointed to process Personal Data related to this Agreement on behalf of the Processor.

36. DATA PROTECTION

The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Technology Supplier is the Processor. The only processing that the Processor is authorised to do is listed in the Schedule of Processing, Personal Data and Data Subjects.

36.1. By the Controller and may not be determined by the Processor.

36.1.1. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the data protection legislation.

36.2. The Processor shall provide all reasonable assistance to the Controller in the preparation of any data protection impact assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

36.2.1. a systematic description of the envisaged processing operations and the purpose of the processing;

36.2.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;

36.2.3. an assessment of the risks to the rights and freedoms of Data Subjects; and

36.2.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

36.3. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

36.3.1. process that Personal Data only in accordance with the Schedule of Processing ,Personal Data and Data Subjects, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;

36.3.2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:

36.3.2.1. nature of the data to be protected;

36.3.2.2. harm that might result from a Data Loss Event;

36.3.2.3. state of technological development; and

36.3.2.4. cost of implementing any measures;



36.3.3. ensure that :

36.3.3.1. the Processor Personnel do not process Personal Data except in accordance with this Schedule

36.3.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

36.3.3.2.1. are aware of and comply with the Processor's duties under this clause;

36.3.3.2.2. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

36.3.3.2.3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Schedule; and

36.3.3.2.4. have undergone adequate training in the use, care, protection and handling of Personal Data; and

36.3.4. not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

36.3.4.1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;

36.3.4.2. the Data Subject has enforceable rights and effective legal remedies;

36.3.4.3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

36.3.4.4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

36.3.5. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

36.4. The Processor shall notify the Controller immediately if it:

36.4.1. receives a Data Subject Request (or purported Data Subject Request);

36.4.2. receives a request to rectify, block or erase any Personal Data;

36.4.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

36.4.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

36.4.5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or



36.4.6. becomes aware of a Data Loss Event.

36.5. The Processor's obligation to notify under this clause shall include the provision of further information to the Controller in phases, as details become available.

36.6. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under this clause (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

36.6.1. the Controller with full details and copies of the complaint, communication or request;

36.6.2. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

36.6.3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

36.6.4. assistance as requested by the Controller following any Data Loss Event;

36.6.5. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

36.7. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause.

36.8. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

36.9. Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

36.10. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

36.10.1. notify the Controller in writing of the intended Sub-processor and processing;

36.10.2. obtain the written consent of the Controller;

36.10.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor;

and

36.10.4. provide the Controller with such information regarding the Sub-processor as

the Controller may reasonably require.

36.11. The Processor shall remain fully liable for all acts or omissions of any of its Sub-



processors.

- 36.12. The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 36.13. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.



SURREY

Schedule of Processing, Personal Data and Data Subjects

Processing, Personal Data and Data Subjects

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are:
CorporatelG@surreycc.gov.uk
2. The contact details of the Processor's Data Protection Officer are:
data.protection@useadam.co.uk
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor in accordance with this Data Processing Schedule.
Subject matter of the processing	<p><i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</i></p> <p><i>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]</i></p>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data being Processed	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>



SURREY

Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

Identity of Supplier’s Sub-contractors, if applicable	<i>[Insert details of all permitted sub-contractors, including full legal name, registered address and location where processing of Personal Data will occur and a description of the processing operations undertaken by each sub-contractor. Please note that you are not permitted to engage any sub-contractors to process any personal or special category data without prior written approval of the Councils.]</i>
Purposes for the processing of the data:	
Duration of the processing of Council Data by Sub-Contractor:	



ANNEX 4 – SELF BILLING AGREEMENT

This Self-Billing Agreement made as of **Insert Date (“Effective Date”)**

BETWEEN

(1) [Insert Client Name & Address] (the “Council”)

and

(2) Insert Supplier Name (Insert Company Number) of Insert Company Address (the “Supplier”)

(Each a “Party”, together the “Parties”)

WHEREAS:

- (A) The Council and the Supplier have entered into agreement(s) which govern the relationship between the Parties. The Council and the Supplier have entered or will enter into Service Agreements at various times for the Services.
- (B) The Council and the Supplier have agreed to use a self-billing procedure for all transactions (the “Relevant Transactions”) in respect of the Services;
- (C) The Council and the Supplier shall adhere to the conditions imposed by HM Revenue and Customs in respect of self-billing invoices, as may be amended from time to time;
- (D) The Council and the Supplier agree that this Self-Billing Agreement shall be incorporated into the terms and conditions of each of the Supplier Agreements.

Definitions:

“DPS Supplier Agreement” means the agreement between the Council and the Supplier for the provision of Services as set out in SProc.Net

“Service Receipt” is the weekly electronic record submitted in SProc.Net to confirm the services that were delivered in the specified week

All terms defined within the DPS Supplier Agreement shall have the same meaning when used within this Self-Billing Agreement.

It is agreed as follows:

1. The Supplier hereby agrees:
 - i. to accept electronically delivered Self-Bill Invoices raised on its behalf by the Council in respect of all Relevant Transactions;



SURREY

- ii. not to issue VAT invoices in respect of the Services;
 - iii. where for internal compliance reasons it raises dummy invoices, the Supplier will reconcile such dummy invoices to the Self-Bill Invoice.
 - iv. to reconcile their account with any factoring company as may be applicable from time to time.
 - v. to only submit paper-copy Service Receipts where pre-agreed in writing with the Council;
 - vi. subject to (v) above, to ensure the Technology's Service Receipt submission system is used to capture all hours worked in respect of the Services;
 - vii. to ensure that rates on routes passenger assistants, and charges are verified prior to submission or on-line entry of Service Receipts;
 - viii. to raise any discrepancies between a Self-Billing Invoice received from the Council and invoicing data in its internal records within seven (7) days of receipt of such Self-Bill Invoice;
 - ix. to notify the Council immediately if the Supplier changes its VAT registration number, ceases to be VAT registered or sells or otherwise disposes of all or part of its business;
 - x. to respond to any request for confirmation of its VAT registration details within seven (7) days of receipt of the request.
2. The Supplier agrees and acknowledges that where there is any breach whatsoever of Clause 1 above, the Council may at its sole discretion delay or not process payment of the sums due to the Supplier from such Self-Bill Invoices that the breach pertains to.
3. The Council agrees:
 - i. wherever reasonably possible, to provide a valid Self-Billing VAT invoice to the Supplier on a regular (e.g. weekly or monthly) basis;
 - ii. to include on each invoice the Supplier's name, address and VAT registration number, invoice total and details of applicable VAT at the prevailing rate;
 - iii. to inform the Supplier of any relevant changes to the Council's VAT registration status, and enter into a new Self-Billing agreement should this be necessary;
4. The Council will not accept any liability for payment of any of the Supplier's services where the Supplier does not hold a valid signed/approved Service Receipt, as applicable, or where the Service Receipt has not been authorised via the Technology's online Service Receipt system, SProc.Net, or such other application as directed by the Council from time to time.
5. For the avoidance of doubt, any payment properly due to the Supplier will be made in accordance with the terms and conditions of the Agreement between the Parties.
6. The Parties shall, without limitation to the foregoing, comply at all times with all conditions imposed by HM Revenue & Customs in respect of Self-Bill invoicing processes.
7. For the avoidance of doubt, this Self-Billing process shall be co-terminous with the duration of the Supplier Agreement but shall be subject to annual review by the parties.
8. This Self-Billing Agreement shall be read in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English courts.



All charges for services provided under this Self-Billing Agreement will be subject to VAT at the prevailing rate.

VAT Details:

G	B				/					/		
Tick box if not VAT registered												<input type="checkbox"/>

Bank Details:

Bank Name:												
Account Name:												
Sort Code:			-			-						
Account Number:					-							

Supplier's Finance Contact Details:

Name:												
Telephone Number:												
Email Address for invoices to be sent to:	«Email_Address»											
Invoicing Street Address:												



ANNEX 5 - TUPE PROVISIONS

1. Where the parties agree that TUPE applies, on the commencement date of the relevant Call Off Contract, any persons currently wholly engaged in providing the Service under the Call Off Contract shall transfer to the Replacement Supplier and the Supplier will comply with all the requirements and obligations which TUPE imposes on a transfer.
2. During the term of this Contract, the Supplier shall provide the Council with accurate and complete information, including the terms and conditions of employment of the Relevant Employees including any new employees, where this is required to assist any prospective Replacement Supplier in relation to tendering for provision of the Service. This information shall include in particular but not necessarily restricted to any of the following:

(a) a list of Relevant Employees employed by the Supplier;

(b) a list of agency workers, agents and independent contractors engaged by the Supplier;

(c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of the Relevant Employees;

(d) the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.

The Supplier shall warrant the accuracy of all the information provided to the Council pursuant to Clause and authorises the Council to use any and all the information as it may consider necessary for the purposes of its business or for informing any Replacement Supplier for any services which are substantially the same as the Services (or any part thereof).

3. Where it appears to the Council that the Supplier is not meeting its obligations under this clause or where an employee of the Supplier or a recognised trade union has complained in writing to the Council that it has been unable to resolve a dispute with the Supplier, the Council shall in the first instance seek an explanation of the Supplier in an effort to resolve the situation.
4. The Supplier shall indemnify and hold harmless the Replacement Supplier or the Council (if relevant) against all claims, costs, demands, liabilities and expenses whatsoever (including legal expenses on an indemnity basis) arising out of any contract of employment or any termination of such contract of employment including, without limitation, any claim within the jurisdiction of an employment tribunal or a court of law or otherwise, in respect of any staff currently employed in supplying the Services the subject of any Call Off Contract, whether directly or indirectly, and affected by the transfer to the Replacement Supplier (whether by agreement or operation of law).
5. The Supplier shall not during the final twelve (12) months of the Call Off Contract term:



- a) undertake a reorganisation of staff employed in the performance of this contract or working methods other than in accordance with a scheme that has been submitted to and approved in writing by the employer;
 - b) award any pay rise which exceeds the annual rate of inflation without first having obtained the written consent of the employer;
 - c) agree or implement any alteration to the terms and conditions on which staff are employed on the Contract without first having obtained the written consent of the employer; or
 - d) increase or decrease the number of employees employed in connection with the Services other than as discussed and agreed with the employer.
6. Until handover of the Services to a Replacement Supplier following expiry or termination of any Call Off Contract, the Supplier shall provide sufficient personnel to fulfil its obligations under the DPS and any Call Off Contract. Failure to comply with this clause shall be deemed a material breach of contract by the Supplier. Without prejudice to any other remedies available to the Council, the Supplier shall indemnify the Council against any liability or costs incurred arising from failure to comply with this clause.
7. On termination of any Call Off Contract for whatever reason or expiry of the Term, the Supplier shall discharge all wages salaries and honoraria (excluding accrued holiday remuneration (if any) of the Relevant Employees and all other costs and expenses relating to the Relevant Employees for the period from and including the Transfer Date) and will pay over all deductions properly made therefrom to the relevant authority (including but not limited to taxation and national insurance).
8. During the 12 months preceding the expiry of any Call Off Contract awarded under this DPS, where notice to terminate any Call Off Contract for whatever reason has been given, the Supplier shall allow the Council or such other persons as may be authorised by the Council to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Council may reasonably request



BLANK TUPE PERSONAL INFORMATION TEMPLATE



TUPE personal
information spreads