

DATED _____ **201**

**[SURREY COUNTY COUNCIL /
EAST SUSSEX COUNTY COUNCIL /
WEST SUSSEX COUNTY COUNCIL]**

and

[supplier name]

**DYNAMIC PURCHASING SYSTEM
AGREEMENT
FOR THE PROVISION OF CLIENT TRANSPORT SERVICES**

**Corporate Group Legal
Services
Surrey County Council
County Hall
Penrhyn Road
Kingston upon Thames
KT1 2DY**

**Legal & Democratic
Services
East Sussex County
Council
County Hall
St Anne's Crescent
Lewes
East Sussex
BN7 1UE**

**Legal Services
West Sussex County
Council
West Street
Chichester
West Sussex
PO19 1RQ**

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CONTENTS

Section I	-	This Memorandum of Agreement duly signed
Section II	-	The Method for Calling off under the DPS
Section III	-	General Conditions of Contract
	-	Schedule 1 Service Specification
	-	Schedule 2 Tender Documents

SECTION I – MEMORANDUM OF AGREEMENT

THIS AGREEMENT is made on the day of 201

between

[**COUNTY COUNCIL of County Hall,]** (hereinafter called “**the Council**”)

and [], registered office address [], company registration number []

(hereinafter called “**the Provider**”)

(hereinafter collectively called “**the Parties**” and individually “**the Party**”)

WHEREAS

- A. Surrey County Council, East Sussex County Council and West Sussex County Council (together “The Councils”) have undertaken a joint procurement for a range of transport services. The Councils face multiple challenges in this area, including the need to reduce the overall spend on transport contracts, increase the efficiency of the services provided, enhance value for money for taxpayers, be mindful of the environmental issues relating to these services and to improve the standard of service provided on these contracts.
- B. The Councils have historic arrangements in place with a number of transport operators. These arrangements are due to expire in July 2015 and it has been decided to replace these with a Dynamic Purchasing System (DPS).
- C. The Client Transport services to be commissioned may include:
 1. Home to school transport for mainstream pupils
 2. Home to school transport for Special Educational Needs (SEN) pupils
 3. Adult services transport requirements
 4. Temporary contracts for children and adults such as looked after children, children in need and travel to respite care.
 5. Short notice work for Adult and Children’s Services, SEN and mainstream pupils.
 6. Other general transportation services required by SCC emerging work through the Health Service and other agencies.
- F. A Dynamic Purchasing System is a procurement procedure carried out pursuant to Regulation 34 of the Public Contract Regulations 2015. It must be carried out under the open procedure with an OJEU notice published and be operated in a

fully electronic way both for selection of operators and award of contracts under it. It operates with the joint benefits of a framework agreement, in which operators confirm at the time of application that they will comply with the terms of the DPS and any call-off contract terms published at this time. The DPS allows any supplier who meets the minimum criteria to apply at any point during the duration of the DPS to join.

G. Through this Agreement the Councils intend to establish a Dynamic Purchasing System for three Lots for procuring:

- **Lot 1** - Transport services requiring vehicles with up to 16 seats
- **Lot 2** - Specialist Transport services requiring vehicles with up to 16 seats
- **Lot 3** - Transport services requiring vehicles with over 16 seats

In accordance with the Public Contracts Regulations 2015 following a tendering procedure, the Provider has been appointed, with several other potential providers, to perform the Services at the discretion of the Council in accordance with the terms and conditions contained in the Agreement.

NOW THEREFORE it is agreed between the Parties as follows:

1. This Agreement incorporates each of:

Section I	-	This Memorandum of Agreement duly signed
Section II	-	The Method for Calling off under the DPS
Section III	-	General Conditions of Contract
	-	Schedule 1 Service Specification
	-	Schedule 2 Tender Documents
	-	Any Letter of Acceptance issued by a Contracting Authority

Each of Sections II, and III are all published on the electronic tendering system In-Tend which the Councils will use for the purchasing of their requirements under the DPS. Sections II and III are hereby incorporated into this Agreement and will be fully available electronically throughout the life of the DPS. Hard copies of these documents will not be attached to this Memorandum of Agreement when it is signed by the parties. Verifiable copies of these documents will be available to view at any time on the In-tend system.

The Provider shall supply the services called-off fully in accordance with the contents of Sections 1, II, and III together with the documents which are issued in respect of the Lots against which they are successful as and when called off by the Council and the Council shall pay the prices agreed at the time of call-off to the Provider.

3. The Commencement Date of this Memorandum of Agreement shall be the 24 June 2015 until the 23 June 2022 or until it is sooner extended or terminated in accordance with the provisions of the Agreement.

4. 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 this deed has been executed and is delivered and takes effect as a deed on the date first written above.

[DELETE AS NECESSARY]

Signed on behalf of **SURREY COUNTY COUNCIL**

Authorised Signatory.....

Name:.....

Head of Service

Please print name of Authorised Signatory

Authorised Signatory

Name:.....

Head of Procurement

Please print name of Authorised Signatory

Signed on behalf of the Provider

[]

Authorised Signatory.....

Name:.....

Designation:.....

Please print name of Authorised Signatory

SECTION II – THE METHOD OF CALLING OFF UNDER THE DPS

1. BACKGROUND

The Council is setting up a DPS of Providers able to provide the Councils with a range of transport services under Lots 1 - 3, which either of the Councils can call off against as and when required

- **Lot 1** - Transport services requiring vehicles with up to 16 seats
- **Lot 2** - Specialist Transport services requiring vehicles with up to 16 seats
- **Lot 3** - Transport services requiring vehicles with over 16 seats

The DPS Agreement provides that any of the Councils [or any Contracting Authority] may enter into separate Letter of Acceptances with Provider(s) for the provision of Services.

2. CALL OFF CONTRACTS

2.1 The purpose of this DPS Agreement is to establish the terms under which the Provider(s) will supply to the Council [or any Contracting Authority] specific services within an agreed range of services in a Lot, at agreed prices.

2.2 This DPS Agreement is not under any circumstances a commitment by any of the Councils [or any Contracting Authority] to purchase. Commitment to purchase will only be made when an authorised party issues an official Letter of Acceptance under the terms of this Agreement.

3. SCOPE OF AGREEMENT

3.1 The levels of service and the method of delivery that may be called-off by the Council under this Agreement are listed in **Section III Schedule I – Service Specification**. The Route Schedules for delivery of specific services shall be provided by the Council at the time of call-off of requirements under this Agreement. The Council or any Contracting Authority is not bound to purchase all its requirements or any given value or volume of services, from the Provider(s).

3.2 The Prices to be paid to the Provider(s) for the supply to the Council or a Contracting Authority of specific services will be agreed at the time the services are called off by the Council and shall be established as part of the call off process

4. METHOD OF CALL-OFF

- 4.1 The Council or any Contracting Authority wishing to call-off services shall comply with the call-off process set out in the Invitation to Tender (available on the In-Tend system).
- 4.2 On each occasion that the Council or any Contracting Authority wishes to call off specific services under this Agreement a Letter of Acceptance will be issued specifying the services required and the price payable, the Route Schedule (where applicable), any special instructions and to whom the invoices should be addressed.
- 4.3 The Provider selected following the call-off process carried out for specific services shall acknowledge receipt of the order and signify its acceptance to comply with the terms of this DPS agreement and the Call-Off Terms by emailing the Council in response, to acknowledge receipt of the Letter of Acceptance.
- 4.4 Each Letter of Acceptance issued and completed pursuant to this Clause 4 shall constitute a Call-Off Contract made under this DPS Agreement.

5. TERMINATION

- 5.1 The Council may terminate a Call-Off Contract at any time by complying with the provisions set out in Section III Standard Conditions of Contract, the Service Specification or any Letter of Acceptance issued to the Provider(s).
- 5.2 The Council may terminate this Agreement or any Call-Off Contract at any time with immediate effect by notice in writing to the Provider(s) where the Provider has been suspended under the DPS system, or where the Provider has been permanently removed from the DPS system.
- 5.3 In the event of termination under clause 5.1, the Council will only be liable to pay to the Provider(s) such sums as may be due for services successfully supplied or due to be supplied against valid Letters of Acceptance.
- 5.4 In the event of termination under clause 5.2, the Council will only be liable to pay to the Provider(s) such sums as the Council may consider is appropriate and due for services successfully supplied or due to be supplied against valid Letters of

Acceptance having due regard to the nature of the suspension or the permanent removal from the DPS system.

6. REVIEW MEETINGS, REPORTS AND INSPECTION

- 6.1 The Provider(s) and the Contracting Authority will meet at the request of the Contracting Authority to review the progress of Call-Off Contracts made under the DPS Agreement in accordance with the provisions set out in Section III, the General Conditions of Contract and the Service Specification
- 6.2 The Provider(s) will supply to the Contracting Authority any reports required pursuant to the Section III, the General Conditions of Contract and Schedule I – Service giving details as required within two weeks of the end of each three month period, or such other reporting time period as may be specified.
- 6.3 The Contracting Authority may at any reasonable time visit the offices, workshops or other premises of the Provider(s) or its sub-contractors to inspect vehicles used in the provision of the Services, or to check, inspect, test or witness the tests of the vehicles used by the Provider(s) or its sub-contractors.

7. PUBLICITY

- 7.1 Unless expressly permitted in writing by the Contracting Authority, the Provider(s) shall not publish or permit to be published either alone or in conjunction with any other person any information, articles, photographs or other illustrations relating to or connected with this Agreement or the work of the staff of the Contracting Authority.

8. APPLICABLE LAW

- 8.1 The construction, validity, performance and execution of the Call-off Contract and the DPS Agreement shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

9. ASSIGNMENT AND SUB-CONTRACTING

- 9.1 The Provider shall not assign or sub-contract the DPS Agreement or any part thereof without the prior written permission of the Council, which shall be at the sole discretion of the Council. Any such permitted sub-contracting shall not relieve the Service Provider of its obligations under the

Agreement and shall not create any contractual relationship between the Council and the Provider's sub-contractor(s).

- 9.2 The Provider(s) shall not assign or sub-contract any Call-off Contract made under this DPS Agreement without the prior written agreement of the Council.
- 9.3 The Service Provider(s) shall safeguard the Council's interest by incorporating the terms and conditions of the DPS Agreement and any Call-off Contract into any permitted assignment or sub-contract.

SECTION III
GENERAL CONDITIONS OF CONTRACT
CONTENTS

Condition	Subject matter
1.	<i>DEFINITIONS AND INTERPRETATION</i>
2.	<i>FORM OF CONTRACT</i>
3.	<i>CONTRACT PERIOD</i>
4.	<i>THE PROVIDER'S OBLIGATIONS</i>
5.	<i>PERFORMANCE OF SERVICES AND THE SERVICE SPECIFICATION</i>
6.	<i>MONITORING OF SERVICES</i>
7.	<i>VARIATION OF SERVICES</i>
8.	<i>AUTHORISED OFFICER</i>
9.	<i>CONTRACT MANAGER</i>
10.	<i>THE PROVIDER'S PERSONNEL</i>
11.	<i>QUALITY & ENVIRONMENTAL MANAGEMENT SYSTEMS</i>
12.	<i>NOT USED</i>
13.	<i>CONTINUOUS IMPROVEMENT AND PERFORMANCE REVIEW</i>
14.	<i>CERTIFICATES AND PAYMENTS</i>
15.	<i>NOT USED</i>
16.	<i>RIGHT OF SET OFF AND RECOVERY OF SUMS DUE</i>
17.	<i>VALUE ADDED TAX</i>
18.	<i>BEST VALUE</i>
19.	<i>USE OF SUBSTITUTE PROVIDER</i>
20.	<i>DEFAULTS</i>
21.	<i>DISPUTE RESOLUTION AND EXPERT DETERMINATION</i>
22.	<i>HEALTH & SAFETY</i>
23.	<i>UNLAWFUL DISCRIMINATION AND EQUAL OPPORTUNITIES</i>
24.	<i>PROVIDER'S WARRANTIES & LIABILITIES</i>
25.	<i>INSURANCE</i>
26.	<i>COPYRIGHT AND INTELLECTUAL PROPERTY</i>
27.	<i>CONFIDENTIALITY & PUBLICITY</i>
28.	<i>TERMINATION AND DETERMINATION</i>
29.	<i>ASSIGNMENT AND SUB CONTRACTING</i>
30.	<i>NOTICES</i>
31.	<i>ANTI-BRIBERY AND ANTI-CORRUPTION</i>
32.	<i>GRATUITIES TIPS AND CHARGES</i>
33.	<i>ENTIRE AGREEMENT AND SURVIVAL OF PROVISIONS</i>
34.	<i>PROVIDER'S WHISTLEBLOWING OBLIGATIONS</i>
35.	<i>WAIVER</i>
36.	<i>FORCE MAJEURE</i>
37.	<i>BUSINESS CONTINUITY</i>

- 38. *FREEDOM OF INFORMATION*
- 39. *TUPE*
- 40. *DATA PROTECTION*
- 41. *EMERGENCIES*
- 42. *LAW AND JURISDICTION*
- 43. *CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999*
- 44. *COUNTERPARTS*

Schedule	Subject Matter
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- | | |
|---|------------------------------|
| 1 | <i>SERVICE SPECIFICATION</i> |
| 2 | <i>TENDER DOCUMENTS</i> |

1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract the following expressions shall (save where the context may otherwise require) have the following meanings:

“Authorised Officer” means the person designated by the Council to perform the Council’s functions under this contract who shall carry appropriate identification and includes appointed representatives of the Council;

“Best Value”

means the Council’s duty to ensure continuous improvement in the way in which its functions are exercised having regard to:

- economy, efficiency and effectiveness as that duty is defined in the Local Government Act 1999, all subsidiary legislation and Government guidance made thereunder and relevant Technical Releases of the Audit Commission; and
- the Council’s independent objectives including (but not limited to) performance of equality, environmental welfare and regeneration;

each of which shall be considered and assessed with regard to every element of the Services;

“Conditions” are the conditions in the General Conditions of Contract, and/or such exceptional conditions as may be stated in the Specification;

“Code of Conduct for Drivers and Code of Conduct for Escorts”

means the Council’s Code of Conduct for Drivers and Code of Conduct for Escorts or any subsequent revisions or amendments issued by the Council which is set out in the Service Specification;

“Commencement Date”

Shall mean the date so specified in the Articles of Agreement

“Confidential Information”

means Information, data and material of any nature which either Party may receive or obtain in connection with the Contract and:

- (1) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998); or
- (2) the disclosure of which would or would be likely to prejudice the commercial interests of either Party or any other person and the public interest in maintaining non disclosure would outweigh the public interest in disclosure; or
- (3) the disclosure of which by the Council would constitute a breach of confidence actionable by the Provider or a third Party; or
- (4) which constitutes a trade secret;

“Contract”

means the agreement concluded between the Council and the Provider comprising these Conditions and the Tender Documents which shall also be incorporated into any Letter of Acceptance issued.;

“Contract Manager”

Shall mean the person designated by the Provider to carry out the functions described in Condition 9.

"Contracting Authority" any contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Council;

“Contract Price”

means the sum to be paid to the Provider for the delivery of the Services in accordance with the Pricing Submission;

“Contract Period”

means the period referred to in **Condition 3** (Commencement and Contract Period);

“Council’s Guidelines”

shall include relevant rules, procedures, guidelines, policies, codes of practice, standing orders, financial regulations and standards of the Council (including but not limited to the Constitution of the Council) as set out or referred to in the Service Specification and the Tender Documents or being reasonably notified to the Provider by the Council from time to time, as any of the same may from time to time be reasonably amended by the Council and notified to the Provider;

“Council’s Publication Scheme”

shall include the publication scheme adopted by the Council pursuant to section 19 of the FOIA and as amended by the Council from time to time;

"Data Controller" shall have the same meaning as set out in the Data Protection Act 1998;

"Data Processor" shall have the same meaning as set out in the Data Protection Act 1998;

“Data Devices” shall include all electronic devices such as computers, desktops, laptops, Blackberry and other Smartphones, USB memory sticks;

"Data Protection Legislation" means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

"Data Subject" shall have the same meaning as set out in the Data Protection Act 1998;

“Default”

shall include any incident in performance of the services by the provider which is not to the standard expected by the council and/or not in accordance with

any of the terms of the contract in circumstances in which the council shall be entitled to issue a default notice;

“Default Notice”

means a notice served on the provider in accordance with condition 20;

“Directive”

means the European Acquired Rights Directive 77/187;

"Environmental Information Regulations" the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

“Expert”

means the person appointed by the mutual agreement of the Parties in accordance with **Condition 21**

"FOIA" the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;

“External Audit”

means the independent external audit of the Council's accounts under the Audit Commission Act 1998 or under the Local Government Act 1999 in relation to Best Value Performance Plans;

“Force Majeure”

shall include an event referred to in **Condition 33** of these Conditions;

“Guarantee”

means a guarantee (where applicable) to be given by the Provider's ultimate holding company in the form to be determined by the Council;

“Health and Safety Guidelines”

means all rules, procedures and requirements concerning health and safety at work notified to the Provider by the Council from time to time;

“Information”

means information as defined in section 84 of the FOIA;

“Insurance”

shall include the policies of insurance which the Provider is obliged to take out and maintain under **Condition 25** (Insurance);

“Intellectual Property Rights”

shall include the rights of ownership in respect of all manner of intellectual property rights (including, without limitation, patents, trade marks and service marks, copyright and design rights) and know-how as set out in **Condition 26** (Copyright and Intellectual Property);

“Legislation”

shall include all Acts of Parliament and statutory regulations, instruments or orders, court decisions or judgements having the force of law and codes of

practice issued thereunder and all applicable European Community legislation, as any of the same may be amended or interpreted from time to time;

“Letter of Acceptance” shall mean the letter sent by the Council informing the Provider that a tender has been accepted after a call-off process has been undertaken, which shall also contain the Route Schedule and the Pricing Submission;

“Location(s)”

shall include any premises at which the Services are to be provided including any land and/or premises;

“Personal Data” shall have the same meaning as set out in the Data Protection Act 1998;

“Performance Standard”

shall include the standard to which the relevant part of the Services is to be performed as set out in or inferred from the Service Specification;

“Personnel”

means the Provider’s partners, directors, employees, the Provider’s agents and sub-contractors;

“PIDA 1998”

means the Public Interest Disclosure Act 1998;

“Prescribed Rate”

means the rate of interest payable by either Party when in default of its payment obligations hereunder being 2% (two percent) above the base rate for the time being of the HSBC;

“Pricing Submission”

Means the pricing submissions as completed by the Provider when a call-off process is carried out, which is accepted by the Council and annexed to the Letter of Acceptance,

“Quality and Environmental Management Systems”

shall include the system of operating and controlling the performance of the Services adopted by the Provider under **Condition 11**;

“Regulated Activity”

As defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006r

“Request for Information”

shall have the meaning set out in section 8 of the FOIA or any apparent request for Information under the FOIA or the Environmental Information Regulations;

“Route Schedule”

Means the document annexed to the Letter of Acceptance sent to the Provider by the Council detailing the route number, route details, timetable requirements and authorised passengers, and any further information required to enable the

Provider to carry out the Service (which may be varied by the Council from time to time in accordance with **Condition 7** (Variation of Services));

“RPIX Adjustment”

means an annual adjustment of the Contract Price in line with inflation, calculated as follows:

$$\text{Contract Price} \times \frac{\text{RPIX (2)} - \text{RPIX (1)}}{\text{RPIX (1)}}$$

when RPIX (2) is the RPIX as at the day of the current contract year (which is two months prior to commencement of the next following contract year) and RPIX (1) is the RPIX as at the day of the preceding Contract year (which is fourteen months and a day prior to the date upon which the RPI Adjustment is to take effect);

“Schedule”

means a schedule to these Conditions;

“Services”

shall include any or all of the services to be provided by the Provider pursuant to this Contract, or such of them as may from time to time remain the subject of this Contract as are more particularly described in the Service Specification and Route Schedule;

“Service Data”

shall include any data and/or information howsoever stored which is compiled in relation to all or any of the Services or part thereof;

“Service User”

Means any user of the Services approved by the Council either in writing or by telephone who are eligible to use the Services (e.g. the pupils approved by the Council for home to school transport) to travel in a Vehicle;

“Service Specification” means the document at **Schedule 1** relating to the provision of the Services as varied by the Council from time to time in accordance with **Condition 7** (Variation of Services) or the

“Termination Notice”

shall include a notice of termination served upon the Provider by the Council under **Condition 28** (Termination);

“Tender Documents”

shall include the documents contained herein and/or annexed hereto and contained in Schedule 2, including the following:

- the Tender Questionnaires as completed and submitted by the Provider
- the Bidder Warranties, and any other relevant Tender Responses forming part of the Tender Documentation;

“Transferring Employee(s)”

means an employee of any person (including the Council) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out the contract between the Council and the Provider, a contract of employment with someone other than the Council;

“TUPE” means the Acquired Rights Directive and Transfer of Undertakings (Protection of Employment) Regulations 2006 or any re-enactment thereof;

“Variation”

shall mean a variation to the Contract made by notice by the Council to the Provider in accordance with **Condition 7** (Variation of Services);

“Vehicle” shall mean any Vehicle supplied by the Provider for the provision of Services;

“Warranties”

shall include the warranties, representations, covenants and undertakings made and/or given by the Provider under **Condition 24** (Provider’s Warranties and Liabilities);

“Whistleblowing Policy and Guidelines”

means the policy and guidelines issued and updated from time to time by the Council (which are available on its website) in relation to the issue of whistleblowing including the Council’s *‘Whistleblowing Policy’* as amended from time to time;

“Working Day”

means Monday to Friday excluding bank and public holidays.

- 1.2 Unless the context requires otherwise, words in the singular may include the plural and vice versa.
- 1.3 Where the Provider is more than one person those persons shall be jointly and severally liable under the Contract.
- 1.4 Words importing individuals shall also include reference to incorporated and unincorporated associations and vice versa.
- 1.5 Words importing the masculine gender shall include the feminine gender and vice versa.
- 1.6 The headings in this Contract are for ease of reference only and do not affect its interpretation or construction.
- 1.7 All stipulations of the Contract as to time shall be of the essence (except any stipulations as to the time of payment by the Council to the Provider).

2. FORM OF CONTRACT

Sufficiency of Information

- 2.1 The Parties acknowledge and agree that any Services which may be provided by the Provider to the Council during the term of this Contract shall be provided upon these terms and conditions and subject to the prices contained in the Tender Documents.
- 2.2 Subject to the Council's warranties contained in this Contract the Council does not warrant the accuracy of any representation or statement of fact or law given to the Provider by the Council, its servants or agents at any time before the execution of this Contract and the Council shall not be liable to the Provider for any loss or damage which the Provider may sustain as a result of relying on any such representation, statement, information or advice whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, save in so far as the relevant representation, statement, information or advice was made or given fraudulently.

Copyright

- 2.3 Any Intellectual Property Rights in the Contract shall remain the property of the Council; the Provider may obtain or make at its own expense further copies of the Contract exclusively for the use of the Provider for the performance of the Services.

Standing Orders of the Council

- 2.4 The Contract shall be subject to the Council's Guidelines (including the Constitution of the Council) current from time to time, the contents of which the Provider acknowledges it has had sight of and is fully aware of their contents.

3. CONTRACT PERIOD

- 3.1 This Contract is for the period from the Commencement Date until 23 June 2022 unless terminated earlier by either party in accordance with Condition 28 (Termination) or extended at the sole discretion of the Council in accordance with clause 3.2
- 3.2 The Council may wish to extend the Contract Period under the DPS or the Letter of Acceptance following a call-off process for a period or periods of not less than three months and not more than three years in aggregate.
- 3.3 Any such extension will be notified to the Provider at least 3 months prior to the contract end date.

4. THE PROVIDER'S OBLIGATIONS

- 4.1 The Provider shall be subject to the Conditions and carry out and complete the Services in compliance with the Contract.
- 4.2 At all times, the Provider shall provide the Services described in the Service Specification and Route Schedule with due skill, care and diligence, with the

utmost good faith and in accordance with the Service Specification and Route Manifest and any written instructions of the Council.

- 4.3 The Provider shall ensure that files, books and records are kept for a period of six (6) years after expiry of the Contract Period in respect of the provision of the Service to the extent:
 - 4.3.1 required by the Conditions and the Service Specification and/or law;
 - 4.3.2 required to record details of any and all monies collected on behalf of the Council; and
 - 4.3.3 otherwise reasonably required ensuring the Service is provided in a proper and timely fashion.
- 4.4 The Provider shall at all times during the provision of the Service allow the Council and such persons as may from time to time be nominated by the Council access to:
 - 4.4.1 all work places used by the Provider for the purposes of inspecting works being performed for the provision of the Service;
 - 4.4.2 all work places used by the Provider for the purposes of inspecting records and documents in the possession, custody or control of the Provider in connection with the provision of the Service;
 - 4.4.3 any Personnel or agent of the Provider for the purposes of interviewing such persons in connection with the provision of the Service; and
 - 4.4.4 technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Service.
- 4.5 If requested to do so by the Council, the Provider shall provide to the Council at no additional charge any and all relevant information in its possession to permit the Council to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Service. The information required shall be sufficient to enable the Council to meet its legal obligations and to obtain the best value for money reasonably obtainable in a tendering exercise.
- 4.6 The Provider shall by a term in any authorised sub-contract secure a similar right of access for the Council and its auditors for the purpose of conducting any audit investigation of the Contract.
- 4.7 The Provider shall at all times comply with the Constitution of the Council referred to under Condition 2.4 and any relevant financial regulations.
- 4.8 If the Provider or its Personnel default in complying or fail to comply with this Condition, any costs, expenses, liabilities or damages incurred by the Council as a consequence thereof, including the reasonable cost to the Council of the time spent by its officers (and any third parties employed by the Council) as a result of the default or failure, may be deducted from any sums due or to become due to the Provider under this Contract or shall be recoverable by the Council from the Provider as a debt.

- 4.9 The Provider shall provide each year to the Council a copy of its audited accounts within three months of the relevant accounting reference date subsequent to those provided in accordance with any tender requirements.
- 4.10 The Provider shall not advertise the fact that it is providing Services to the Council under this Contract other than with the written permission of the Council.
- 4.11 The Provider shall at all times provide, maintain, replace (as necessary) and insure all equipment (including software) used for the performances of the Services. In the event of failure to do as aforesaid, the Provider will be liable for and will fully indemnify the Council against all liabilities, damages, costs, expenses, charges, losses, demands and proceedings arising as a consequence of failure to do as aforesaid.
- 4.12 The Provider shall (where applicable) procure the execution and delivery to the Council of a Guarantee, in a form which will be provided by the Council as a condition precedent to payment under this Contract.
- 4.13 The Provider shall not in any way whatsoever be, act or hold itself out as an agent of the Council nor make representations or warranties on behalf of the Council and the Provider undertakes to contract with the Council as principal and not as agent.

5. PERFORMANCE OF THE SERVICES AND THE SERVICE SPECIFICATION

- 5.1 The Provider shall at all times during the Contract Period perform the Services comprehensively with due skill, care and diligence and in utmost good faith strictly in accordance and in compliance with the Contract, including but not limited to:
- 5.1.1 the Service Specification, any Letter of Acceptance and Route Schedule and implementation and maintenance of the Quality and Environmental Management Systems;
 - 5.1.2 the Council's Guidelines in particular (but without limitation) those relating to customer care and any other guidelines as may have been approved by the Council and supplied to the Provider;
 - 5.1.3 the instructions issued to the Provider by the Council under or in connection with the Contract;
 - 5.1.4 all relevant Legislation;
 - 5.1.5 in an efficient, professional, ethical and courteous manner which shall have regard to the interests and welfare of the Customers and other occupiers of the Locations and in a manner which shall preserve, promote and enhance and shall not prejudice the reputation and interests of the Council.
- 5.2 The Provider's performance shall be monitored by the Council and shall in particular be measured on the basis of the Performance Points Scheme in the

Service Specification at Appendix F and in compliance with the service levels set out in the Service Specification.

- 5.3 The Provider shall be responsible for managing the performance of all Personnel engaged in the delivery of Services defined in this Agreement.

6. MONITORING OF THE SERVICES

- 6.1 There will be review meetings during the Contract Period on the relevant review date(s) as outlined in Schedule 1 at Appendix F and elsewhere in the contract documents throughout the Contract Period in order to agree upon any issues which are outstanding and/or require review and to ensure total compliance by the Provider with any monitoring arrangements or monitoring exercise that may be reasonably instigated or required by the Council.

- 6.2 The Provider shall keep and maintain such necessary data and information and shall provide such assistance as the Council may reasonably require to enable the Council to complete all official returns, including (where applicable) but without limitation (provided the nature of such data and information and the format for the same has been agreed by the Parties at the last relevant review date):

6.2.1 returns to the Department of Health and the Department for Works and Pensions;

6.2.2 returns to the Chartered Institute of Public Finance and Accountancy;

6.2.3 information required by the Audit Commission;

6.2.4 information required for the purposes of compliance with any External Audit, Best Value, Best Value performance plans or other inspection; and

6.2.5 information required in order to ensure compliance with the Equality Act 2010 other applicable legislation and generally to ensure conformity with obligations contained in Condition 23 (Unlawful Discrimination and Equal Opportunities).

- 6.3 The Provider shall provide such data and information as the Council from time to time shall reasonably require to permit the Council to complete management reports (whether of a regular, cyclical or ad hoc nature) on the performance of the Services.

- 6.4 The Provider shall at all times during the currency of the Contract allow the Council and such other persons (including representatives of other public bodies or agencies) as may from time to time be reasonably nominated by the Council access on reasonable notice (save in the case of emergency or for statutory or audit purposes where no notice shall be required) to all offices and places of work used by the Provider for the purposes of monitoring and inspecting work being performed pursuant to the provision of the Services and any or all records and documents in the possession, custody or control of the Provider in connection with the provision of the Services.

7. VARIATION OF THE SERVICE

7.1 The Council may from time to time require changes to the Service Specification and/or Route Schedule and accordingly the Council may, upon giving twenty eight days' written notice thereof to the Provider (which may be reduced to seven days in an event of an unplanned and/or unforeseen change that is outside of the Council's control or such other period as may be agreed between the Parties), issue instructions to the Provider to do all or any of the following:

7.1.1 to reduce or increase the volume or frequency of any part of the Service permanently or during such time or for such period as the Council may determine;

7.1.2 to perform the Service or any part thereof in such a manner as the Council may reasonably require, provided that a requirement to perform the Service in accordance with the Service Specification and/or Route Schedule shall not be a Variation;

7.1.3 to provide such services additional to the Service, (including at additional locations), as the Council may reasonably require, provided that such additional services shall be the same type or similar to the Services referred to in the Service Specification and/or Route Schedule; and

7.1.4 to vary temporarily or permanently the Services or the Service Specification and/or Route Schedule or any part thereof.

7.2 No Variation pursuant to this Condition shall vitiate the Contract.

7.3 The value of all Variations shall be ascertained by the Council after consultation with the Provider in accordance with the following principles:

7.3.1 where services are of similar character and executed under similar conditions to Services priced in the pricing documents the Variation shall be valued at such rates and prices contained therein as may be applicable;

7.3.2 where the Variation involves work that is not the same as or of similar character to or not executed under similar conditions to the Service, the rates and prices in the pricing documents shall be used as the basis for valuing such Variation in so far as may be reasonable and otherwise a fair valuation shall be made by the Council.

7.4 In the event of any dispute as to the value of any Variation or additional work or as to whether any Variation or additional work should give rise to any increase or decrease in the Contract Price, the decision may be dealt with in accordance with the provisions of Condition 21 (Disputes).

8. Authorised Officer

8.2 The function of the Authorised Officer shall be to liaise with and give instructions to the Provider and its Personnel in relation to all matters concerning the performance by the Provider of its obligations under the

Contract and to determine any matters or issue any notices as may be the function of the Council under this Contract.

- 8.3 The Authorised Officer shall have power on behalf of the Council to issue instructions and directions on any matter relating to the performance of the Services and exercise the functions and powers of the Council under this Contract and the Provider shall observe and comply with all such instructions or directions, which the Authorised Officer shall use reasonable endeavours to confirm in writing.
- 8.4. The Authorised Officer shall be given all information and other facilities they may require to ensure that the Provider is fulfilling its obligations under this Contract.
- 8.5 The Authorised Officer may investigate at any time to ensure the proper performance of the Contract and the Provider shall provide a detailed report on any matter subject to investigation and provide any other information required without charge to the Council.
- 8.6 Where the Authorised Officer is satisfied that in any particular instance the Provider has failed to perform the Service or any part of the Service or that the Service has been performed inadequately or otherwise not in accordance with the provisions of this Contract then the Authorised Officer shall be entitled to instruct the Provider of this.

9. CONTRACT MANAGER

- 9.1 The Provider shall ensure that at all times during the Contract Period there shall be one member of the Provider's Personnel who has been and remains appointed as the Contract Manager with authority to represent the Provider for all purposes, the identity and contact details of whom shall be notified to the Council 14 days prior to the Commencement Date.
- 9.2 The Contract Manager shall be appointed subject to his identity having the written approval of the Council and his being available all times throughout the Contract Period.
- 9.3 The Contract Manager will follow and comply with any instructions or directions given or issued by the Council in connection with performance of the Services.

10. THE PROVIDER'S PERSONNEL

- 10.1 The Provider shall employ sufficient suitably qualified Personnel to ensure that the Services are provided in all respects to the Service Specification and Route Schedule throughout the Contract Period, including (without limitation) during periods of absence of some members of its Personnel due to sickness, maternity leave, Personnel holidays, Personnel training or otherwise.
- 10.2 Without prejudice to the generality of Condition 5 (Performance of Services and the Service Specification) the Provider shall perform the Services in accordance with the arrangements relating to personnel stated in the Service Specification.

- 10.3 The Provider shall notify the Council of any material amendments to the Personnel arrangements during the Contract Period whether or not they fall within the provisions of Condition 10.2 above.
- 10.4 The Provider shall employ or engage in and about the provision of the Services only persons who are honest, skilled, competent, diligent, trained and experienced in the work which they are to perform.
- 10.5 The Provider shall at all times in carrying out the Service do so in a skilful manner and knowledge expected of an experienced Provider of such services and any approvals given by the Council shall in no way relieve the Provider of its responsibilities or obligations under this Contract and the Provider shall employ enough persons of sufficient ability and status to supervise the performance of the Service so that they are carried out in a proper skilful manner and to the satisfaction of the Council.
- 10.6 Shall ensure that each of his Personnel is aware and complies (as appropriate) with the requirements of the Code of Conduct for Drivers and Code of Conduct for Escorts and any revisions or amendments thereto or any replacement documents that may be issued by the Council and is supplied with his/her own personal copy. These copies are to be carried on every journey performed under the Agreement by every member of Personnel.
- 10.7 The Personnel shall at all times maintain the highest standards of courtesy and consideration and in all aspects of the performance of the Contract and in particular in their dealings with the public.
- 10.8 The Provider shall ensure all Personnel carry the relevant Contracting Authority identification badges at all times where required by the Contracting Authority.
- 10.9 The Provider shall, for the purposes of enabling the Council and the Council to satisfy themselves as to the Provider's compliance with this Condition 10 maintain at all times accurate and up-to-date records of all Personnel in the Provider's employ who are and who are likely to have any connection with the performance of the Services including employee attendance records and shall afford the Council and the Council full access to these records upon reasonable notice in writing by the Council .
- 10.10 The Provider shall immediately remove any Personnel notified to the Council from carrying out the Services as being either under investigation or unacceptable to the Council.
- 10.11 The Council shall under no circumstances be liable either to the Provider or to its Personnel for any cost, expense, liability, loss or damage occasioned by removal under Condition 10 and subject as aforesaid the Provider shall fully indemnify the Council in respect of any claim made by the personnel.
- 10.12 For the avoidance of doubt, the Provider shall at all times be fully and solely responsible under this Contract for the payment of all income or other taxes, national insurance contributions and levies of every kind, relating to or arising out of its employment of any individual after the Commencement Date and fully indemnifies the Council against any liability arising as a consequence thereof.

- 10.13 The Provider will provide details of employee disciplinary and grievance procedures and other policies, which the Council may request from time to time.
- 10.14 The Provider shall have and shall operate an agreed safeguarding policy and procedure and undertake checks on its Personnel and services to ensure compliance with that policy and procedure.
- 10.15 With regard to the Provider's Personnel, including but not limited to full time, part time, temporary, permanent and voluntary personnel and sub-contractors and agents the Provider undertakes as follows:
- 10.15.1 to ensure that all of the Provider's Personnel are Police checked in accordance with Legislation (including but not limited to the Care Standards Act 2000) by ensuring all Personnel have current Disclosure and Barring Service ("**DBS**") checks in accordance with the Safeguarding Vulnerable Groups Act 2006, Part 5 of the Protection of Freedom Act 2012 and/or Protection of Vulnerable Adults Scheme and that checks are carried out in accordance with Legislation and the Secretary of State Code of Practice under section 122 of the Police Act 1997 and any amendment thereof;
 - 10.15.2 to ensure all Personnel (as required) have a current enhanced DBS Certificate of Disclosure including a check against the children's barred list, as appropriate if the Service falls within one of the prescribed purposes under Section 5A of the Police Act 1997 (Criminal Records) Regulations 2002 and the Rehabilitation of Offenders Act Exceptions Order 1975
 - 10.15.3 DBS checks carried out for the Provider will be accompanied by written confirmation from the DBS that:
 - 10.15.3.1 the Provider is either registered for the purposes of initiating DBS checks or confirmation that the Provider has used an umbrella body which is registered to undertake DBS checks
 - 10.15.4 to comply with all the requirements operated by the DBS and ensure that all of the Provider's Personnel with unsupervised access to children and/or vulnerable adults are registered and checked as required;
 - 10.15.5 to ensure that all of the Provider's Personnel who have lived or worked abroad for more than three (3) months in the last five (5) years obtain a Certificate of Good Conduct acceptable to the Council, or similar appropriate document, showing that the individual has not been convicted of any act which would render them inappropriate to work with children and/or vulnerable adults;
 - 10.15.6 Following the government review of the Vetting and Barring Scheme should there be an introduction of the Independent Safeguarding Authority ("**ISA**"), or any other such organisation all staff will have to satisfy all checks of this progress before commencing work

- 10.16. to undertake that the Provider complies with the Council's Recruitment and Selection and Safer Recruitment policies which are available on the Council's website as updated from time to time; and
- 10.17. to undertake that the Provider keeps clear records of every member of the Provider's Personnel, including their employment histories, medical clearances, proof of enhanced DBS checks disclosures, notes of face to face meetings, records of checked references and identity in accordance with the Council's Recruitment and Section and Safer Recruitment policies.
- 10.18 In relation to previous and spent convictions if the Provider's Personnel are exempt from the application of Section 4 (2) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions in the Rehabilitation of Offenders Act 1974 Exception Order 1975, the Provider undertakes it will ensure that all the Provider's Personnel shall provide information in accordance with the said Act and Order in relation to convictions which would otherwise be spent under the provisions of the said Act.
- 10.19 The Provider warrants that at all times for the purpose of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereafter, as amended from time to time
- 10.20 The Provider shall immediately notify the Council of any information that is reasonably requests to enable it to be satisfied that the obligations of Clause 10 have been met.
- 10.21 The Provider shall not employ anyone who is barred from, or previous conduct or records indicate that he/she would not be suitable to carry out a Regulated Activity or may otherwise pose a risk to Users.
- 10.22 The Council (at its own discretion) may refer any information about any individual to the DBS if the conditions of section 77 of the Safeguarding Vulnerable Groups Act 2006 are met.
- 10.23 The Provider acknowledges that the Council is under a duty to assist and provide such information it holds to the DBS where the DBS considers the Council holds relevant information.
- 10.24 The Provider shall indemnify the Council against all claims, proceedings, liabilities, losses, costs, damages and expenses howsoever incurred by the Council as a result of any breach of this **Condition 10** by the Provider and the Provider's Personnel.
- 10.25 Throughout the Term the Provider undertakes it will:
- 10.25.1 comply with the SSAB and SSCB (the Surrey Safeguarding Adults Board and the Surrey Safeguarding Children's Board) Procedures, the Pan Sussex Child Protection and Safeguarding Procedures, the Sussex Multi-Agency Policy & Procedures for Safeguarding Adults at Risk and the Council's Safeguarding Children Board Multi Agency Procedures or equivalent from time to time in place;

- 10.25.2 have in place its own safeguarding procedures acceptable to the Council which will be made available to the Council and Service Users on demand;
 - 10.25.3 ensure the Provider's Personnel are trained and work in accordance with the Provider's safeguarding procedures at all times including, where required, attendance at SSAB and SSCB training sessions (or equivalent training courses organised by the Councils); and
 - 10.25.4 The Provider shall adhere to and comply with any guidelines and/or codes of practice issued by the Council (including but not limited to the Council's Recruitment and Selection and Safer Recruitment policies) when selecting and/or recruiting employees and volunteers who may have substantial and unsupervised access to children and adults at risk.
- 10.26 The Provider shall take all reasonable steps to ensure that:
- 10.26.1 All persons involved in providing the Services on behalf of the Provider understand and follow Surrey (and West Sussex equivalent) Safeguarding Children Board's guidance and protocols for safeguarding children and young people: and
 - 10.26.2 All persons involved in providing the Services on behalf of the Provider understand and follow Surrey (and West Sussex equivalent) Safeguarding Adults Board's guidance and protocols
- 10.27 All persons involved in providing the Service on behalf of the Provider shall co-operate fully with any investigation by the Council or with any person authorised by the Council to conduct an investigation into any allegations of abuse against the Provider's staff.
- 10.28 All allegations, suspicions and incidents of abuse by the Provider's Personnel must be followed up promptly. In the event that immediate danger is reasonably likely, urgent action must be taken and emergency services contacted. Details of concerns and actions taken must be recorded and reported to the Council, and if appropriate, the Police and any regulatory body.
- 10.29 The Provider shall ensure that there are robust procedures for responding to and reporting such concerns and that all staff receive appropriate awareness training regarding Safeguarding Children and Safeguarding Adults which comply the Council's Safeguarding Children and Child Protection Policy and Adults' Protection Policy as appropriate. The Provider shall also ensure that they follow the Councils Whistle Blowing Policy to protect staff who wish to raise such concerns.
- 10.30 The Council reserves the right to require the Provider at no cost to the Council to remove from performing the Services any Provider Personnel allocated to the performance of the Services by the Provider who in the reasonable opinion of the Council is detrimental to the provision of the Services.

11. QUALITY AND ENVIRONMENTAL MANAGEMENT SYSTEMS

- 11.1 The Provider shall as from the Commencement Date institute and throughout the Contract Period maintain in relation to its performance of the Services a system of quality assurance, improvement planning and operation and an environmental management system designed to ensure that the Services are carried out in accordance with the Service Specification .
- 11.2 The Quality and Environmental Management Systems shall be operated by the Contract Manager on behalf of the Provider and shall include (without prejudice to the generality of the foregoing):
- 11.2.1 the keeping of records in order to comply with obligations under this Contract;
 - 11.2.2 carrying out frequent checks and reconciliation in compliance with the Service Specification ;
 - 11.2.3 reporting to the Council on the extent to which the Provider is achieving the Service Specification and;
 - 11.2.4 making suggestions to the Council as to how the Services could be improved, and in particular taking into account views expressed by residents, parents, schools, and Service Users.
- 11.3 The Provider shall achieve conformity with the Quality and Environmental Management Systems.
- 11.4 From time to time the Council or an authorised third party may audit the Quality and Environmental Management Systems. In the event of any reasonable written recommendation concerning the modification of the Quality and Environmental Management Systems being made by the Council from time to time, such recommendation shall, as soon as reasonably practicable, be incorporated and implemented by the Provider.

12. Not used

13. CONTINUOUS IMPROVEMENT AND PERFORMANCE REVIEW

- 13.1 The Council shall at its discretion convene regular meetings (“Continuous Improvement Meetings”) to promote jointly with the Provider continuous improvement in the delivery of the Services provided under the Contract.
- 13.2 Working jointly at Continuous Improvement Meetings (to be chaired by the Council and the Contract Manager on a rotational basis) the Council and Contract Manager shall scrutinise and review all aspects of the activities and performance of the Contract and develop and bring forward agreed proposals for achieving such continuous improvements or for preventing failures in the provision of the Services.
- 13.3 The Parties will agree and record the changes to be introduced and assign organisational responsibilities for delivering such changes and specify a time

scale for both the implementation of any operational improvements and for achievement of such improvements.

14. CERTIFICATES AND PAYMENTS

- 14.1 In consideration of the provision of the Services by the Provider, the Council shall pay the Provider sums due within thirty (30) days of receipt of an invoice for Services previously rendered in accordance with this Contract and subject to satisfactory performance of the Services. Each invoice will contain all appropriate references and a detailed breakdown of the Service and all other data required by the Council. The Council shall only make payments against VAT invoices correctly submitted for Services properly performed in accordance with the Contract. Any invoice received by the Council for payment not including all the relevant information will be returned to the Provider unpaid. Save as otherwise expressed in this Contract, in the event of failure by the Council to pay sums properly due within the said period, interest shall be payable on the sums due at the Prescribed Rate calculated on a daily basis which the Parties agree shall be a sufficiently substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 14.2 The element of the Contract Price due relating to the unit rates for work executed shall be requested by the Provider by means of an application for payment and shall relate only to those Services performed in the preceding calendar month.
- 14.3 Such applications for payment shall comprehensively detail the Services for which payment is requested and the Provider shall supply such additional information as the Council requires, to verify the accuracy of such application. The Council will use such means as it considers appropriate to verify the application for payment including but not limited to enquiries with third parties.
- 14.5 The Council reserves the right to deduct or require that sums are deducted from invoices submitted by Providers in cases where transport was not provided, or has been provided inadequately, without prejudice to the rights or remedies of the Council. Where this is the case the Provider will be informed of this action taken. No payment will be made for any contracted journey(s) cancelled before their operation. For any journey cancelled with very short notice, for example when a driver has left for a pick-up, the Council will pay the normal rate for that journey.
- 14.6 If the duration of any call-off contract made exceeds twelve months, the Provider may request the Council to review the Contract Price in the light of changes in costs. The Council may at its sole discretion award an increase which will be based on an index made up of the factors relevant to transport operation. If the Contract Price is varied by agreement between the Provider and the Council due to a change in the Specification pursuant to Condition 7, then no further increase will be considered until the anniversary of the variation.
- 14.7 Where, with the agreement of the Council, the Provider enters into a sub-contract with a supplier or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Provider to the sub-

contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

- 14.8 Where applicable under Lot 3, the Contract Price shall be adjusted annually 12 months after the Commencement Date by adding the RPIX Adjustment to or subtracting the RPIX Adjustment from (as appropriate) the previous calculation of the Contract Price. The resulting figure shall become effective as the Contract Price upon the relevant anniversary of the Commencement Date.

15. NOT USED

16. RIGHT OF SET OFF AND RECOVERY OF SUMS DUE

- 16.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Provider to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Provider under this Contract or any other contract with the Council.

- 16.2 If the Provider is unable or fails to provide the Services or any part thereof in accordance with the requirements of this Condition, the Council may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred as a consequence thereof may be deducted from any sums due or to become due to the Provider under the Contract or shall be recoverable from the Provider by the Council as a debt.

- 16.3 Where the Council considers that an overpayment has been made to the Provider or that any other sum is due to the Council from the Provider under the terms of this Contract due to:

16.3.1 an error in any account which has been subject to certification for payment;

16.3.2 an error in any invoice; or

16.3.3 arising from any other cause,

he or she shall serve a notice on the Provider indicating the amount or amounts he or she considers to have been overpaid or to be due to the Council and the grounds upon which he or she relies upon for considering that the relevant amount or amounts should be recovered from the Provider.

- 16.4 If the Provider is of the opinion that the Council has either failed to make a payment due under this Contract or made a payment in error, then the Provider shall within not more than 28 days of such payment either being due or made in error as the case may be give to the Council written notice specifying the said error or failure made, the sum due to the Provider (or the Council, as the case may be) to correct such error or failure and information as to the unpaid Services undertaken by the Provider to which it is of the opinion that such non-payment or incorrect payment has been made. In the event such sum is properly due to the Provider, the Council shall pay to the Provider such sum in accordance with this Contract within 14 days of receipt of such written notice.

17 VALUE ADDED TAX

- 17.1 All payments made by either Party to the other Party under the terms of this Contract shall be exclusive of any Value Added Tax chargeable in respect of the supply of goods or services for which payment is consideration and in so far as such payments are to be made under this Contract such Value Added Tax shall be added to the amount thereof and paid in addition thereto upon production of a proper Value Added Tax invoice.

18. BEST VALUE

- 18.1 The Provider shall acknowledge that the Council is subject to the Best Value duty and that the Provider shall throughout the Contract Period assist the Council in discharging the Best Value duty by actively promoting, supporting and assisting the Council in meeting its Best Value duty including (but not limited to) undertaking a Best Value Review at the appropriate Best Value Review Date as notified by the Council in respect of the Service.

19. USE OF A SUBSTITUTE PROVIDER

- 19.1 The Council may engage a substitute provider in accordance with this Condition if:

19.1.1 the Provider fails to undertake any of the Services in accordance with the performance indicators stipulated in the Specification or the Tender Documents;

19.1.2 in the reasonable opinion of the Council the Provider has failed to allocate sufficient resources to perform any of the Services.

- 19.2 Where the Council pursuant to Condition 19.1 decides to engage a substitute provider he shall notify the Provider in respect of the Provider's failure under Condition 19.1. above and raise a Purchase Order/Letter of Acceptance to a substitute provider of his choice to carry out the relevant work until the Provider is able reasonably to satisfy the Council of its ability to carry out that work in accordance with the Service Specification and Route Schedule .

- 19.3 Where the Council has served notice on the Provider in accordance with Condition 19.2 he may in respect of the relevant Services forthwith recover from the Provider any costs, damages or expenses incurred by the Council by reason of the default of the Provider to comply with the requirements referred to in this Condition 19 together with any costs or expenses incurred by the Council in excess of the sums that would have been paid by the Council to the Provider under the terms of this Contract.

20. DEFAULTS

- 20.1 If at any time after the Commencement Date:

20.1.1 the Council determines that the Services or any part of them have not been carried out in accordance with the Contract; or

20.1.2 the Provider has failed to comply with any requirement made by the Council within the terms of the Contract; or

20.1.3 the Council deems that Provider has adversely affected the image or reputation of the Council; or

20.1.4 the Provider is in breach of any part of this Contract

then without prejudice to any other right or remedy available to the Council, the Council or its Council may issue Default Notices and deduct sums of money in accordance with the procedures set out below.

20.2 Any or all of the following procedures may be used upon issue of notice in writing to the Provider and the Council shall have sole and entire discretion as to which is most appropriate:

20.2.1 the Council may make such deduction from the payment due to the Provider as the Council shall reasonably calculate as compensation to the Council in respect of the Provider's failure in accordance with Appendix F of the Service Specification;

20.2.2 without terminating the Contract, the Council may itself provide or procure the provision of any part of the Service until such time as the Contract Manager shall have demonstrated to the reasonable satisfaction of the Council that the Provider is able to perform the Contract to a standard acceptable to the Council;

20.2.3 without terminating the whole Contract, the Council may determine that part of the Service shall no longer be provided by the Provider and itself provide or procure a third party to provide that part of the Service;

20.2.4 without terminating the Contract, the Council may require the Provider to remedy the default within a specified timescale at the discretion of the Council; and

20.2.5 the Council may terminate the whole of the Contract, in accordance with Condition 28 (Termination).

Any expenses incurred which are in addition to the cost of the relevant part of the Services arising as consequence of suspension of the Services or procuring a third party to do so shall be recovered from the Provider in accordance with these Conditions.

21. DISPUTE RESOLUTION AND EXPERT DETERMINATION

21.1 Authorised representatives of each of the Council and the Provider agree to discuss and make all reasonable efforts to resolve any dispute or difference between themselves relating to this Contract prior to the appointment of an Expert.

21.2 If any dispute is incapable of resolution between the Parties, the Council and the Provider shall on request promptly supply to the Expert all such assistance, documents and information as he may require for the purpose of

his determination and both the Council and the Provider shall use all reasonable endeavours to procure the prompt determination of the reference.

- 21.3 The Expert shall be deemed to act as an expert and not as an arbitrator.
- 21.4 The costs of the Expert appointed under this Condition 21 shall be equally apportioned between the Parties or as may otherwise be directed by the Expert.
- 21.5 If the Parties are unable to agree the identity of the individual to act as the Expert then the Expert shall either be chosen from the Registry of Independent Experts maintained by the Law Society or be nominated by an Institute agreed upon between the Parties with the intent that by agreement or nomination the Expert be appointed and the dispute referred to the Expert within seven days.
- 21.6 Nothing in this Contract shall prevent either the Council or the Provider at any time from seeking any interim or interlocutory relief from the Court.
- 21.7 Either Party may, within 90 days after receipt of the determination of the Expert, refer any matter comprised in the dispute to the Court for determination and the Court shall have jurisdiction to determine the rights of the parties in respect of such matters.
- 21.8 Without prejudice to Condition 7 (Variation of Services), until the time that a dispute between the Provider and the Council is resolved the Provider shall continue to perform the Services and be paid by the Council in accordance with this Contract.

22. HEALTH AND SAFETY

- 22.1 The Provider shall in performing the Services ensure that its personnel and any sub-Providers, Council Personnel or any other person acting on behalf of the Provider comply with all statutory and other legal requirements in relation to the safety and health of its employees, of sub-Providers, of any other persons in or near the Locations and of the members of the public. The Provider shall in particular comply with all Legislation in the field of health and safety at work and in performance of the Services and generally perform the Services in accordance with the Provider's health and safety policy statements and the Provider's health and safety codes of practice and/or the Health and Safety Guidelines (where applicable). In the event of any inconsistency between the Provider's health and safety policy statements and codes of practice and the Health and Safety Guidelines, the Health and Safety Guidelines shall prevail.
- 22.2 For the guidance of the Provider the regulatory framework requiring compliance by the Provider includes but is not limited to:

The Health and Safety at Work etc. Act 1974;
The Control of Substances Hazardous to Health Regulations 2002;
The Occupiers' Liability Acts 1957 and 1984;
The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;
The Health and Safety (First Aid) Regulations 1981;

The Workplace (Health, Safety and Welfare) Regulations 1992;
The Management of Health and Safety at Work Regulations 1999;
The Personal Protective Equipment at Work Regulations 1992;
The Provision and Use of Work Equipment Regulations 1998;
The Health and Safety (Display Screen Equipment) Regulations 1992;
The Health and Safety Information for Employees Regulations 1989;
Manual Handling Operations Regulations 1992;
The Electricity at Work Regulations 1989;
The Control of Noise at Work Regulations 2005;
Health and Safety (Safety, Signs and Signals) Regulations 1996; and
The Equality Act 2010

22.3 The Council shall be empowered to suspend the provision of the Services in the event of non-compliance by the Provider with the health and safety requirements of the Contract. The Provider shall not resume provision of the Services until the Council is satisfied that the non-compliance has been rectified.

22.4 No payment will be made for any part of the Services omitted as result of a cessation of the Services required by the Council due to breach of any health and safety requirement and neither will any additional payment be made for steps which the Council requires the Provider to take to remedy the breach of the health and safety requirement.

22.5 The Provider shall:

22.5.1 keep its health and safety policy, health and safety codes of practice and risk assessments under review and make any amendments necessary, particularly where there has been a change to current legislation or working practices or the introduction of new equipment (including vehicles) and shall notify the Council in writing of any changes made; and

22.5.2 comply with any changes, amendments or further instructions reasonably requested or issued by the Council in connection with the Provider's health and safety procedures or the Health and Safety Guidelines (where applicable).

23. UNLAWFUL DISCRIMINATION AND EQUAL OPPORTUNITIES

23.1 In the performance of the Services the Provider shall comply and shall ensure that its Personnel, agents and sub-Providers comply with the best professional practice in relation to equal opportunities in particular (but not limited to) all relevant Legislation including the Equality Act 2010, as well as statutory and other official guidance and codes of practice.

23.2 The Provider acknowledges that the Council has a general duty under the Equality Act 2010 ("the Act") to have due regard to the need to eliminate unlawful discrimination and promote equality of opportunity carrying out their functions.

23.3 The Provider shall be considered to have the same obligations as the Council under the Act when providing the Services under this Contract. The Provider shall comply with the general duty under the Act as set out in Condition 23.2

above and any Codes of Practice issued by the Equality and Human Rights Commission including (but not limited to) the Statutory Code of Practice on Racial Equality in Employment (2006). The Provider shall be considered to be in breach of this Condition in the event of any non-compliance with the Act and any Codes of Practice.

- 23.4 The Provider shall have their own equal opportunities policies and procedures (as the same may be adopted and amended from time to time as notified to the Council) to comply with the statutory requirements of the Act and accordingly shall not, when employing persons for the purpose of performing the Services, discriminate on the grounds of race directly, indirectly or by victimisation.
- 23.5 The Provider shall indemnify the Council in respect of any costs and legal expenses incurred in defending any action brought by the Equality and Human Rights Commission and/or any third party against the Council for non-compliance with the Act and/or any Codes of Practice as a result of the breach of this Condition by the Provider.
- 23.6 The Provider shall inform the Council as soon as becoming aware of any legal proceedings (whether civil or criminal) brought against the Provider under the Equality legislation or of any judgements, awards, or settlements arising therefrom, and shall provide the Council with such further information and documentation as may be required in relation thereto.

24. PROVIDER'S WARRANTIES AND LIABILITIES

- 24.1 The Provider from the date hereof and throughout the Contract Period warrants, represents and undertakes to the Council as follows:
 - 24.1.1 it has in all respects complied with every requirement in the Tender Documents (where applicable);
 - 24.1.2 it has made its own investigations and research and has satisfied itself in respect of all matters relating to the Contract including the Service Specification and these Conditions and it is not contracting with the Council in reliance upon any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by the Council except those contained in the Invitation to Tender (if applicable) and this Contract;
 - 24.1.3 all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Provider in connection with or arising out of the Tender are true, complete and accurate in all respects;
 - 24.1.4 it has full power and authority to enter into the Contract and thereafter to perform the Services;
 - 24.1.5 it is of sound financial standing and the Provider is not aware of any circumstances (other than such circumstances as expressly disclosed in writing by the Provider to the Council), which may adversely affect any financial standing in the future;

- 24.1.6 it has made arrangements to ensure that it will have sufficient working capital, skilled personnel, equipment, machinery and other resources available to it in order to carry out the Service in accordance with the Service Specification;
- 24.1.7 it has or has made arrangements to ensure that it will obtain all necessary consents, licences and permissions to enable it to carry out the Services and will throughout the Contract Period obtain and maintain all further and other necessary consents, licences and permissions to enable it to carry out the Services; and
- 24.1.8 it will perform all of the Services in accordance with the Service Specification and Route Schedule with due skill, care and diligence and within the times stated in the Service Specification, which times shall be of the essence.
- 24.2 The Provider shall be liable for and shall fully and promptly indemnify and hold harmless the Council, its officers, employees and agents against all liabilities, damages, costs, losses, claims, demands and proceedings incurred or suffered whatsoever and howsoever arising, be it directly or indirectly, out of or in connection with the Provider's obligations under the Contract in respect of:
- 24.2.1 any claims, demands or proceedings brought against the Council by any third party by reason either directly or indirectly of any default or breach by the Provider of any provision of the Contract other than one for which a remedy is provided under any other provision of these Conditions or any additional conditions agreed in writing between the Parties;
- 24.2.2 any fraudulent or negligent act or omission by the Provider (including, without limitation, any misappropriation of monies properly due to the Council);
- 24.2.3 any liability of the Council to pay compensation to a Customer arising out of the Provider's default in respect of repairs or failure to perform the Services in accordance with the Contract; and
- 24.2.4 any failure by the Provider to perform the Services in accordance with all and any terms of the Contract (including but not limited to the Service Specification and Route Schedule).
- 24.3 The Provider's liability to the Council under Condition 24.2 shall be without prejudice to any other right or remedy available to the Council and in particular (but without limitation) shall not prejudice in any way the Council's right to enforce at any time and in any manner whatsoever the Guarantee as appropriate.
- 24.4 Except as provided by this Contract, the Council shall not under any circumstances be liable to the Provider whether in contract, tort or otherwise, for any loss, damage or injury howsoever caused or arising out of, in the course of or in connection with the provision by the Provider of the Services or the access to or use of the Council's premises or facilities by the Provider or the Provider's Personnel.

24.5 Condition 24.4 shall not apply in relation to:

24.5.1 any failure by the Council to make proper payment to the Provider in accordance with the terms of the Contract; and

24.5.2 any deliberate or negligent act or omission of the Council or any of its employees giving rise to death or personal injury.

25. INSURANCE

25.1 The Provider shall at all times maintain in force such employer's liability (if required by the nature of the business operated by the Provider) and public liability insurance with reputable insurers or underwriters approved by the Council which shall fully insure and indemnify the Provider against its liability under this Contract in the sum, in respect of employer's liability at least £10,000,000 and in respect of public liability at least £10,000,000, in respect of any one occurrence or series of occurrences arising out of one event, or such other level as may be determined by the Council..

25.2 The Provider shall further insure against any expense, liability, loss, claim or proceedings in respect of any damage whatever to property (real or personal) in so far as such damage arises out of, in the course of, or by reason of, the performance of the Services and is due to the negligence, omission or default of the Provider or its employees in the sum of at least £10,000,000 in respect of any one occurrence or series of occurrences arising out of one event and shall cause any sub-Provider to maintain such level of insurance as the Council shall agree.

25.3 The Provider is responsible for ensuring that valid motor insurance policies are maintained by its Personnel

25.4 The Provider shall before the Commencement Date and annually thereafter and at such times as the Council may reasonably require supply the Council with certified copies of all insurance policies required by any of the provisions of this Condition 25.

25.5 In the event that the Provider fails to comply with any of these requirements the Council shall be entitled to effect such insurance itself and recover the proper and reasonable costs of so doing from the Provider together with an administrative charge equal to ten per centum (10%) of the total cost of obtaining such insurance (subject to a maximum administrative charge of £500) and interest on the total outstanding amount at four per centum (4%) above the base rate of the Co-operative Bank plc in force from time to time.

26. COPYRIGHT AND INTELLECTUAL PROPERTY

26.1 The Intellectual Property Rights in all documents, records, data, or other information produced by the Provider as part of the Services shall belong exclusively to the Council and the Provider shall not make or distribute to a third party any copies of this Contract or the documents, records, data or other information produced by it without the written consent of the Council, which consent the Council shall be absolutely entitled to withhold.

- 26.2 Any and all Intellectual Property Rights developed under this Contract or arising from the provision of the Services by the Provider shall belong to the Council and the Provider agrees that it shall execute or cause to be executed (by personnel if necessary) all deeds, documents and acts required to vest such Intellectual Property Rights in the Council.
- 26.3 The Provider shall indemnify the Council against any claims, liabilities, costs, losses, expenses, proceedings and damages arising out of any infringement or alleged infringement of any third party Intellectual Property Rights in connection with the provision of the Services.
- 26.4 Subject to Condition 26.5, the Provider shall notify the Council of and conduct any litigation arising from (including all negotiations in connection with) any claims, demands and actions in respect of any infringement or alleged infringement of any Intellectual Property Rights. The Council shall at the request of the Provider, afford the Provider all reasonable assistance for the purpose of contesting any such claims, demands and actions. The Provider shall reimburse the Council for all costs and expenses (including, but not limited to legal costs and disbursements on a full indemnity basis) incurred in so doing.
- 26.5 If so requested by the Council, the Provider shall either:
- 26.5.1 take all such steps as may be necessary to avoid the infringement or the alleged infringement of any Intellectual Property Rights; or
- 26.5.2 procure such licence as may be necessary to continue the carrying out of the Services without infringement, on terms which are reasonably acceptable to the Council.
- 26.6 The Provider shall keep any Service Data which may at any time be in the Provider's possession or under its control and shall store such Service Data safely and separately from any data not relating to the Services and in a manner which makes it readily identifiable as Service Data relating to each of the Services and the Provider shall at all times comply with the Data Protection Act 1998 and the Computer Misuse Act 1990 and shall give the Council (and/or persons nominated by him) right of access to premises used by the Provider to monitor performance of the Services and compliance with the Legislation.

27. CONFIDENTIALITY AND PUBLICITY

Confidentiality

- 27.1 Subject to Conditions 27.3, 27.6 and 27.8, each Party undertakes to the other Party as follows:
- 27.1.1 to treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly both during the Contract Period and following expiry or termination of the Contract;
- 27.1.2 not to disclose any Confidential Information belonging to the other Party without the prior written consent of that Party, except to such persons and to such extent as may be strictly necessary for the

performance of the Contract or except where such disclosure is otherwise expressly permitted by the provisions of this Contract; and

- 27.1.3 not use any Confidential Information received from the other Party otherwise than for the purposes of or in connection with this Contract.
- 27.2 The Provider shall take all necessary precautions to ensure that all Confidential Information under or in connection with the Contract is given only to such of its employees or professional advisors or consultants engaged to advise in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary of the Contract
- 27.3 The Parties shall use of all reasonable endeavours to procure that their employees, agents and sub-contractors keep confidential and do not make any disclosure of Confidential Information to any third Party in breach of Condition 27.1 above and only use such Confidential Information in connection with the performance of the Contract.
- 27.4 Condition 27.1 shall not apply to any disclosure of Confidential Information:
 - 27.4.1 which a Party can demonstrate has become or will become generally available to the public and in the public domain otherwise than through the act or default of (or on behalf of) the relevant Party;
 - 27.4.2 which was in the possession of the receiving Party without restriction as to its disposal, before receiving it from the disclosing Party;
 - 27.4.3 which is received from a third Party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 27.4.4 which is required by law, any judicial or administrative process, the rules of any stock exchange or governmental or regulatory authority having the force of law;
 - 27.4.5 to enable a determination to be made under the Dispute Resolution Procedure referred to under Condition 21;
 - 27.4.6 by either Party to any department, office or agency of the Government;
 - 27.4.7 which is for the purpose of:
 - 27.4.7.1 the examination and certification of the Council's or the Provider's accounts (including any External Audit of the accounts); or
 - 27.4.7.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has utilised its resources;
 - 27.4.8 which is independently developed without access to the confidential Information;

- 27.4.9 by the Council to any third party insofar as this may be necessary to the performance or provision by that party of any services or works whatsoever for or to the Council;
- 27.4.10 by the Council to an arms length management organisation relating to Council residential or non residential properties and further disclosure by the said arms length management organisation insofar as this is reasonably necessary for the proper discharge of the Council's functions which have been or may be delegated by the Council to the arms length management organisation; or
- 27.4.11 by the Council or the arms length management organisation in service monitoring reports to the Council's Executive or other member body or to the arms length management organisation board, sub-boards or committees.
- 27.5 The Provider shall not make use of this Contract or other information issued or provided by the Council in connection with this Contract otherwise than for the purpose of this Contract, except with the prior written consent of the Council.
- 27.6 When the Provider, in carrying out its obligations under this Contract, is provided with Confidential Information or other information relating to users or potential customers of the Services the Provider shall not disclose or make use of any such Confidential Information or other information otherwise than for the purpose for which it was provided, unless the Provider has sought and obtained the prior written consent of that person or the Council.
- 27.7 At the request of the Council, the Provider shall facilitate the Council's compliance with the Code of Practice on Access to Government Information (second edition) or the Environmental Information Regulations and in the event that the Council is required to provide information to a person as a result of a request made to it under such Code or regulations, the Provider shall provide such information relating to the Contract, the Services or itself to enable the Council to adhere to the requirements of the Code or regulations.
- 27.8 Nothing in this Condition 27 shall prevent either Party from using any ideas, know-how or techniques gained during the performance of this Contract in the course of its normal business, to the extent that this does not result in the disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 27.9 The Provider acknowledges to the Council that nothing in this Condition 27 shall fetter or affect the Council's obligations under the Data Protection Act 1998, the 2000 Act or the Environmental Information Regulations.

PUBLICITY

- 27.10 Subject to Condition 27.11, the Provider shall not and shall procure that any member of the Provider's Personnel or sub-contractor shall not make any public statement or issue any press releases or any other form of publicity document relating to, connected with or arising out of this Contract or the matters contained in this Contract without obtaining the Council's prior written

approval as to its contents and manner and timing of its presentation and publication.

27.11 The Provider shall not and shall procure that any member of the Provider's Personnel, shall not communicate with, or provide information to any representatives of the press, television, radio or other media on any matter concerning or arising out of this Contract without the prior written approval of the Council.

27.11.1 Either Party may make a public statement or announcement concerning the completion of this Contract if required by:

27.11.2 law; or

27.11.3 any regulatory or Government body to which either Party is subject or submits, wherever situated, whether or not the requirement has the force of law PROVIDED THAT any such statement does not contravene the duty of confidentiality contained in Condition 27.1

27.12 Subject to the provisions of Condition 27.1 the Council reserves the right to publish or disseminate information about this Contract and the provision of the Services as it may deem appropriate from time to time.

28. TERMINATION AND DETERMINATION

28.1 The Council shall be entitled upon the happening of any of the following events to terminate the Contract ("Termination"), without prejudice to any accrued rights or remedies under the Contract, forthwith by written notice having immediate effect:

- a) if the Provider commits a breach of any term of the Contract which breach is capable of being remedied and the Provider has failed to remedy the said breach within 14 days after issue of a written request from the Council that the Provider should do so;
- b) a material breach by the Provider of any condition and/or of its obligations under the Contract;
- c) the Provider suffering an execution to be levied on his goods;
- d) if the Provider consists of one or more individuals, any such individual dying, entering into a composition or arrangement for the benefit of his creditors or becomes bankrupt or is the subject of similar procedures under the law of any other state;
- e) if the Provider consists of a body corporate, the Provider having a receiver or manager or administrator, provisional liquidator or liquidator appointed or has a proposal in respect of its company for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986 or being subject to similar procedures under the law of any other state provided that an

amalgamation or reconstruction of a limited company shall be deemed not to be a breach of this Condition;

- f) if the Provider has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver or has an administrative receiver appointed or is the subject of similar procedures under the law of any other state;
- g) the Provider has possession taken, by or on behalf of the holders of any debenture secured by a floating charge, of any property comprised in, or subject to, the floating charge or is the subject of similar procedures under the law of any other state;
- h) the Provider is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, or manager, or administrator, or administrative receiver or to begin similar procedures under the law of any other state; or which entitle the Court to make a winding up order or a similar order under the law of any other state;
- i) if the Council shall certify in writing to the Council that in his opinion the Provider has abandoned the Contract;
- j) if the Council shall certify in writing to the Council that the Provider without reasonable excuse has failed to commence the Service on the Commencement Date or has suspended the performance of the Service or a substantial part thereof for seven days after receiving from the Council written notice to proceed;
- k) the Provider shall have offered or given or agreed to give to any person any gift or consideration of any kind, as an inducement or reward for doing or forbearing to do or for having done or forborne to do, any act in relation to the obtaining or execution of the Contract with the Council; or for showing or forbearing to show favour or disfavour, to any person in relation to the Contract, or any other contract with the Council, or if the like acts shall have been done by any person employed by the Provider or acting on its behalf, (whether with or without the knowledge of the Provider);
- l) if in relation to any contract with the Council, the Provider or any person employed by it or acting on its behalf shall have committed an offence or anything contrary to Legislation;
- m) in addition to the Termination rights set out in this condition 28, the Council shall be able to terminate this Contract or any Letters of Acceptance issued in accordance with the Termination rights set out in Service Specification at clause 11
- n) the Council may decide that it does not wish to terminate a Letter of Acceptance which is ongoing whilst the Provider may have been suspended or permanently removed from the DPS, and may also decide it wishes to continue with a Provider on

the DPS, regardless of the fact that Letters of Acceptance issued under the DPS have been terminated.

28.2 Upon such Termination and in addition to such consequences as are set out elsewhere in these Conditions of Contract or in the Service Specification:

- a) the Provider shall forthwith cease to perform the Service;
- b) the Provider shall fully and promptly indemnify the Council in respect of the cost of causing to be performed the Service or any part thereof as would have been performed by the Provider during the remainder of the Contract period to the extent that such cost exceeds such sums as would have been lawfully payable to the Provider for performing the Service. The Council shall be at liberty to have the Service or any part thereof performed by any persons (whether or not servants of the Council), as the Council shall in its entire discretion think fit and shall be under no obligation to employ the least expensive method of having the Service or part thereof performed;
- c) the Council shall cease to be under any obligation to make further payments to the Provider and shall be entitled to retain any payments which may have fallen due to the Provider before termination until the costs, losses and/or damages resulting from or arising out of the Termination of the Contract shall have been calculated; where the Parties agree that such calculation shows a sum or sums due to the Provider, the Council shall pay the Provider such sums forthwith and in any event within 10 (ten) Working Days of the calculation being agreed between the Parties;
- d) the Council shall be entitled to repossess any of its premises, materials, equipment or other goods loaned or hired to the Provider and to exercise lien over any of the materials, equipment or other goods belonging to the Provider for any sum due hereunder or otherwise due from the Provider to the Council;
- e) the Council shall be entitled to employ and pay other persons to perform and complete the Service or any part thereof;
- f) the Council shall be entitled to deduct, retain or set off from any sum or sums which would but for paragraph c) of this Condition have been due from the Council to the Provider under this Contract or any other Contract or be entitled to recover the same from the Provider as a debt, any loss or damage to the Council resulting from or arising out of the termination of the contract. Such loss or damage shall include reasonable cost to the Council of the time spent by its officers in terminating the contract and in making alternative arrangements for the provision of the Service or any part thereof;
- g) when the total costs, losses and/or damages resulting from or arising out of the Termination of the Provider's employment

have been calculated and deducted insofar as is practicable from any sum or sums which would but for paragraph c) of this Condition have been due to the Provider, any balance shown as due to the Council shall be recoverable as a debt, or alternatively, the Council shall pay to the Provider any balance shown as due to the Provider.

h) The Provider shall forthwith release and hand over to the Council any records and work in progress whether in the form of documents, computer data or other material in any medium

28.4 The rights of the Council under this Condition 28 are in addition to and without prejudice to any other rights the Council may have whether against the Provider directly or pursuant to any guarantee or indemnity.

28.5 The Provider may terminate this Contract by serving notice on the Council at least sixty (60) days prior to termination of the Contract if any sums remain unpaid for thirty (30) days after receipt by the Council of an invoice for Services previously rendered in accordance with this Contract and the Provider has given the Council prior written notice stating sum(s) remaining unpaid and its intention to terminate the Contract and such sum(s) remain unpaid for thirty (30) days following service of the notice Provided Always that the Provider shall not exercise this right of termination where the sum(s) outstanding is/are the subject of a genuine dispute.

28.6 Either party may terminate this agreement at any time by giving 28 days notice in writing. In the event of termination as foresaid, the Council will only be liable to pay the Provider such sums as may be due for Services successfully supplied.

29. ASSIGNMENT AND SUB-CONTRACTING

29.1 The Council shall with the Provider's consent (not to be unreasonably withheld or delayed) be entitled to assign the benefit of the Contract or any part thereof and shall give reasonable written notice of any such assignment to the Provider.

29.2 The Provider shall not:

29.2.1 assign the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof;

29.2.2 sub-contract the provisions of the Services or any part thereof to any person without the previous written consent of the Council which consent shall be at the absolute discretion of the Council . This shall not relieve the Provider from any liability or obligation under the Contract, and the Provider shall be responsible for the acts, defaults or neglect of any sub-Providers, its employees and agents in all respects as if they were the acts, defaults or neglect of the Provider itself.

29.3 The Provider is not and shall not in any circumstances hold himself out as being authorised to enter into any contract on behalf of the Council, or in any

other way to bind the Council to the performance, variation, release or discharge of any obligation.

- 29.4 Notwithstanding provision 29.2.2, if any sub-contracting does take place of the Contract or any part thereof, this shall not relieve the Provider of any of his responsibilities under the Contract and he shall be responsible for the acts, defaults and neglects of any sub-contractor, his agents or employees as if they were acts, defaults and neglects of the Provider, his agents or employees.

30. NOTICES

- 30.1 Notices under this Contract shall be given by sending them by pre-paid registered post, fax (with a confirmatory copy by post), electronic mail or personal delivery to the other Party at its address set out in the description of the Parties or to such other address notified in writing to the sender. Notices sent by registered post shall be deemed to have been received 48 hours after sending (as evidenced by the sender's receipt), notices sent by fax and electronic mail shall be deemed to have been received on the first working day after sending (in the case of notices by fax as shown by the timed print out on or with the sender's copy) and notices sent by personal delivery shall be deemed to have been received at the time delivery is acknowledged.

31. ANTI-BRIBERY AND ANTI-CORRUPTION

- 31.1 The Council may terminate this contract and recover all its losses if the Provider (or its personnel):
- (a) fails to comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti corruption including but not limited to the Bribery Act 2010; and
 - (b) engages in any activity, practice or conduct which would constitute an offence under, section 1, 2, and 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; or
 - (c) engages in any activity, practice or conduct which would constitute an offence under Section 117(2) of the Local Government Act 1972 and any amendment thereto or any subsequent legislation or under Legislation creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council; or
 - (d) defraud or attempt to defraud or conspire to defraud the Council.

32. GRATUITIES TIPS AND CHARGES

32. The Provider shall not whether itself or by any of the Provider's Personnel engaged in the provision of the Services solicit or accept any gratuity, tip or any form of money taking or reward, collection or charge for the provision of any part of the Services other than bona fide charges approved by the Council.

33. ENTIRE AGREEMENT AND SURVIVAL OF PROVISIONS

- 33.1 This Contract supersedes all prior agreements and arrangements of whatever nature and sets out the entire agreement and understanding between the Parties relating to the Services. Unless otherwise stated herein, this Contract applies in place of and prevails over any other terms, conditions and prior representations, whether contained in correspondence or implied by custom or law. Nothing in this Contract shall limit or otherwise exclude liability for fraudulent statements or misrepresentations made by either Party.
- 33.2 The rights and obligations which expressly or by their nature are intended to survive the expiry or termination of this Contract shall so survive and bind the Parties and their legal representatives, successors and assigns.

34. THE PROVIDER'S WHISTLEBLOWING OBLIGATIONS

- 34.1 The Provider hereby takes notice of and agrees to comply in all respects with the Council's Whistleblowing Policy and Guidelines and PIDA 1998. In particular (but without limitation) the Provider agrees:

34.1.1 to accept and adopt the Council's Whistleblowing Policy for Providers as a procedure for the purposes of s.43C(2) of PIDA and the Provider agrees and acknowledges that its employees are authorised to use and rely upon the said procedure;

34.1.2 that to the extent that the Whistleblowing Policy and Guidelines impose duties on or grant rights, protections or immunities to Council employees or agents, the Provider agrees and irrevocably undertakes to impose similar duties and grant similar rights, protections or immunities to the Contractor's employees and agents and to any sub-contractors.

- 34.2 Without limiting the generality of Condition 34.1, the Provider agrees to report to the Council in accordance with the Whistleblowing Policy and Guidelines any circumstances relating to or arising out of the Contract (including the entering into thereof and procurement of goods, services and supplies for the implementation thereof) and the supply of the Works/Services/Supplies, which give rise to a reasonable belief that one or more of the following matters (referred to in this Condition as "instances of malpractice") has occurred, is occurring or is likely to occur:

34.2.1 a criminal offence (including any form of child abuse, or the abuse of other vulnerable individuals);

34.2.2 a breach or failure to comply with any lawful duty (including, without limitation, negligence and/or breach of statutory, contractual, fiduciary, administrative law or other duty);

34.2.3 miscarriage of justice;

34.2.4 danger to health and safety;

34.2.5 damage to the environment;

34.2.6 any other matter designated as malpractice in the Whistleblower Policy and Guidelines;

34.2.7 concealment of any of the above

34.3 Without limiting the generality of Condition 34.1, in the event that any employee, agent or sub-contractor of the Provider should make a report to the Council (or to any other person authorised by law) pursuant to this Condition, the Provider warrants that it shall use its best endeavours to ensure that such person does not suffer any form of retribution, victimisation or detriment as a consequence of having made such report.

34.4 The Provider agrees to indemnify the Council in respect of any loss or damage caused by or arising out of a failure on the part of the Provider to report, within a reasonable time, any instances of malpractice in accordance with this Condition, the Whistleblowing Policy and Guidelines and/or PIDA 1998.

34.5 Where the Provider acting reasonably and in good faith makes a report pursuant to this Condition, and the Council subsequently undertakes or omits to undertake a course of action wholly in reliance upon such report the Council accepts such liability as the Provider may incur as a direct consequence of such report.

35.6 The Provider confirms that the Council's Chief Executive, Director of Corporate Resources, Monitoring Officer and Assistant Director (Audit and Performance) are authorised as persons to whom the Provider's staff may make a qualifying disclosure under the Public Interests Disclosure Act 1998 and declare that any of its staff making a protected disclosure (as defined by the said Act) shall not be subject to any detriment. The Provider further declares that any provision in an agreement purporting to preclude a member of its staff from making a protected disclosure is void.

35. WAIVER

35.1 Failure by either Party at any time or for any period to enforce any one or more of the provisions of the Contract or to require performance by the other Party of any of the provisions of the Contract shall not:

35.1.1 constitute or be construed as a waiver of any such provision or the right at any time subsequently to enforce all terms and conditions of the Contract; nor

35.1.2 affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

36. FORCE MAJEURE

36.1 If a Force Majeure event arises on or following the date of this Contract (irrespective of the fact that this Contract may then be conditional) which directly causes the Provider to be materially unable to comply with any of its obligations hereunder, the Provider and the Council may agree such terms as are appropriate for the continued performance of the Contract. If no such terms are agreed within one month of the commencement of the said event,

and such event is continuing or its consequence remains such that the Provider is materially unable to comply with its obligations, the Parties hereby agree that the Contract shall thereupon terminate, subject to the provisions of Condition 28 (Termination). Failure by the Provider to comply with its contractual obligations by reason of a Force Majeure event shall not constitute a breach of contract.

36.2 The events which are to be classified as Force Majeure events shall include each of the following:

- a) war, civil war, conflict or terrorist attack arising within and affecting the United Kingdom;
- b) nuclear, chemical or biological contamination of the Provider's property arising from any of the events at (a) above;
- c) riot, flood or earthquake; or
- d) any circumstances beyond the reasonable control of either of the Parties.
- e) For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties, failure to meet any foreseen regulatory changes and failure to provide adequate premises, equipment, materials, consumables and/or Personnel or similar matters, which a prudent and diligent Provider could have avoided with the application of foresight, are not to be considered as events of Force Majeure

37. BUSINESS CONTINUITY

The Provider shall have in place a Business Continuity plan as outlined in the Service Specification and shall be available for inspection upon request.

38. FREEDOM OF INFORMATION

38.1 The Provider acknowledges that the Council is subject to the requirements of the Environmental Information Regulations and the 2000 Act and agrees to use all reasonable endeavours to assist the Council (at the Provider's expense) to comply with its obligations imposed under those provisions.

38.2 The Provider shall process Information produced in the performance of the Contract or relating to the Contract in accordance with a records management system which complies with the Lord Chancellor's code of practice for the keeping and management of records under section 46 of the 2000 Act.

38.3 Subject to Condition 38.6, the Provider shall and shall procure that its sub-contractors shall:

38.3.1 transfer any Request for Information received by the Provider or its sub-contractors to the Council promptly and, in any event, within two Working Days of its receipt;

- 38.3.2 provide the Council with a copy of all Information in its possession or power in the form and within the time scale that the Council requires including such information as the Council may require in order to comply with the Council's Publication Scheme;
- 38.3.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance prescribed by section 10 of the 2000 Act;
- 38.3.4 not respond directly to a Request for Information or disclose or release Information without the prior written authority of the Council.
- 38.4 Subject to Condition 38.6, the Council shall be responsible for determining, in its absolute discretion, whether:
 - 38.4.1 Information relating to a Request for Information is exempt from disclosure under the 2000 Act or the Environmental Information Regulations;
 - 38.4.2 any Information is to be disclosed in response to a Request for Information.
- 38.5 The Provider acknowledges that the Council may be obliged under the 2000 Act or the Environmental Information Regulations to disclose Information:
 - 38.5.1 without consulting the Provider; or
 - 38.5.2 following consultation with the Provider and having taken its views into account.
- 38.6 Where the 2000 Act applies to the Provider (by virtue of an order made under section 5 of the 2000 Act or otherwise), the Provider shall:
 - 38.6.1 comply with the 2000 Act and any associated Legislation and codes of practice (including (without limitation) the Secretary of State's and Lord Chancellor's codes of practice issued under sections 45 and 46 of the 2000 Act); and
 - 38.6.2 where the Provider receives a Request for Information from a third Party under the 2000 Act which relates to the Council and / or this Contract:
 - 38.6.2.1 inform the Council about the Request for Information and the nature of the Information being sought as soon as reasonably possible;
 - 38.6.2.2 consider and apply all lawful exemptions provided under the 2000 Act to withhold Information sought in terms of the Request for Information;
 - 38.6.2.3 consult with the Council prior to the disclosure of any such Information; and

38.6.2.4 keep the Council informed about the Provider's progress in dealing with any Request for Information and where requested by the Council, provide the Council with copies of any correspondence and documents relating to the Request for Information.

38.7 The Provider shall indemnify the Council against all claims and proceedings and all liabilities, losses, costs and expenses incurred in connection therewith by the Council as a result of any breach of this Condition 38 by the Provider, the Provider's personnel, sub-contractors or agents.

38.8 The Provider acknowledges that the definition of Confidential Information is indicative only and that the Council may be obliged to disclose Confidential Information pursuant to the Environmental Information Regulations or the 2000 Act.

39. TUPE

39.1 Where the parties agree that TUPE applies, on the Commencement Date of the Contract any persons currently wholly engaged in providing the Service shall transfer to the Provider and the Provider will comply with all the requirements and obligations which TUPE imposes on a transfer.

39.2 During the term of this Contract, the Provider shall promptly on request by the Council provide the Council with accurate and complete information, including the terms and conditions of employment of the Transferring Employees and any new employees, where this is required to assist any prospective incoming contractor in relation to tendering for provision of the Service.

39.3 Where it appears to the employer that the Provider is not meeting its obligations under this condition 39.1 or where an employee of the Provider or a recognised trade union has complained in writing to the employer that it has been unable to resolve a dispute with the Provider, the employer shall in the first instance seek an explanation of the Provider in an effort to resolve the situation.

39.4 The Provider shall indemnify and hold harmless the employer 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 this Contract, whether directly or indirectly, and affected by the transfer to the Contractor (whether by agreement or operation of law).

39.5 The Provider shall not during the final twelve (12) months of the 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.

39.6 Until handover of the Services to a new provider following expiry or termination of this Contract the Provider shall provide sufficient personnel to fulfil its obligations under this Contract. Failure to comply with this clause 39.6 shall be deemed a material breach of contract by the Provider. Without prejudice to any other remedies available to the employer, the Provider shall indemnify the employer against any liability or costs incurred arising from failure to comply with this clause 39.6.

39.7 On termination of the Contract for whatever reason or expiry of the Term, the Provider shall discharge all wages salaries and honoraria (excluding accrued holiday remuneration (if any) of the transferring employees and all other costs and expenses relating to the Transferring 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).

40. DATA PROTECTION

40.1 The Provider shall comply with its obligations, whether as data controller, data processor or otherwise under the Data Protection Act 1998 and shall promptly provide the Council with such information (including but not limited to a copy of the Provider's registration under that Act) as the Council may reasonably require to satisfy itself of the Provider's compliance.

40.2 The Provider and any sub-contractor shall only undertake processing of Personal Data (as defined) reasonably required in connection with the provision of the Services.

40.3 The Provider shall not disclose Personal Data to any third parties other than:

40.3.1 to its Personnel and authorised sub-Providers to whom such disclosure is reasonably necessary in order for the Provider to carry out the Services; and

40.3.2 to the extent required under a court order provided that disclosure under Condition 40.3.1 is made subject to written terms substantially the same as and no less stringent than the terms contained in this Condition 39 and that the Provider shall promptly inform the Council in writing of any disclosure of Personal Data it or a sub-contractor is required to make under Condition 40.3.

40.4 Without prejudice to the generality of Condition 40.1, where the Council is data controller for any Personal Data processed by the Provider as part of the Services, the Provider (as data processor) shall:

40.4.1 act only on instructions from the Council, as data controller; and take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and accidental loss or destruction of or damage to Personal Data and, on request supply written particulars of the measures taken, to the Council.

PROTECTION OF PERSONAL DATA

40.5 The Provider shall in relation to all the Council's data held by the Provider ensure that it:

42.5.1 Encrypts any Data Devices and adopt appropriate password controls

42.5.2 Keep all computers, laptops and other electronic Data Devices, which hold information locked and secure and ensure this is not left in unattended vehicles;

42.5.3 Store all paper files in locked cabinets within a secure area;

42.5.4 Have in place a procedure to challenge any unauthorised or unknown individuals seen on the Providers premises

42.5.5 Ensure all the Councils data is disposed of properly and securely

40.6 The Provider shall not:

42.6.1 Leave any Council data in unsecured areas

42.6.2 Take the Councils data out of the Providers premises unless prior written consent has been obtained from the Council

42.6.3 Transmit or exchange data by any means unless previously agreed in writing with the Council

42.6.4 Hold the Councils data for longer than required by law

40.5 The Provider shall indemnify and keep indemnified the Council against all actions, claims, costs, damages, deductions, expenses losses and liabilities incurred by the Council in respect of any breach by the Provider (and/or any act or omission of any sub-contractor) of its obligations under this Condition 40.

40.6 The Provider shall, where necessary make such application for an amendment of its registration under the Data Protection Act 1998 and take such other steps as may be practicable to afford the Council access to Personal Information and other information which is reasonably required by the Council for the purposes of its statutory duties or in connection with its rights and obligations under this Contract.

- 40.7 Each Party undertakes to the other Party that it will not knowingly place the other Party in breach of that other Party's obligations under the Data Protection Act 1998.
- 40.8 Each Party shall comply with its obligations under the Computer Misuse Act 1990 insofar as performance of this Contract gives rise to obligations thereunder.
- 40.9 The Provider shall not transfer any personal data outside the countries of the European Economic Area without and only to the extent of any written consent of the relevant data subject and Council which may be refused at the Council's sole discretion. The Provider shall indemnify and keep indemnified the Council from and against any and all loss damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by the Council resulting from a breach of this agreement by the Provider including any act neglect or default of the Provider's employees or agents; breaches in respect of any matter arising from the supply of transport resulting in any successful claim by any third party; breaches in respect of the Data Protection Requirements.
- 40.10 The Provider shall not without the prior written consent of the Council, disclose to any person any confidential information of the Council which is given to or obtained by the Provider pursuant to this Agreement unless such disclosure is required by law.

41. EMERGENCIES

- 41.1 On receipt of an instruction from the Council, the Provider shall deploy resources from the provision of the Services to enable the Council to carry out any of its functions which in the opinion of the Council amounts to a situation of urgency or a potential or actual disaster or exceptional emergency. Any such deployment shall be dealt with in accordance with the procedure for Variations set out in Condition 7 (Variation of Services).
- 41.2 During any period in which the Provider is engaged in carrying out work in accordance with an instruction pursuant to Condition 42.1, the Council may issue further instruction to the Provider suspending the provision of the Services (or part of the Services) to the extent reasonably necessary as a consequence of the deployment of members of the Provider's personnel to comply with the instruction under Condition 41.1.
- 41.3 On receipt of an instruction from the Council, the Provider shall ensure that appropriate members of the Provider's Personnel attend training sessions arranged by the Council for the purposes of enabling such persons to prevent, deal with or alleviate the consequences of any such situation as is mentioned in Condition 41.1. The Provider's participation in any such training session shall be treated as a Variation in accordance with Condition 7 (Variation of Services).
- 41.4 Certain common emergencies (which shall for the avoidance of doubt exclude the matters referred to in Condition 41.1) which may affect the performance of the Services are to be anticipated during the Contract Period, including (without limitation) break-ins, minor flooding, minor fire damage and

vandalism at the Provider's premises. The Provider shall ensure that the Services, so far as reasonably practicable, are maintained irrespective of any such common emergencies and (where necessary) are rectified at no additional cost to the Council.

42. LAW AND JURISDICTION

42.1 The Contract shall be governed by and construed in accordance with the Laws of England and the Parties submit to the exclusive jurisdiction of the English courts.

42.2 The express terms and conditions of this Contract shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations, whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law.

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

43. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

43.1 Unless expressly stated nothing in this Contract or any agreement referred to herein will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the Parties to this Contract.

44. COUNTERPARTS

44.1 This Contract may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all parties shall constitute a full original of this Contract for all purposes.

SCHEDULE 1

SERVICE SPECIFICATION

SCHEDULE 2

Tender Documents