

Appendix 2 – Contractual Requirements

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Part 1 – Terms and Conditions

DURHAM COUNTY COUNCIL STANDARD TERMS AND CONDITIONS

PART A - OPERATIVE PROVISIONS

A1. DEFINITIONS

A1.1 The terms and expressions used in these Terms and Conditions shall have the meanings set out below:-

“Agreement”	this contract;
“Additional Contract Provisions”	the Additional Contract Provisions document forming part of the Contract documentation;
“Authorised Officer”	the person duly appointed by the Council in accordance with clause B5.3 and notified in writing to the Contractor to act as the representative of the Council for the purpose of this Contract or as amended from time to time and in default of such notification the Council’s Corporate Procurement Manager or similar responsible officer;
“Bribery Act”	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
“Business Continuity Plan”	the plan setting out the Contractor’s proposed methodology to ensure continuance of the Contract in the event of an emergency;
“Business Day”	any day other than a Saturday or Sunday or a public or bank holiday in England;
“Caldicott Guardian”	the senior officer responsible for safeguarding the confidentiality of Service Users’ information;
“Change in Law”	the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract;
“Commencement Date”	the commencement date is 4 September 2017;
“Commercially Sensitive Information”	any Confidential Information comprised of information: (a) which is provided by the Contractor and designated as commercially sensitive information by the Council for the period set out in the Contract; and/or (b) that constitutes a trade secret;

"Confidential Information"	<p>(a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 2018; and</p> <p>(b) the Commercially Sensitive Information;</p> <p>and does not include any information:</p> <ul style="list-style-type: none"> (i) Which was public knowledge at the time of disclosure (otherwise than by breach of Clause 6.3 (Confidential Information)); (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or (iv) is independently developed without access to the Confidential Information;
"Contract"	the written agreement between the Council and the Contractor;
"Contracting Authority"	any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 <i>other</i> than the Council;
"Contract Manager"	the person appointed by the Contractor as the contract manager and any replacement from time to time in accordance with clause B5.1;
"Contract Particulars"	Is a formal tender acceptance award letter issued by the Council;
"Contractor"	the provider of the Services and where applicable this shall include the Contractor's Employees, Sub-Contractors, agents, representatives, and permitted assigns and, if the Contractor is a consortium or consortium leader, the consortium members;
"Contract Period"	The Contract Period set out in the Contract Particulars;
"Contract Period"	The proposed contracts are for an initial period as set out in the contract documents with an option to extend for up to a further two Years to a maximum duration of five years;
"Contract Price"	the price payable to the Contractor by the Council under the Contract, as set out in the Pricing Schedule or, if no price is stated in the Pricing Schedule, the price calculated in accordance with the price set out in the Pricing Schedule or the Tender for the full and proper performance by the Contractor of its obligations under the Contract; Unless otherwise stated, any reference to Contract Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for;
"Contractor Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor

engaged in the performance of its obligations under the Agreement;

“Control”	control as defined by the Corporation Tax Act 2010;
“Controller”	takes the meaning given in the GDPR;
“Convictions”	other than in relation to minor road traffic offences, any previous pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order;
“Council”	the County Council of Durham of County Hall, Durham DH1 5UL, and where the context so admits any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists);
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
“Processor”	has the meaning given to it in the GDPR;
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Protection Legislation”	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
“Data Protection Officer”	has the meaning given to it in the GDPR;
“Data Subject”	has the meaning given to it in the GDPR;
“Data Subject Request”	A request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
“DPA 2018”	the Data Protection Act 2018;
"Default"	any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or

in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other;

“Delivery Instructions”

Where relevant the instructions provided in the Additional Contract Provisions and any other information that the Council considers appropriate to the provision of the Services;

"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;

“Employee”

any person employed by the Contractor to perform the Contract which will also include the Contractor's servants, agents, voluntary and unpaid workers and Sub-Contractors and representatives, employed by the Contractor in the performance of the Services;

“FOIA”

the Freedom of Information Act 2000;

“Force Majeure”

any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Contractor's or any sub-contractor's organisation; or
- (b) the failure by any sub-contractor to perform its obligations under any sub-contract;

And shall include those circumstances set out in the Additional Contract Provisions

"Fraud"

any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud a Contracting Authority or the Council;

“GDPR”

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

“Good Industry Practice”

the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced Contractor engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to this Contract;

“Guidance”

any applicable guidance or directions with which the Contractor is bound to comply;

“Information”

has the meaning given under Section 84 of the FOIA;

"Intellectual Property Rights" and "IPRs"	patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, exercise of the royal prerogative, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;
"LED"	Law Enforcement Directive (Directive (EU) 2016/680)
"Liabilities"	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought;
"Monitoring Requirements"	any requirements of the Council in relation to monitoring ongoing performance and delivery of the Services detailed in the Additional Contract Provisions;
"Month"	a calendar month
"Parent Company"	any company which is the ultimate Holding Company of the Contractor or any other company of which the ultimate Holding Company of the Contractor is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Contractor or which is engaged by the same or similar business to the Contractor. The term "Holding Company" shall have the meaning ascribed in Section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto;
"Party"	the Contractor or the Council; a Party to this Agreement;
"Payment Terms"	the payment terms set out in Clause C2;
"Personal Data"	has the meaning given to it in the GDPR;
"Personal Data Breach"	has the meaning given to it in the GDPR;
"Premises"	Where relevant the delivery address where the Services are to be supplied,;
"Pricing Schedule"	the pricing schedule set out ITT Document 3;
"Process"	has the meaning given to it under the Data Protection Legislation but, for the purposes of this agreement, it shall include both manual and automatic processing;
"Processor"	has the meaning given to it in the GDPR;
"Protective Measures"	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly

assessing and evaluating the effectiveness of such measures adopted by it;

"Quality Standards"	the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with (as may be further detailed in the Additional Contract Provisions) and any other quality standards set out in the Additional Contract Provisions;
"Regulated Activity Provider"	as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006;
"Regulatory Body / Bodies"	any government department, regulatory, statutory and other entity, committee, ombudsman or body which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council;
"Replacement Provider"	any third party provider of Services appointed by the Council to supply any services which are substantially similar to any of the Services, and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract;
"Request for Information"	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "Request" shall apply);
"Service User"	a service user of the Council or any other client or customer who is referred or presents to the Contractor or otherwise receives Services under this Contract;
"Services"	the Services described in the Additional Contract Provisions and the Specification together with all equipment required and any associated Goods provided by the Contractor in relation to those Services;
"Specification"	As listed in Part 3 of ITT Document 2;
"Sub-Contract"	any contract or agreement, or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services;
"Sub-Contractor"	any other person engaged by the Contractor from time to time as may be permitted by this Agreement to procure the provision of the Works and/or the Services (or any of them). References to sub-contractors means sub-contractors (of any tier) of the Contractor;
"Sub-Processor"	any third Party appointed to process Personal Data on behalf of the Contractor related to the Agreement;
"Subject Access Request"	has the meaning given to it in the DPA;

"Tender"	the document(s) submitted by the Contractor to the Council in response to the Council's invitation to providers for offers to supply it with Services;
"Terms and Conditions"	the terms and conditions set out in this document;
"Third Party Employees"	employees of Third Party Employers whose contracts of employment transfer with effect from the Effective Date to the Contractor or Sub-Contractor by virtue of the application of TUPE;
"Third Party Employer"	a Contractor engaged by the Authority to provide [some of the] Services to the Authority before the Effective Date and whose employees will transfer to the Contractor on the Effective Date;
"TUPE"	The Transfer of Undertakings (Protection of Employment) Regulations 2006;
"VAT"	value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;
"Working Day"	any day other than a Saturday or Sunday or public holiday in England and Wales.

A1.2 The interpretation and construction of the Contract including any schedules and appendices shall be subject to the following provisions:

- a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- b) words importing the masculine include the feminine and the neuter;
- c) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- f) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and
- g) reference to a clause is a reference to the whole of that clause unless stated otherwise.

A1.3 **Contractor's Status**

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

A1.4 **Council's Obligations**

Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other

capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Contractor.

A1.5 **Entire Agreement**

- a) This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- b) Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- c) Nothing in Clauses 1.5(a) and 1.5(b) shall operate to exclude Fraud or fraudulent misrepresentation.
- d) In the event of and only to the extent of any conflict between the Schedules, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:
 - i. The Pricing Schedule
 - ii. The Additional Contract Provisions
 - iii. The clauses of the Contract
 - iv. Form of Tender
 - v. Tender
 - vi. The remaining Schedules (if any); and
 - vii. any other document referred to in the clauses of the Contract.

A1.6 **Notices**

- a) Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.
- b) Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 1.6(c). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- c) For the purposes of Clause 1.6(b) the address of each Party shall be:
 - i. for the Council: Integrated Passenger Transport Group, Regeneration and Local Services, Durham County Council, County Hall, Durham, DH1 5UQ;
 - ii. for the Contractor: the address stated in the Tender.
- d) Either Party may change its address for service by serving a notice in accordance with this Clause.

A1.7 **Mistakes in Information**

The Contractor shall be responsible for the accuracy of all documentation and information supplied to the Council by the Contractor in connection with the supply of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

A1.8 Conflicts of Interest

- a) The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are placed in a position where (in the reasonable opinion of the Council), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or Staff and the duties owed to the Council under the provisions of the Contract.
- b) The Contractor shall promptly notify the Council (and provide full particulars to the Council) if any conflict referred to in Clause A1.8(a) above arises or is reasonably foreseeable.
- c) The Council reserves the right to terminate the Contract immediately by giving notice in writing to the Contractor and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

A1.9 Prevention of Fraud

- a) The Contractor shall take all reasonable steps to prevent any Fraud by Staff and the Contractor (including its shareholders, members and directors) in connection with the receipt of monies from the Council.
- b) The Contractor shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- c) If the Contractor or its Staff commits any Fraud in relation to this or any other contract with a Contracting Authority or the Council may:
 - i. terminate the Contract with immediate effect by giving the Contractor notice in writing and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; and/or
 - ii. recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this Clause 1.9.
- d) This Clause shall apply for the duration of the Contract and for a period of two (2) years after expiry of the Contract.

PART B - PROVISION OF SERVICES

B1. CONTRACT PERIOD

B1.1 This Contract shall commence on the Commencement Date and shall continue for the Contract Period, unless it is otherwise terminated in accordance with the provisions of this Contract, or otherwise lawfully terminated or extended under clause B1.2.

B1.2 If the Contract Period includes an option to extend and the Council intends to take up the option, the Contractor shall be notified in writing within the period stated in writing prior to the commencement of the extension. The provisions of this Contract will apply throughout any such extended period. If no such notification is issued this Contract shall automatically expire after the initial Contract Period.

B3. THE SERVICES

B3.1 In consideration of the payment of the Contract Price, the Contractor shall supply the Services during the Contract Period in relation to this Contract in a proper, skilful and workmanlike manner; and in accordance with the Council's requirements and the Additional Contract Provisions.

B3.2 The Council may inspect and examine the manner in which the Contractor provides the Services as detailed in the Additional Contract Provisions.

B3.3 Timely supply of the Services shall be of the essence of this Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

B4. MANNER OF CARRYING OUT THE SERVICES

B4.1 The Contractor shall ensure that a sufficient number of Employees are in place to supply the Services and that all Employees supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

B4.2 The Council shall have the right to require the Contractor to attend such ad hoc performance review meetings as the Council (acting reasonably) shall request.

B4.3 If the Contractor at any time becomes aware of any material matter that could affect the performance of the Services in accordance with this Contract, the Contractor shall inform the Council immediately.

B5. CONTRACT MANAGER AND AUTHORISED OFFICER

B5.1 The Contractor shall by the Commencement Date provide the name(s) of competent and authorised person(s) to act as Contract Manager empowered to act for the Contractor for all purposes connected with this Contract.

B5.2 The Contractor shall within seven (7) days give notice in writing to the Council of any change in the identity, postal address, email address and telephone numbers of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Council before changing its Contract Manager.

B5.3 The Council shall appoint an Authorised Officer who shall be empowered to act on behalf of the Contractor for all purposes connected with this Contract.

B5.4 The Council shall within seven (7) days of the Commencement Date give notice in writing to the Contractor of the identity of the Authorised Officer. The Council shall within seven (7) days give notice in writing to the Contractor of any change in the identity, postal address, email address and telephone number of the person appointed Authorised Officer.

B6. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

B6.1 The parties acknowledge that the Contractor is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006 the Contractor shall:

- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service; and
- (b) monitor the level and validity of the checks under this clause B7.1 for each member of staff;
- (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.

B6.2 The Contractor warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

B6.3 The Contractor shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause B6 have been met.

PART C - PRICE AND PAYMENT

C1. Contract Price

C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with Clause C2 (Payment and VAT).

C1.2 The Council shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

C2. Payment and VAT

C2.1 In consideration of the Contractor performing its obligations under the Contract, the Council shall pay all sums due to the Contractor in cleared funds within 30 days of a valid invoice, submitted in accordance with this Clause C2 and any additional terms set out in the Pricing Schedule.

C2.2 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.

C2.3 Where the Contractor enters into a sub-contract with a supplier or Contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.

C2.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.

C2.5 The Contractor shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Council at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this Clause C2.6 shall be paid by the Contractor to the Council not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Council.

C2.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under Clause D2 (Termination on Default) for failure to pay undisputed sums of money.

C2.7 Interest shall be payable by the Council on the late payment of any undisputed sums of money properly invoiced under the provisions of this Clause C2 in accordance with the Late Payment of Commercial Debts (Interest) Act 1998

C3. Recovery of Sums Due

C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Council.

C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C3.3 The Contractor shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Contractor.

C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4. Euros

C4.1 Any requirement of Law to account for the Services in Euros (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to the Council.

C4.2 The Council shall provide all reasonable assistance to facilitate compliance with Clause C4.1 by the Contractor.

PART D - DEFAULT, DISRUPTION AND TERMINATION

D1. Termination on insolvency and change of control

D1.1 The Council may terminate the Contract with immediate effect by giving notice in writing where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of Section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in Clause D1.1(a) - (g) occurs under the law of any other jurisdiction.

D1.2 The Council may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days; or
- (f) being an individual, dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- (g) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

D1.3 The Contractor shall notify the Council immediately if the Contractor undergoes a change of control as defined by section 450, 451,707 and 1124 of the Corporation Tax Act 2010 ("Change of Control"). The Council may terminate the Contract by notice in writing with immediate effect within six months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Council becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

Termination due to Change of Circumstances of Service User

D1.4 The Council may terminate the Contract in full or in part with immediate effect by giving notice in writing where a Service User for whatever reason no longer requires the Service provision.

D2. Termination on Default

D2.1 The Council may terminate the Contract by giving notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of the Council within three (3) Working Days, or such other period as may be specified by the Council, after issue of a notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Council, capable of remedy; or
- (c) the Default is a material breach of the Contract.

D2.2 Additionally, the following may be considered to be material breaches which are not capable of remedy (this list is not exhaustive):

- (a) the Council having issued five (5) notices under Clause D2.3 below in a rolling twelve (12) month period, regardless of whether the issues identified have subsequently been remedied. This breach shall not be considered capable of remedy; or
- (b) there is evidence of deliberate abuse and/or mistreatment of Service Users by the Contractor; or
- (c) a Driver or Passenger Assistant who does not have approval from the Council is used on the contract; or
- (d) the Contractor fails to maintain insurances required under the Contract; or
- (e) a Vehicle is operated without the appropriate licence or a Driver does not have a necessary licence; or
- (f) the Contractor fails to maintain Vehicles in a safe and roadworthy condition which in the view of the Council creates a hazard to safety; or
- (g) the Contractor makes a fraudulent claim for payment; or
- (h) the Contractor merges the operation of the Contract with another Contract without the authority of the Council; or.
- (i) the Contractor causes unauthorised persons to travel on the Vehicle

Dealing with Non-Material Breaches

D2.3 If from time to time the Contractor is in breach of its obligations under this Contract which is not material (having regard to clauses D1 and D2), the Council may (without limiting its rights and remedies) do either of the following at its discretion and at any time for as long whilst the relevant breach has not been remedied to the reasonable satisfaction of the Council may:

- a) issue the Contractor a notice identifying with sufficient clarity and detail the relevant breach, remedial action required (to be carried out at no further charge to the Council) and the deadline by which the relevant action must be completed to the reasonable satisfaction of the Council. That deadline shall not be less than 10 days from the date of the notice, except that a shorter deadline may be required where (on a reasonable view) the relevant breach requires urgent correction in order to properly meet the needs of Service Users, or causes (or creates an unreasonable risk of causing) death or personal injury or property loss or damage to any Service User or other person or any breach of relevant Law by the Council or by the Contractor;

- b) require a meeting between relevant personnel of the Council and the Contractor. The Contractor shall properly prepare for and attend such meeting promptly if requested by the Council (and in any case, if requested by the Council, within ten (10) working days for the date requested with a view to discussing the relevant breach, the actions required of the Contractor to remedy it, and deadlines in doing so, and other matters which the Council reasonably considers relevant. That relevant deadline shall not be less than 10 days from the date of the notice, except that a shorter deadline may be required where (on a reasonable view) the relevant breach requires urgent correction in order to properly meet the needs of Service Users, or causes (or creates an unreasonable risk of causing) death or personal injury or property loss or damage to any Service User or any person or any breach of relevant Law by the Council or by the Contractor.

D2.4 If the Council fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under Clause D7 (Recovery on Termination).

D3 The Public Contracts Regulations 2015

D3.1 The Council reserves the right to terminate the Contract where:

- a) the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015; or
- b) the Contractor has, at the time of contract award, been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or
- c) the contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.

D4. Break

D4.1 The Council and the Contractor shall have the right to terminate the Contract at any time by giving the appropriate written notice, as stated in the Additional Contract Provisions.

D5. Consequences of Expiry or Termination

D5.1 Where the Council terminates the Contract under Clauses D2 (Termination on Default) and then makes other arrangements for the supply of Services, the Council may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause D2 (Termination on Default), no further payments shall be payable by the Council to the Contractor until the Council has established the final cost of making those other arrangements.

D5.2 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Contractor under Clauses C2 (Payment and VAT), D7 (Recovery upon Termination), H8 (Prevention of Bribery), F2 (Confidential Information), F4 (Freedom of Information), F7 (Records and Audit Access), H2.6 (Cumulative Remedies), E1 (Liability, Indemnity and Insurance), D5 (Consequences of Expiry or Termination), and H13 (Law and Jurisdiction).

D6. Disruption

- D6.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other Contractor employed by the Council.
- D6.2 The Contractor shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- D6.3 In the event of industrial action by the Staff, the Contractor shall seek the Council's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- D6.4 If the Contractor's proposals referred to in Clause D6.3 are considered insufficient or unacceptable by the Council acting reasonably then the Contract may be terminated with immediate effect by the Council by notice in writing.

D7. Recovery upon Termination

- D7.1 On the termination of the Contract for any reason, the Contractor shall where relevant:
- (a) immediately return to the Council all Confidential Information and any IPRs belonging to the Council, in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - (b) immediately deliver to the Council all property (including materials, documents, information and access keys) that may have been provided to the Contractor by the Council. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - (c) assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress.
 - (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Contractor to conduct due diligence.
- D7.2 If the Contractor fails to comply with Clause D7.1 (a) and (b), the Council may recover possession thereof and the Contractor grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-Contractors where any such items may be held.
- D7.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under Clause D7.1 (c) and (d) free of charge. Otherwise, the Council shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

PART E - INSURANCE AND LIABILITIES

LIABILITIES

E1. Liability, Indemnity and Insurance

- E1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
- (a) death or personal injury caused by its negligence or that of its Staff;
 - (b) Fraud or fraudulent misrepresentation by it or its Staff; or
 - (c) any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

- E1.2 Subject to Clause E1.3 the Contractor shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.
- E1.3 Subject to Clause E1.1, in no event shall either Party be liable to the other for any:
- (a) loss of profits;
 - (b) loss of business;
 - (c) loss of revenue;
 - (d) loss of or damage to goodwill;
 - (e) loss of savings (whether anticipated or otherwise); and/or
 - (f) any indirect or consequential loss or damage.
- E1.4 The Council may, amongst other things, recover as a direct loss:
- (a) any additional operational and/or administrative expenses arising from the Contractor's Default;
 - (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Contractor's Default; and
 - (c) the additional cost of procuring replacement Services following termination of the Contract as a result of a Default by the Contractor.
- E1.5 Nothing in the Contract shall impose any liability on the Council in respect of any liability incurred by the Contractor to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Contractor that may arise by virtue of either a breach of the Contract or by negligence on the part of the Council, or the Council's employees, servants or agents.
- E1.6 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover (which as a minimum shall comply with the level of cover set out below) in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss.
- E1.7 Minimum levels of insurance cover
- public liability insurance for a sum not less than £5 million per occurrence;
 - employers liability insurance for a sum of not less than £5 million per occurrence;
 - motor vehicle insurance (at least third party motor insurance).
- E1.8 The Contractor shall give the Council, on request, copies of all insurance policies referred to in this Clause E1 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- E1.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

E1.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Clause E1.2.

E2. **Warranties and Representations**

E2.1 The Contractor warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- (b) the Contract is executed by a duly authorised representative of the Contractor;
- (c) in entering the Contract it has not committed any Fraud;
- (d) as at the Commencement Date, all information, statements and representations contained in the Tender are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council prior to execution of the Contract and it will advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (h) it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (i) the obligations undertaken by the Contractor shall be discharged and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (j) In the three (3) years prior to the date of the Contract:
 - I. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and
 - II. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - III. it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

PART F - PROTECTION OF INFORMATION

F1. **INTELLECTUAL PROPERTY**

F1.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:-

- (a) provided to the Contractor by the Council shall remain the property of the Council; or

- (b) prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of this Contract

shall belong to the Council subject to any exceptions set out in the Contract Particulars.

F1.2 The Contractor shall obtain any necessary approval before using any material, in relation to the performance of this Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the Intellectual Property Rights grants to the Council a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-licence, transfer, novate or assign to other Councils, the replacement Contractor or to any other third party providing services to the Council, and shall be granted at no cost to the Council.

F1.3 It is a condition of this Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Council.

F1.4 At the termination of this Contract the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.

F2. **CONFIDENTIAL INFORMATION**

F2.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

F2.2 Clause F2.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause F4 (Freedom of Information);
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- (e) it is independently developed without access to the other party's Confidential Information.

F2.3 The Contractor may only disclose the Council's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

F2.4 The Contractor shall not, and shall procure that its Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.

F2.5 At the written request of the Council, the Contractor shall procure that those members of the Staff identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.

F2.6 Nothing in this Agreement shall prevent the Council from disclosing the Contractor's Confidential Information:

- (a) to any Contracting Authority. Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority;

- (b) for the purpose of the examination and certification of the Council's accounts;
- (c) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.

F2.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to Clause F2.6 is made aware of the Council's obligations of confidentiality.

F2.8 Nothing in this Clause F2 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

F3 DATA PROTECTION

F3.1 The parties acknowledge their respective obligations arising under Data Protection Legislation and must assist each other as necessary to enable each other to comply with these obligations..

F3.2 Notwithstanding the general obligations of clause F3, the Contractor shall

- a) provide the Council with such information as the Council may require to satisfy itself that the Contractor is complying with its obligations under the DPA 2018 promptly and in any event within 5 working days;
- b) promptly notify the Council of any breach of the security measures required to be put in place pursuant to this clause F3.2
- c) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of any of its obligations under the DPA 2018;
- d) notify the Council when any Data Subject Request is received relating to data for which the Council is the Controller

F3.3 The Contractor must:

- a) nominate an information governance lead, to be responsible for information governance;
- b) where relevant nominate a Caldicott Guardian;
- c) ensure that the Council is kept informed at all times of the identities of the Information Governance Lead and, where relevant, the Caldicott Guardian;

Controller Responsibilities

F3.4 The Parties acknowledge that:

- a) in relation to Personal Data collected and processed by the Contractor for the purpose of delivering the Services the Contractor will be sole Controller; and
- b) in relation to Personal Data provided by the Council to the Contractor for the purpose of delivering the Services the Council will be the sole Controller and the Contractor will be the Processor; and
- c) in relation to Personal Data required by the Council for the purposes of quality assurance, performance management and contract management, the Council and the Contractor will be joint Controllers.

The Contractor as a Controller

Where paragraphs F3.4 (a) and/or (c) apply to any Personal Data then paragraphs F3.5 to F3.7 below shall apply:

- F3.5 The Contractor must ensure that all Personal Data processed by the Contractor in the course of delivering the Services is processed in accordance with the relevant Parties' joint obligations under the DPA 2018.
- F3.6 The Contractor's obligations in relation to Personal Data processed by the Contractor in the course of delivering the Services include:
- a) maintaining and operating policies relating to confidentiality, data protection and information disclosures that comply with Data Protection Legislation and where relevant the Caldicott Principles;
 - b) maintaining and operating policies that describe the personal responsibilities of Staff for handling Personal Data and applying those policies conscientiously;
 - c) maintaining and operating agreed protocols to govern the disclosure of Personal Data.
- F3.7 The Contractor must have in place a communications strategy and implementation plan to ensure that Service Users are provided with, or have made readily available to them, the following information:
- a) the identity of the Controller,
 - b) if it has nominated a representative for the purposes of the Data Protection Legislation, the identity of that representative,
 - c) the purpose or purposes for which the Personal Data are intended to be processed, and
 - d) any further information which is necessary, having regard to the specific circumstances in which the Personal Data are or are to be processed, to enable processing in respect of the Service User to be fair.

The Contractor as Data Processor

Where paragraph F3.4 (b) applies to any Personal Data then clauses F3.8 to F3.20 below shall apply:

- F3.8 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Annex 1 of Part 3 Specification by the Council and may not be determined by the Contractor.
- F3.9 The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- F3.10 The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - c) an assessment of the risks to the rights and freedoms of Data Subjects; and

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

F3.11 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- a) process that Personal Data only in accordance with the Specification, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
- b) ensure that it has in place Protective Measures, as appropriate to protect against a Data Loss Event having taken account of the:
 - 1. nature of the data to be protected;
 - 2. harm that might result from a Data Loss Event;
 - 3. state of technological development; and
 - 4. cost of implementing any measures;
- c) ensure that :
 - i. the Contractor Staff do not process Personal Data except in accordance with this Agreement (and in particular the Specification);
 - ii. it takes all reasonable steps to ensure the reliability and integrity of any Contractor Staff who have access to the Personal Data and ensure that they:
 - A. are aware of and comply with the Contractor's duties under this clause;
 - B. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - C. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
 - D. have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - iii. not transfer Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - A. the Council or the Contractor has provided appropriate safeguards in relation to the transfer;
 - B. the Data Subject has enforceable rights and effective legal remedies;
 - C. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - D. the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- d) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

- F3.12 Subject to clause F3.9, the Contractor shall notify the Council immediately if it:
- a) receives a Data Subject Request (or purported Data Subject Request);
 - b) receives a request to rectify, block or erase any Personal Data;
 - c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - f) becomes aware of a Data Loss Event.
- F3.13 The Contractor's obligation to notify under clause F3.9 shall include the provision of further information to the Council in phases, as details become available.
- F3.14 Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause F3.12 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
- a) the Council with full details and copies of the complaint, communication or request;
 - b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - d) assistance as requested by the Council following any Data Loss Event;
 - e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- F3.15 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- a) the Council determines that the processing is not occasional;
 - b) the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- F3.16 The Contractor shall allow for audits of its data processing activity by the Council or the Council's designated auditor.
- F3.17 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- F3.18 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- a) notify the Council in writing of the intended Sub-processor and processing;

- b) obtain the written consent of the Council;
- c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
- d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

F3.19 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

F3.20 The Council may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

F3.21 The Parties agree to take account of any guidance issued whether before or after the Commencement Date by the Information Commissioner's Office or the Crown Commercial Service. The Council may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office or the Crown Commercial Service.

F4. FREEDOM OF INFORMATION

F4.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

F4.2 The Contractor shall and shall procure that its Sub-Contractors shall:

- (a) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within [two] Working Days of receiving a Request for Information;
- (b) provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within [five] Working Days (or such other period as the Council may specify) of the Council's request; and
- (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

F4.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

F4.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.

F4.5 The Contractor acknowledges that (notwithstanding the provisions of Clause F4.2) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:

- (a) in certain circumstances without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account;
- (c) provided always that where F4.2 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

F4.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

F5. Publicity, Media and Official Enquiries

- F5.1 The Contractor shall not make any press announcements or publicise the Contract in any way without the Council's prior Approval and shall take reasonable steps to ensure that its servants, employees, agents, Sub-Contractors, suppliers, professional advisors and consultants comply with this Clause.
- F5.2 The Council shall be entitled to publicise the Contract in accordance with any legal obligation upon the Council, including any examination of the Contract by the Auditor.
- F5.3 The Contractor shall not do anything or cause anything to be done, which may damage the reputation of the Council or bring the Council into disrepute.

F6. Security

- F6.1 The Contractor shall comply with all reasonable security requirements of the Council while on the Premises and shall ensure that all Staff complies with such requirements.
- F6.2 The Council shall provide the Contractor upon request copies of its written security procedures and shall afford the Contractor upon request an opportunity to inspect its physical security arrangements.

F7. Records and Audit Access

- F7.1 The Contractor shall keep and maintain until one (1) year after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Contracts entered into with the Contracting Authority and the amounts paid by each Contracting Authority.
- F7.2 The Contractor shall keep the records and accounts referred to in Clause F7.1 above in accordance with good accountancy practice.
- F7.3 The Contractor shall on request afford the Council, the Council's representatives and/or the Auditor such access to such records and accounts as may be required from time to time.
- F7.4 The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) during the Contract Period and for a period of one (1) year after the expiry of the Contract Period to the Council and the Auditor.
- F7.5 The Council shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the supply of the Services save insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Council.
- F7.6 Subject to the Council's rights of Confidential Information, the Contractor shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the Council within the scope of the audit;
 - (b) reasonable access to sites controlled by the Contractor and to Equipment used in the provision of the Services; and
 - (c) access to Staff.
- F7.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 6.6, unless the audit reveals a material Default by the Contractor in which case the Contractor shall reimburse the Council for the Council's reasonable costs incurred in relation to the audit.

F8. RECORD KEEPING AND MONITORING

- F8.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after this Contract has been completed, full and accurate records of this Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request allow

the Council or the Council's representatives such access to (and copies of) those records as may be required by the Council in connection with this Contract.

F8.2 Where Monitoring Requirements are set out in the Contract Particulars, the Contractor shall comply with Monitoring Requirements at its own cost. The Council reserve the right to request from the Contractor all necessary supporting information in relation to the Monitoring Requirements.

PART G - STATUTORY OBLIGATIONS

G1. HEALTH AND SAFETY

G1.1 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Employees and other persons working in the performance of its obligations under this Contract.

G1.2 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request. The Contractor acknowledges that its health and safety policy statement is subject to approval by the Council.

G2. CORPORATE REQUIREMENTS

G2.1 The Contractor shall comply with all obligations under the Human Rights Act 1998.

G2.2 The Contractor will have in place appropriate policies and rules, including, but not limited to:-

- a) equality and diversity policies;
- b) child protection and safeguarding policies;
- c) sustainability;
- d) information security rules;
- e) whistleblowing and/or confidential reporting policies; and
- f) all site rules relevant to the fulfilment of the Contractor's obligations in the performance of the Services.

G2.3 The Contractor shall produce them upon request of the Council.

G2.4 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) and shall take all reasonable steps to secure the observance of this Clause G2 by all servants, employees or agents of the Contractor and all suppliers and Sub-Contractors employed in the execution of the Contract

G2.5 The Contractor shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.

G2.6 If the Contractor has a finding against it relating to its obligations under clause G2 it will provide the Council with:-

- (a) details of the finding; and
- (b) the steps the Contractor has taken to remedy the situation.

G3. LAW AND CHANGE IN LAW

G3.1 The Contractor shall comply at all times with the Law in its performance of this Contract.

G3.2 On the occurrence of a Change in Law which has a direct effect upon the Contract Price the parties shall meet within fourteen (14) days of the Contractor notifying the Council of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Contract Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the

impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with clause H1.

G3.3 Any agreed additional sums payable as a result of the operation of clause G3.2 shall be included in the Contract Price. For the avoidance of doubt nothing in this Contract is intended to allow the Contractor double recovery of any increase in costs.

G4. TUPE INDEMNITY

G4.1 For the purposes of this clause only the following definitions shall take effect:-

“Current Employer” the employer of the Transferring Employees immediately before the Commencement Date;

“Employment Costs” remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions and pensions contributions;

“Prohibited Act” include any of the following (i) termination of employment of any Employees; or (ii) the alteration or change of terms or conditions of any Employees; or (iii) the recruitment of any employees; or (iv) relocation or assignment to new duties of any Employees,

“Transferring Employees” those employees employed wholly or mainly by the Current Employer in providing the Services described in the Additional Contract Provisions prior to the Commencement Date.

G4.2 The Council and the Contractor acknowledge that where as a result of TUPE the contracts of employment between the Current Employer and the Transferring Employees (except in so far as such contracts relate to any occupational pension scheme as defined in Regulation 10 of TUPE) transfer, they will have effect after the Commencement Date as if originally made between the Contractor and the Transferring Employees.

G4.3 All Employment Costs in respect of the period:

- (a) up to and including the Commencement Date in relation to the Transferring Employees (whether or not due for payment at that date) will be borne by the Current Employer;
- (b) after the Commencement Date will be borne by the Contractor;
- (c) and will if necessary be apportioned on a time basis between the Contractor and the Current Employer.

G4.4 The Contractor will keep the Council and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly and whether incurred by the Council pursuant to an indemnity provided to the Replacement Contractor in connection with:

- (a) the employment or termination of employment of any of the Employees (whether or not terminated by notice and, if so terminated, whenever that notice expires);
- (b) any act, omission or default of the Contractor in respect of the employment of the Transferring Employees;
- (c) the Contractor’s failure to inform or consult as required under Regulation 13 of TUPE except to the extent that any such action or claim (or any part of such action or claim) arises from any failure by the Council or the Replacement Contractor to give the Contractor the information required from the Council or the Replacement Contractor to enable the Contractor to comply with its obligations under TUPE; and
- (d) the Contractor’s failure to provide the employee liability information under Regulation 11 of TUPE.
- (e) Any claim by a Transferring Employee that such person is entitled for any reason to take early retirement benefits pursuant to the terms of any pension scheme in which the Council or the replacement Contractor is not then participating, or pursuant to the Transferring Employee’s terms and conditions of employment;

- G4.5 In the event of expiry or termination of this Contract or whenever reasonably requested by the Council in preparation for tendering arrangements the Contractor will (if the Council has reasonable grounds to believe that TUPE will apply to any employees of the Contractor or its Sub-Contractors on expiry or termination in connection with a service provision change) provide the Council with such assistance as the Council may require and provide at no cost to the Council any information the Council (whether on its own account or on behalf of any potential or confirmed Replacement Contractor) may request in relation to the Employees including but not limited to, providing employee liability information as required under Regulation 11 of TUPE.
- G4.6 The Contractor authorises the Council to pass any information supplied to any Replacement Contractor or potential Replacement Contractor and the Contractor will secure all necessary consents from relevant Employees in order to do this.
- G4.7 The Contractor will keep the Council and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.
- G4.8 The parties acknowledge that they consider the application of TUPE to be unlikely on termination or expiry of this Contract. Accordingly, except with the prior consent of the Council to do otherwise (such consent not to be unreasonably withheld) the Contractor is to use best endeavours to provide the Services in a manner such that no organised grouping of employees of the Contractor and/or its Sub-Contractors is formed where such individuals have rights under TUPE against the Council or its subsequent service Contractor. The Contractor shall indemnify the Council and/or where relevant the Council's subsequent service Contractors in full for all losses, liabilities, actions, claims demands, compensation, damages, costs and expenses and increased costs and expenses relating to or arising from or connected with claims made against them respectively by such employees on the grounds of TUPE arising under or in connection with this Contract.

G5. BUSINESS CONTINUITY PLAN

- G5.1 The Civil Contingencies Act 2004 requires the Council to maintain plans to ensure it can continue to perform all of its ordinary functions in the event of an emergency. Organisations providing services or goods which underpin the Council's service provision must be able to continue to provide in the event of an emergency. The Contractor shall use its reasonable endeavours:-
- (a) to prepare a robust Business Continuity Plan that ensures the continuation of this Contract;
 - (b) on request, to disclose to the Council the contents of its Business Continuity Plan (including any revisions made to it from time to time);
 - (c) to allow the Council at its discretion from time to time to monitor the Contractor's business continuity arrangements;
 - (d) to notify the Council if an incident occurs which activates the Contractor's Business Continuity Plan (such notification to be given prior to the issue of any notification to the press or other media); and
 - (e) to provide the Council with details of how the Contractor managed any incident which resulted in the activation of the Contractor's Business Continuity Plan and any consequential amendments made to the Contractor's processes and/or procedures thereafter.

G6. COMMUNITY SAFETY

- G6.1 The Council has a statutory duty to ensure that it does all that it reasonably can to prevent crime and disorder in its area under the Crime and Disorder Act 1998. The Contractor is requested to assist the Council in the provision of the Services, in order to enable the Council to comply with this obligation at no additional expense to the Council.

G7. ENVIRONMENTAL REQUIREMENTS

- G7.1 The Contractor shall perform its obligations under the Contract in accordance with the Council's environmental policies, which are to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

PART H - GENERAL PROVISIONS

H1. DISPUTE RESOLUTION PROCEDURE

- H1.1 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause H1.
- H1.2 The Contractor and the Council shall endeavour to notify each other of any anticipated disputes so that any potential dispute can be avoided by negotiation between them.
- H1.3 Both parties shall endeavour to resolve any failure to agree matters or any disputes by direct negotiations between senior representatives of both parties.
- H1.4 If the parties fail to resolve the dispute through such consultation either party may refer the matter to an adjudicator ("the Adjudicator"). The Adjudicator shall be selected by agreement between the parties, or where the parties are unable to agree on the identity of the adjudicator within fourteen (14) days, the President for the time being of the Chartered Institute of Arbitrators shall appoint the Adjudicator within thirty (30) Business Days of any application for such appointment by either party.
- H1.5 Within five (5) Business Days of nomination in relation to a particular dispute, the Adjudicator shall require the parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.
- H1.6 In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within twenty (20) Business Days of the Adjudicator's nomination to consider the relevant dispute (or such other period as the parties may agree after the reference) or thirty (30) Business Days from the date of reference if the party which referred the dispute agrees. The Adjudicator's decision shall not state any reasons for his decision. Unless and until revised, cancelled or varied by the English Courts, the Adjudicator's decision shall be binding on both parties who shall forthwith give effect to the decision.
- H1.7 The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- H1.8 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.
- H1.9 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.
- H1.10 All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by clause F2 (Confidentiality and Publicity) and clause 0 (Freedom of Information), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.
- H1.11 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.
- H1.12 If:-
- (a) either party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with clause H1.6 (Adjudicator's Decision); or
 - (b) both parties agree,
- then either party may (within twenty (20) Business Days of receipt of the Adjudicator's decision, where appropriate), notify the other party of its intention to refer the dispute to the courts.

H1.13 The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause H1 and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this clause H1.

H2. CONTROL OF THE CONTRACT

H2.1 Transfer and Sub-Contracting

- (a) The Contractor shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without the prior approval of the Council. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract.
- (b) Where the Authority considers whether there are grounds for the exclusion of a Sub-Contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
 - a. if the Authority finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the Sub-contractor;
 - b. if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Contractor to replace or not to appoint the Sub-Contractor and the Contractor shall comply with such a requirement.
- (c) The Contractor shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.
- (d) Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Contractor to the Council as soon as reasonably practicable.
- (e) Subject to Clause H2.1(f), the Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
 - a. any Contracting Authority; or
 - b. any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or
 - c. any private sector body which substantially performs the functions of the Council;
- (f) provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- (g) Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to Clause H2.1(f), affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Council.
- (h) If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause H2.1(f) to a body which is not a Contracting Authority or if there is a change in the legal status of the Council such that it ceases to be a Contracting Authority (in the remainder of this Clause both such bodies being referred to as "**the Transferee**"):
 - a. the rights of termination of the Council in Clauses D1 (Termination on insolvency and change of control) and D2 (Termination on Default) shall be available to the Contractor in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and

- b. the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Contractor.
- (i) The Council may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.
- (j) Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

H2.2 **Waiver**

- (a) The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- (b) No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 1.6 (Notices).
- (c) A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

H2.3 **Variation**

- (a) Subject to the provisions of this Clause H2.3 and the Additional Contract provisions paragraph 32.4, the Council may request a variation to Services ordered provided that such variation does not amount to a material change to the Contract. Such a change is hereinafter called a "Variation".
- (b) The Council may request a Variation in writing to the Contractor giving sufficient information for the Contractor to assess the extent of the Variation and any additional cost that may be incurred. The Contractor shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the services.
- (c) In the event that the Contractor is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Council may:
 - i. agree to continue to perform their obligations under the Contract without the Variation; or
 - ii. terminate the Contract in accordance with Clause D4.
- (d) If the Parties agree the Variation and any variation in the Contract Price, the Contractor shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

H2.4 **Severability**

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

- (b) In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Council and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

H2.5 Remedies in the event of inadequate performance

- (a) Where a complaint is received about the standard of provision of the Services or about the manner in which any Services have been supplied or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Council shall take all reasonable steps to investigate the complaint. The Council may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause D2 (Termination on Default) of the Contract.
- (b) In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Council may, without prejudice to its rights under Clause D2 (Termination on Default), do any of the following:
 - i. without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Council that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
 - ii. without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
 - iii. terminate, in accordance with Clause D2 (Termination on Default), the whole of the Contract; and/or
 - iv. charge the Contractor for and the Contractor shall pay any costs reasonably incurred by the Council (including any reasonable administration costs) in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- (c) If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within three (3) Working Days of the Council's instructions or such other period of time as the Council may direct.
- (d) In the event that the Contractor:
 - i. fails to comply with Clause H2.5 (c) above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or
 - ii. persistently fails to comply with Clause H2.5 (c) above;
- (e) the Council may terminate the Contract with immediate effect by giving the Contractor notice in writing.
- (f) Without prejudice to any other right or remedy which the Council may have, if any Services are not supplied in accordance with, or the Contractor fails to comply with any of the terms of, the Contract the Council shall be entitled to avail itself of any one or more of the following remedies at its discretion whether or not any part of the Services have been accepted by the Council:
 - i. at the Council's option to give the Contractor the opportunity at the Contractor's expense to either remedy any defect in the Services or to supply replacement Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
 - ii. to carry out at the Contractor's expense any work necessary to make the Services comply with the Contract; and
 - iii. to claim such damages as may have been sustained in consequence of the Contractor's breach or breaches of the Contract.

H2.6 **Cumulative Remedies**

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

H2.7 **Monitoring of Contract Performance**

The Contractor shall comply with the monitoring arrangements set out in the Contract Particulars including, but not limited to, providing such data and information as the Contractor may be required to produce.

H3. **THIRD PARTY RIGHTS**

H3.1 This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

H4. **NO WAIVER**

H4.1 Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of this Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.

H4.2 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause A1.6 (Notices).

H5. **SEVERANCE**

H5.1 If any provision of this Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

H6. **ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY**

H6.1 Subject to any express provision of this Contract, the Contractor shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.

H6.2 The Council shall be entitled to:-

(a) assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any Contracting Authority; or

(b) transfer, assign or novate its rights and obligations where required by Law.

H6.3 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, Sub-Contractors, servants, agents and Employees as though they were its own.

H7. **FORCE MAJEURE**

H7.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

H7.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

H7.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or which is likely to give rise to any such failure or delay on its part as described in Clause H7.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

H8. PREVENTION OF BRIBERY

H8.1 The Contractor:

- a) shall not, and shall procure that any Employee shall not, in connection with this Contract commit a Prohibited Act which for the purposes of this clause H8 only shall be as defined in the Bribery Act;
- b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

H8.2 The Contractor shall:

- a) if requested, provide the Council with any reasonable assistance to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- b) within 5 Working Days, of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Contractor) compliance with this clause H8 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Contractor shall provide such supporting evidence of compliance as the Council may reasonably request.

H8.3 If breach of clause H8 is suspected or known, the Contractor must notify the Council immediately.

H8.4 If the Contractor notifies the Council that it suspects or knows that there may be a breach of clause H8, the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.

H8.5 Without prejudice to any other rights and remedies available under this Contract, the Council may terminate this Contract by written notice with immediate effect if the Contractor or an Employee (in all cases whether or not acting with the Contractor's knowledge) breaches clause H8 and recover from the Contractor the amount of any loss suffered by the Council arising from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. In determining whether to exercise the right of termination under this clause H8.6, the Council shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an Employee not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting:

- a) with the Contractor; or,
- b) with the actual knowledge of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be); or
- c) in circumstances where any one or more of the directors of the Contractor or the Sub-Contractor ought reasonably to have had knowledge.

H8.6 Any notice of termination under clause H8.5 must specify:

- a) the nature of the party whom the Council believes has committed the Prohibited Act; and
- b) the date on which e Prohibited Act;

c) the identity of t this Contract will terminate.

H8.7 Notwithstanding clause H1 (Dispute Resolution), any dispute relating to:

a) the interpretation of this clause H8; or

b) the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive

H8.8 Any termination under clause H8 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

H8.9 For the avoidance of doubt, the Contractor shall be responsible for the acts and omissions of any Sub-Contractor and for the purpose of this clause H8, any act, default or omission of any Sub-Contractor shall be deemed to be an act, default or omission of the Contractor.

H9. **COSTS AND EXPENSES**

H9.1 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

H10. **NO AGENCY OR PARTNERSHIP**

H10.1 Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

H11. **NON SOLICITATION AND OFFERS OF EMPLOYMENT**

H11.1 The Contractor agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Contract Period or for a period of twelve (12) months following termination of this Contract:-

(a) solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination; or

(b) attempt, or knowingly assist or procure any other person to do the above.

H12. **INSPECTION OF CONTRACTOR'S PREMISES**

H12.1 The Contractor shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Contractor's premises in relation to this Contract.

H13. **LAW AND JURISDICTION**

H13.1 This Contract shall be governed by the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English courts.

Part 2 – Additional Contract Provisions

It is entirely your responsibility to familiarise yourself with the contractual requirements.

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1. Definitions

- 1.1. In these Additional Contract Provisions, unless otherwise defined herein words and expressions shall have the meaning assigned to them in Document 2 Contract
- 1.2. “**Average Price Per Mile**” means the Contract Price divided by the passenger carrying mileage required to be operated to perform the Contract, determined using digital geographical data using the shortest route.
- 1.3. “**Behaviour on School Transport Policy Document**” means the Council’s published policy regarding behaviour on school transport
- 1.4. “**CCTV**” means closed circuit television or any equivalent system recording images and/or sound.
- 1.5. “**Contractor’s Staff**” means individuals working for the Contractor in delivering the contract
- 1.6. “**CSE**” means Child Sexual Exploitation
- 1.7. “**DBS Update Service**” means the facility provided by the Disclosure and Barring Service by which notification can be obtained of whether there have been any subsequent changes in the subject’s record since the issue of a disclosure document
- 1.8. “**Driver**” means any member of the Contractor’s staff who drives a Vehicle used in performing the Contract
- 1.9. “**Fixed Route Contracts**” means Contracts with a fixed route and stopping places.
- 1.10. “**Integrated Passenger Transport Group**” means the Integrated Passenger Transport Group, Regeneration and Local Services, County Hall, Durham DH1 5UQ
- 1.11. “**LADO**” means the Local Authority Designated Officer responsible for safeguarding
- 1.12. “**Passenger**” means children and young people and adults that are transported under this Contract.
- 1.13. “**Passenger Assistant**” means a person who assists in the needs of the passengers as set out within Section 21.
- 1.14. “**PCV**” means Passenger Carrying Vehicles
- 1.15. “**PSV**” means Public Service Vehicle
- 1.16. “**Safeguarding**” means safeguarding (protecting) people at risk of abuse or neglect
- 1.17. “**Social Care Direct and First Contact Service**” means the Council’s first point of contact for any Safeguarding concerns about the welfare of Service Users. The telephone number is 03000 267 979. After 5pm Monday to Thursday and 4:30pm Friday calls will automatically be transferred to the Emergency Duty Team.
- 1.18. “**Social Care Transport**” means transport provided for users of adult and health services.
- 1.19. “**Variable Route Contracts**” means Contracts where the transport involves collection of each Passenger from and/or return to a specific address, where details will change during the Contract due to changes in Passengers
- 1.20. “**Vehicle**” shall mean a Vehicle being used by the Contractor in the performance of these Contracts.

2. General

- 2.1. The headings to these Conditions shall not be deemed to be part thereof and shall not affect the construction or interpretation of the same.
- 2.2. Any requirement detailed in the Specification of Service is to be read with and forms part of the Contract.
- 2.3. Except as provided for by these Contracts, the Contractor shall at its own expense at all times conform in all respects with the provision of any Act of Parliament General or Local or any Statutory Rules or Orders affecting the whole or part of the subject matter of the Contract or any work to be done in relation thereto.
- 2.4. Should any condition contained within these Contracts be deemed illegal by a Court of Law it will not affect the operation of the remaining Conditions of these Contracts.

3. Notices, and Termination of Contract

- 3.1. For non- accessible Vehicles designed or adapted to carry up to 8 passengers: The Contract may be terminated by the giving of 2 weeks' notice by either party.
- 3.2. For non-accessible Vehicles designed or adapted to carry 9-16 passengers: The Contract may be terminated by the giving of 4 weeks' notice by either party.
- 3.3. For Vehicles designed or adapted for the carriage of wheelchair passengers: The Contract may be terminated by the giving of 6 weeks' notice by either party.
- 3.4. For Vehicles designed or adapted to carry 17 passengers or more: The Contract may be terminated by the giving of 12 weeks' notice by either party.
- 3.5. Where a Contractor does not give the appropriate period of notice as required by the Contract, the Contractor will be charged any excess costs which the Council incurs in fulfilling the Contract by an alternative Contractor as arranged by the Council for the period of notice.
- 3.6. Where a Contract is terminated forthwith payment will be made up to the time and date of termination.
- 3.7. Where the Contract has been terminated by the Council due to material breach, the Council may in its sole discretion not engage the Contractor in any further Contract arrangements for a period determined by the Council.

4. Contract Complaints Procedure

- 4.1. The Council has a duty of care towards the passengers assigned to the Contract and will investigate all complaints which relate to the safety of a Passenger. This will include complaints which are in relation to non-Council contracts or passengers. In all such circumstances the Contractor MUST notify the Council in writing with immediate effect. In order to investigate any complaint the Council may require suspension of the whole or of part of the Contract while investigations take place.
- 4.2. On receipt of a complaint relating to Drivers or Passenger Assistants or any other relevant staff of the Contractor, the following actions will be taken:
 - 4.2.1. The complaint will be passed to a responsible officer within the Integrated Passenger Transport Group.
 - 4.2.2. The complaint will be forwarded to the Local Authority Designated Officer (LADO) and/or other investigating officer in a safeguarding role.
 - 4.2.3. Following instruction from the LADO or Investigating Officer the Contract and/or the named driver and/or Passenger Assistant may be suspended

from engagement on all contracts carried out for the Council or may be restricted to working on specific contracts only.

- 4.2.4. This suspension relates only to Durham County Council Contracts. A suspension will include any private hire arrangements with a County Council establishment which involves the conveyance of children or vulnerable adults.
- 4.3. The action to suspend is normal procedure in such circumstances and is without prejudice, whilst an investigation takes place.
- 4.4. An investigation meeting will be held with relevant professionals to discuss the complaint.
- 4.5. An investigation may be carried out with discussions held with relevant people.
- 4.6. The investigating officer, on behalf of the LADO, will advise the appropriate officers within the Integrated Passenger Transport Group of the outcome of the investigation.
- 4.7. A contract management meeting will then be held to discuss the outcome of the investigation with the holder of the Contract and the suspended Driver or Passenger Assistant, this meeting may also include others working on the Contract at the time of the alleged incident.
- 4.8. Details of the meeting will be referred back to the LADO and/or other investigating officer.
- 4.9. The LADO and/or other investigating officer will agree the appropriate action to be taken.
- 4.10. Once the Investigation is concluded the Contractor and the suspended driver or Passenger Assistant will be notified of the outcome, this may include a range of actions, for example one of the following: reinstated to full duties, moved to another contract, required to undertake further training, a final warning issued or refused authorisation to work on DCC Contracts or termination of the Contract, in whole or in part.
- 4.11. Please note:
 - 4.11.1. A driver or Passenger Assistant may not resume his/her duties on contract until such time as the designated officer with the Integrated Passenger Transport Group receives formal notification that the investigation is concluded and this officer relays further advice to you in writing.
 - 4.11.2. Until the investigation is completed members of the Integrated Passenger Transport Team cannot discuss the details of the complaint resulting in the suspension or restriction on duties.
 - 4.11.3. The Council retains the right to share operator, driver and Passenger Assistant information pertaining to the safe operation of Contracts with others within the Council and/or organisations responsible for safeguarding and/or health and safety.
 - 4.11.4. Where it is necessary to suspend the operation of a contract whilst an investigation centred on an employee or agent of the Contractor is undertaken, payment, if any, for the period of suspension will be made only in exceptional circumstances upon the outcome of the investigation.

5. Annual Price Review

- 5.1. The Contract Price shall be reviewed annually by the Council with effect on and from the first Sunday in September each year (subject to the first review being not less than 6 months after the start of the Contract). At each review the Contract price shall be increased or decreased as appropriate in line with the change (if any) in transport operating costs between the start of the Contract and the first day of April preceding the review date.
- 5.2. The review shall not take into account any changes in fares revenue during the course of these Contracts.
- 5.3. For the purpose of this clause, transport operating costs shall be determined by the Council by reference to appropriate facts and statistical indices concerning the average cost of operating passenger transport services in County Durham, including overheads (but not finance and asset replacement costs). At the Council's discretion, different assessments may be made of the change in operating costs for different classes for transport; but within each class, the review shall be the same as applied to other Contracts of the same class. The Contractor shall be required to supply any data about operating costs which the Council may reasonably require for the purpose of assessing transport operating costs.

6. Unforeseeable Disruptions to Contract

- 6.1. This section relates only to those instances where the Contractor is unable on any occasion and for reasons beyond its control to fulfil entirely its contractual obligations.
- 6.2. This may include but is not limited to:
 - inclement weather
 - Passenger(s) did not require travel e.g. sickness
 - unplanned closure of schools or social care establishments such as due to damage to the building or heating failures or industrial action by staff at the school or establishment. It is the Contractor's responsibility to ensure they are aware of any planned occasions when a school or social care establishment is closed for any reason including professional development days.
- 6.3. This does not include industrial disputes involving the Contractor's employees.
- 6.4. The Contractor must notify the Integrated Passenger Transport Group on the first day of non-performance if they are unable to undertake any part of the journey for any reason.
- 6.5. The Contractor shall be entitled to payment as indicated below only if they notify the Council, at the first opportunity, of non-performance upon which you will be advised by Integrated Passenger Transport Group staff on future operation of the contract.
- 6.6. For each separate incident the Contractor shall be entitled to:
 - 6.6.1. 80% of daily Contract Price for the first day.
 - 6.6.2. 50% of daily Contract Price on the four subsequent consecutive days of the contract journeys;
 - 6.6.3. thereafter no payment at all until the re-commencement of the normal operation.

7. Payment

- 7.1. The Contractor will nominate a specific account used for the business into which payment will be made in respect of the contract. The Integrated Passenger Transport Group must be notified of any changes to this account. Payment will not be made to any person or third party other than the Contractor of this document or the company account.
- 7.2. The Contractor shall be paid the Contract Price for the journeys performed under the requirements of this contract, except where paragraph 6(force majeure) applies.
- 7.3. The Council will pay the Contractor the amount due within a period which normally shall not exceed 21 days from receipt of the invoice and the supporting certification, so long as it is satisfied of the accuracy of the account claimed.

8. Invoices

- 8.1. The Contractor shall submit invoices promptly in arrears on a calendar month basis to Integrated Passenger Transport, Regeneration and Local Services, County Hall, Durham DH1 5UQ. Invoices shall show
 - the name and address of the Contractor, details of to whom the payment is to be made
 - a unique invoice reference number
 - the date of the invoice
 - the contract number(s) the invoice relates to
 - the names of the school or social care establishment served
 - the dates journeys operated
 - the daily rate(s)
 - the total amount claimed before any value added tax where chargeable, the value added tax and the overall total amount claimed, plus the Contractor's value added tax registration number
- 8.2. Where invoices submitted are not on the Contractor's official stationery the Council reserves the right to return them to the Contractor.
- 8.3. In the case of school transport, invoices shall be supported by obtaining a certification from the head teacher (or an authorised signatory at the school) that the journeys have operated, either by countersigning the invoice or a separate document stating the dates for which payment is claimed.
- 8.4. In the case of adult social care transport, the Council may require that invoices shall be supported by obtaining a certification from an authorised signatory at the establishment served by the Contract that the journeys have operated, either by countersigning the invoice or a separate document stating the dates for which payment is claimed.
- 8.5. The Council may require the Contractor to submit a report with the monthly invoice on incidences where a passenger fails to travel or the route has varied from the schedule issued by the Council. The Contract Price may be varied as a result of any significant variation to the original tendered pick up list.

9. Operator and Vehicle Licensing

- 9.1. Vehicles used on the contract shall be licenced as below.
 - 9.1.1. Any Vehicle designed or adapted to carry not more than 8 adult passengers shall be licensed as a hackney carriage or private hire Vehicle

and display the appropriate authorisation plate as issued by the licensing authority.

- 9.1.2. The use of Vehicles designed or adapted to carry not more than 8 adult passengers, operated under the provision of Section 265 of the Transport Act 2000 will only be permitted if driven by a person licenced to drive a PSV.
 - 9.1.3. Any Vehicle adapted for carrying more than 8 adult passengers shall be operated under a PSV Operator's Licence and shall display a valid disc. The Contractor shall have and keep in force a PSV Operator's Licence as required by statute which permits the operation of these Contracts and shall produce the licence at any reasonable time for inspection by the Council.
- 9.2. If the Traffic Commissioner calls a public inquiry regarding the Contractor's PSV Operator's Licence or if DCC Taxi Licencing enforcement refers the Contractor to Licensing Committee, the Contractor shall inform the Council as soon as the Contractor receives official notification of the Inquiry/Committee and shall supply such copies of any relevant documents relating to the Inquiry/Committee as may reasonably be required by the Integrated Passenger Transport Group. Failure to notify the Integrated Passenger Transport Group will be considered to be a breach of contract.

10. Specifications and Standards on Vehicle Use

- 10.1. The Contractor shall maintain all Vehicles in a safe and roadworthy condition and shall comply with all statutory requirements applying to the use of the Vehicle.
- 10.2. The Contractor must keep full and proper Vehicle maintenance records available for inspection by the Council at any reasonable time. The Contractor may be required to make any Vehicle or premises used in the performance of these Contracts available for inspection by the Council at any reasonable time to ensure that the requirements of the Contract are met. At least 24 hours' notice shall be given of any such inspection unless this negates the purpose of the inspection. The Council may notify the Traffic Commissioner regarding any defects which are found.
- 10.3. The Council may instruct the Contractor not to use in the performance of these Contracts or any other Contract with the Council any Vehicle which is found to be deficient and in such circumstances the Contractor shall provide an appropriate alternative Vehicle for the performance of these Contracts at the Contractor's expense.
- 10.4. Where an alternative Vehicle cannot be provided the Contract will be suspended or terminated at the sole discretion of the Council. The Contractor will not receive payment for those days when the Contract is suspended.
- 10.5. No Vehicles may be used to fulfil the Contract which are more than 18 years old (vehicles 17 passenger seats and over) or 12 years old (vehicles up to 16 passenger seats) from the date of first registration, without the prior agreement of the Council. In considering whether to agree to the use of an older vehicle, the Council will have regard to whether the condition of the interior and exterior of the vehicle is equivalent to a well-maintained vehicle of compliant age, and to any measures which improve the original level of exhaust emissions such as a replacement engine or exhaust treatments.
- 10.6. Any Vehicle used to fulfil the Contract must comply with the following conditions:

- 10.6.1. As a Contractor you are required to ensure that procedures are in place and implemented to ensure that Vehicle meets the safety standards required in this Contract.
- 10.6.2. All Vehicles, each day, prior to operating on this contract must be subject to a walk round check in accordance with the defect book to ensure that they are roadworthy. Aspects of the Vehicle that should be checked include but not be limited to, lights, brakes, steering, tyres (including spare), exhaust system, seatbelts, demisters, windscreen wipers, clean windscreens, windows, indicators and reflectors, mirrors, number plates, correct adjustment of seats, seatbelts and head restraints.
- 10.6.3. All Vehicle operating on these Contracts must display on the bodywork markings which to the satisfaction of the Council indicate clearly to passengers which individual or business organisation operates the Vehicle, where the licensing authority permits such a display. The statutory lettering on PSVs stating the identity of the operator shall not be sufficient for the purposes of this clause.
- 10.6.4. Only Vehicles which have access from the near-side may be used on these Contracts. Where a Vehicle has a rear door, this must not be used by passengers other than for exit in an emergency and access/exit for wheelchair passengers.
- 10.6.5. All minibuses, that is Vehicles designed or adapted to between 9 and 16 passenger seats must have forward or rearward facing seats only and be fitted with seat belts on all passenger seats.
- 10.6.6. All Vehicles designated as coaches must have forward or rearward facing seats only and be fitted with seat belts on all passenger seats.
- 10.6.7. All PSVs must be fitted with audible reversing alarms.
- 10.6.8. All Vehicles of 20 passenger seats or more must be fitted with power doors which must only be operated by the driver. For those Vehicles of under 20 passenger seats not fitted with a power door, the driver or Passenger Assistant must be responsible for opening and closing of doors. Passengers must not be permitted to operate Vehicle doors, except in the case of an emergency.
- 10.6.9. "School bus" signs must be fitted and used on all Vehicles where required by the provisions of "The Road Vehicles Lighting (Amendment) Regulations 1994". Such signs should not obstruct forward vision (area swept by windscreen wipers) or external mirrors.
- 10.6.10. All Vehicles used in the performance of these Contracts shall be adequately clean (inside and out) at all times. This requirement will normally be met if Vehicles are swept daily and washed regularly.
- 10.6.11. Child safety locks must be used on the rear passenger doors of Vehicles designed or adapted to carry up to and including 8 adult passengers.
- 10.6.12. All Vehicles used on these Contracts must have some means of communication either by two way radio or mobile telephone, to be provided by the Contractor.
- 10.6.13. Where Vehicles with tinted windows are to be used to fulfil these Contracts such Vehicles require the prior approval of the Council, which must be satisfied that the tinting is not such as to prevent the occupants of the Vehicle being clearly visible from outside the Vehicle.

- 10.7. In the case of Vehicles adapted for the carriage of wheelchair-using passengers:
- 10.7.1. All Vehicles must be compliant with the Council's specification for wheelchair accessible Vehicles as stated in Annex 1. The Contractor must be able to demonstrate compliance with the specification and, when requested, present evidence of certification.
 - 10.7.2. All Vehicles must undergo, prior to the commencement of the contract, an inspection of compliance to the specification for wheelchair accessible Vehicles undertaken by the Council's Vehicle inspection team. The Council will meet the cost of the initial Vehicle inspection. If a Vehicle fails inspection, the cost of any re-inspections will be met by the Contractor.
 - 10.7.3. Where an appointment is made with the Council for a Vehicle to be inspected and the Contractor fails to be present the Vehicle at the appointed time, without having given at least 24 hours notification, the Contractor will be responsible for the cost of the inspection fee and the Vehicle shall be deemed to have failed the inspection.
 - 10.7.4. Where a Vehicle fails to meet the Council's required standard, the Vehicle must not be used on these Contracts until it undergoes re-inspection by the Council and meets the required standard. Failure to provide an alternative suitable Vehicle during the period prior to the re-inspection may result in the termination of contract.
- 10.8. Where a contract requires the carriage of a passenger seated in a wheelchair, the Contractor must ensure that whilst in transit, the wheelchair is at all times appropriately secured and a safety restraint provided for the passenger throughout the journey (the wheelchair posture belt will not suffice). It is the Contractors responsibility to carry out a risk assessment, so as to ensure that the wheelchair is transportable with a seated passenger and that appropriate wheelchair and passenger restraints are used for the type of wheelchair being carried. Advice and guidance can be sought from the Integrated Passenger Transport Group on restraint equipment.
- 10.9. Any equipment, such as folding wheelchairs or walking frames must be secured when carried in the Vehicles.
- 10.10. The Contractor must be familiar with all relevant legislation appertaining to the carriage of wheelchairs and wheelchair passengers.

11. Portable Steps

- 11.1. Portable steps should only be used following authorisation by the Council.
- 11.2. If authorised for use, the Contractor should ensure that drivers and Passenger Assistants are proficient in assisting passengers using portable steps.
- 11.3. The use of homemade or adapted portable steps must not be used on any of these Contracts.

12. Non Compliance, Vehicle Defect and Operation Failures

- 12.1. The Council will record instances of non-compliance, identified Vehicle defect and operational failures. This information may be taken into account when future contracts, both temporary and permanent are awarded. The information may also be used to determine decisions on the continuation of the operation of the current Contract.
- 12.2. The Council may require Operators of Public Service Vehicles to register with the free Operator Compliance Risk Score service provided by the Driver and Vehicle Standards Agency, to provide information about the score when requested by the Council, and to

provide the Council with a user login to the system so that the Council may monitor the information.

13. Safety

- 13.1. Passengers must not be allowed to enter or leave the Vehicle while it is in motion.
- 13.2. The Contractor shall take all reasonable steps to ensure the safety of Passengers not only whilst they are aboard the Vehicle but also at such times as they are entering, leaving, boarding or alighting.
- 13.3. Should Passengers be seen standing during the journey, the driver must instruct the Passenger to reoccupy their seat, except that in an emergency which requires a Passenger Assistant to stand to immediately attend to the Service User, the Driver shall, when it is safe to do so, bring the Vehicle safely to a standstill. Passengers failing to adhere to this instruction should be reported to the Integrated Passenger Transport Group and, when possible, to school or social care staff.
- 13.4. Service Users must board or alight only from a door of the Vehicle that is adjacent to the kerb, save only that wheelchair-using Passengers may use a rear door if that is the means by which the Vehicle is accessed by wheelchairs.

14. Accidents

- 14.1. The Contractor must have an emergency plan for office staff, Drivers and Passenger Assistants setting out what to do in the event of an incident or accident (in the office and the Vehicle)
- 14.2. If any accident occurs while performing the Contract, which may or may not result in injuries to any Passenger, Drivers must
 - ensure that they themselves and any Passenger(s) involved in an accident are fit to drive/ travel or are provided with appropriate medical attention (e.g. call 999).
 - report the incident immediately to the Contractor .
- 14.3. The Contractor shall respond appropriately to deal with the incident.
- 14.4. In the event of any accident from Home to the establishment involving a Service User, details should also be notified immediately to the Head Teacher/senior officer of the Service User' school or social care establishment. In the event of any from the establishment to Home, details should be notified immediately to the parents or carers of the Service User.
- 14.5. The Contractor shall report the incident immediately to the Integrated Passenger Transport Group or at the next opening of the office.
- 14.6. The Contractor shall comply with instructions given by the Integrated Passenger Transport Group.
- 14.7. The Contractor must provide a written report giving full details of the accident no later than the end of the following working day.

15. Seat Belts

- 15.1. All Vehicles must comply with the statutory requirements relating to the installation and use of seat belts.
- 15.2. It is a requirement of these Contracts that all seats on mini-buses and coaches must be forward or rearward facing and be fitted with seat belts.

- 15.3. All Vehicles designed or adapted to carry 8 passengers or less shall have forward or rearward facing seats and seat belts installed which meet British Safety Standards for each passenger to be carried.
- 15.4. Drivers must ensure that all passengers in Vehicles designed or adapted to carry 8 passengers or less wear their seat belts throughout the journey. Failure by passengers to comply must be reported to the Council.
- 15.5. Drivers of Vehicles of 9 or more passenger seats shall comply with the statutory requirements regarding the wearing of seat belts by passengers.
- 15.6. All passengers seated in the front seat of Vehicles of 16 seats or less shall be provided with a 3 point lap and diagonal seat belt.
- 15.7. In the case of disabled passengers the Contractor must ensure that in addition to the wearing of seat belts where special harnesses are required by the Council these must be worn on all journeys.
- 15.8. Vehicle must display the relevant "fasten seatbelt" signs as required by law.

16. Fuel

- 16.1. The contract will be terminated immediately if the Council receives confirmation from either the Police or Customs and Excise official that the Contractors' Vehicle has been found to have been using illegal fuel.
- 16.2. Contractors should ensure that the Vehicle has sufficient fuel to complete the journey before embarking, failure to do so will be viewed as a breach of passenger safety.
- 16.3. Operators must not refuel with passengers on board, except in emergency or exceptional circumstances. Any such incident must be reported to the Integrated Passenger Transport Group.

17. CCTV Installation

- 17.1. Where a Contractor's Vehicle has been fitted with CCTV, the Contractor must
 - 17.1.1. fulfil all legal requirements appertaining to the use of such equipment;
 - 17.1.2. ensure the CCTV system fitted to the Vehicle is in good working order at all times during the Contract period;
 - 17.1.3. make CCTV images available to the Council and School designated officers on request, but otherwise not share CCTV images with other people without prior agreement of the Council.

18. Safeguarding

- 18.1. The Contractor must have or adopt the Council's written procedures in relation to safeguarding of both children and young people and vulnerable adults, which are in line with the requirements of the Council and conform to the CSE/Safeguarding training provided by the Council.
- 18.2. All staff must be made aware of their responsibilities in relation to safeguarding. This includes reporting any information relating to potential safeguarding issues.
- 18.3. All complaints that present a safeguarding issue relating to drivers or passenger assistants who carry out children or vulnerable adults contracts must be forwarded immediately to the Council, irrespective of whether the complaint is made in connection with the Contract or not.

19. Disclosure and Barring Services (DBS) Checks for Drivers and Passenger Assistants

- 19.1. In accordance with arrangements introduced by the Home Office aimed at protecting children and vulnerable adults, all Drivers and Passenger Assistants must undertake a criminal background check (Disclosure and Barring Services (DBS) Enhanced Certificate) and be approved by the Council in advance of being engaged by the Contractor as part of the Contracts. Approved Drivers and Passenger Assistants will be issued with a badge to identify that they are cleared for work on these contracts.
- 19.2. All Drivers and Passenger Assistants applying for a criminal background check (DBS) on or after 1st September 2017 will be required to register with the DBS Update Service and consent to the Council to check the status of their DBS record.
- 19.3. The Council will take account of any convictions even if they are deemed spent under normal circumstances (Rehabilitation of Offenders Act 1974) and subsequent orders made under the Act.
- 19.4. All Disclosure Checks will be at an Enhanced Level.
- 19.5. The Council will not accept a prior check which has been processed by another authorised body unless the original certificate is provided and the applicant is signed up to the DBS Update Service.
- 19.6. The Council may require Drivers and Passenger Assistants to undertake an Enhanced DBS background check on more than one occasion during the duration of these Contracts.
- 19.7. A charge will be made by the Council in respect of each Enhanced DBS application except for taxi drivers licenced by the Council. Where a charge is made it will cover the charge made by the Disclosure and Barring Services and a £10 administrative fee set by the Council. Costs may increase at the discretion of the DBS and the Council during the period of contract. A charge will be made for the replacement of lost badges, and for badges requested by drivers licenced by the Council if the request for a badge is not made at the time of renewal of the taxi licence.
- 19.8. Prior to the commencement of the Contract, the Contractor must provide Council with the details of all Drivers and Passenger Assistants who might work on this Contract. Contracts will not commence until the Council is satisfied that a relevant number of Drivers and Passenger Assistants have approval from the Council.
- 19.9. The Contractor must notify the Council of any changes to the list of Drivers and Passenger Assistants.

20. Drivers

- 20.1. Drivers are responsible for the care and supervision of passengers in their charge, including the safe handing over to a member of staff at the school, centre/establishment where required by the Contract. Where a Passenger Assistant is present on a Contract this role is a joint responsibility.
- 20.2. Drivers must be licensed with the appropriate authority in respect of the Vehicles they drive to fulfil the obligations of the Contract.
- 20.3. Drivers must produce the appropriate documentation whenever requested to do so as proof that they are appropriately licensed.
- 20.4. Any driver who has previously been disqualified from driving can only do so with the prior written approval of the Council.

- 20.5. Drivers must comply with their duty to disclose relevant medical conditions to the DVSA as identified in DVSA – Document D100. The Council requires that the driver notify to the Council of the outcome of the disclosure of such a medical condition to the DVLA.
- 20.6. Where the Council has reasonable grounds to believe that a driver is unfit to carry out the required duties of these Contracts, the Council reserves the right to require the driver to undertake a medical examination at the Contractor's expenses.
- 20.7. Contractors must ensure that Drivers are appropriately trained in all contract requirements.
- 20.8. Drivers intending to operate a wheelchair accessible Vehicle must complete a course approved by the Council prior to working on the Contract.
- 20.9. Where a driver is operating an accessible Vehicle this driver must be proficient in the use of tail-lifts and/or ramps, as appropriate, to ensure that these Contract operations meet legal requirements.
- 20.10. Where a driver is operating an accessible Vehicle this driver must be proficient in the securing of wheelchair and passenger safety restraints.
- 20.11. Drivers must be appropriately dressed to the satisfaction of the Council whilst carrying out the Contract.
- 20.12. Drivers must wear identification badges issued by the Council under paragraph 19.1 at all times while performing the Contract.
- 20.13. Whilst en-route or with engine running the use of mobile phones is strictly forbidden, except where hands free is being used.
- 20.14. Drivers should not offer or accept gifts to or from passengers.
- 20.15. Drivers should not engage in the lifting of Service Users. In cases where a Service User is unable to be transported without being lifted then the Council must be notified.

21. Passenger Assistants

- 21.1. Passenger Assistants must be competent to the satisfaction of the Council to undertake the duties required of them. The Council will if necessary, advise on suitability and capability issues and require action to be taken with regard to the continuation or engagement on the Contract.
- 21.2. Passenger Assistants are jointly with the Driver responsible for the care and supervision of passengers in their charge, including the safe handing over to a member of staff at the school, centre/establishment. The Passenger Assistant must be competent to care for and supervise the passengers, taking into account any disabilities they may have and should seek to ensure that good behaviour is maintained during journeys. This is a significant responsibility and great care should be taken by the Contractor in the selection of Passenger Assistants to ensure their suitability.
- 21.3. Passenger Assistants must be seated in the Vehicle where it is most beneficial to Service User needs.
- 21.4. Passenger Assistants must assist the Service User in and out of the Vehicle using the appropriate methods of assistance instructed during training.
- 21.5. Passenger Assistants must ensure Service Users are secured in the seat, as appropriate to age and need. Any difficulties with seating must be notified to the Council immediately.
- 21.6. Passenger Assistants must summon emergency assistance immediately should the need arise.

- 21.7. Passenger Assistants must not allow Service Users to enter or leave the Vehicle, or lean out of the window, while it is in motion.
- 21.8. Should Service Users be seen standing during the journey, the Driver or Passenger Assistant must instruct the Service User to reoccupy their seat. Service Users failing to adhere to this instruction should be reported to the Integrated Passenger Transport Group and, when possible, to school or social care staff.
- 21.9. Where the Council has reasonable grounds to believe that a Passenger Assistant is medically unfit to carry out the required duties of these Contracts, the Council reserves the right to require the Passenger Assistant to undertake, as soon as practicable, a medical examination at the Contractor's expense.
- 21.10. The Passenger Assistant must travel in the Vehicle for the whole of the journey, unless the Contract specifically states to the contrary.
- 21.11. Passenger Assistants must be suitably dressed whilst carrying out these Contracts to the satisfaction of the Council.
- 21.12. Passenger Assistants must wear identification badges issued by the Council under paragraph 19.1 at all times while performing the Contract.
- 21.13. Passenger Assistants should not offer or accept gifts to or from passengers.
- 21.14. Passenger Assistants should not engage in the lifting of Service Users. In cases where a Service User is unable to be transported without being lifted then the Council must be notified.

22. Training for Drivers and Passenger Assistants

- 22.1. Contractors must ensure that all Drivers and Passenger Assistants are fully aware of their responsibilities under the Contract.
- 22.2. Before undertaking the duties of this Contract all Drivers and Passenger Assistants must undertake "CSE and Safeguarding" training as required by the Council.
- 22.3. Before undertaking the duties of this Contract all Drivers and Passenger Assistants may also require further training appropriate to the Contract which may include, but not be limited to, Wheelchair Accessible Vehicle and Contract and Passenger Awareness. A charge may be made to the Contractor for such training courses.
- 22.4. All Drivers and Passenger Assistants must undertake periodic refresher training as determined by the Council, which shall normally be a 3-yearly intervals. A charge may be made to the Contractor for such training courses.
- 22.5. The Council at its discretion may require any Driver or Passenger Assistant to undertake further training where necessary and appropriate.

23. Smoking including e-cigarettes

- 23.1. Smoking by Drivers or Passenger Assistants is prohibited during the performance of the Contract. This includes the Vehicle journey to the pickup point.
 - 23.1.1. This includes all forms of e-cigarettes and vaporisers or equivalent
 - 23.1.2. Smoking is not permitted in or around school sites or social care establishments or designated parking areas. The prohibition extends to the period while the Vehicle is parked on a school site or social care establishment.
- 23.2. If passengers attempt to smoke in a Vehicle, they must be advised by the driver or Passenger Assistant that smoking is prohibited. Where smoking by passengers

persists, the behaviour must be reported to the Integrated Passenger Transport Group, for appropriate action to be taken.

- 23.3. Smoking must be prohibited in the entire Vehicle and adequate notices must be displayed advising passengers. The Contractor shall be required to take all reasonable action to enforce this requirement.

24. Staffing Age Limits

- 24.1. Drivers and Passenger Assistants shall not be less than 18 years of age.
- 24.2. Drivers aged 21 years and under must be notified to the Council prior to use on contract, to seek approval on suitability and capability, which will take into an account driving experience.
- 24.3. Details of drivers aged 65 years and over must be notified to the Council. In the case of such drivers the Council will seek confirmation on an annual basis that the appropriate licensing authority has renewed authorisation to the driver for either PSV, hackney carriage or a private hire purposes. Relevant documentation from the Department of Transport and or appropriate licensing authority must be produced as evidence of the driver's fitness to drive.

25. Home Visits and Risk Assessments

- 25.1. When requested by the parent the Council requires the, Contractor to carry out visits to the Passenger's home to introduce themselves to parents and the Passenger before the Contract commences to familiarise themselves with the Passenger and their transport requirements. Home visits are likely to arise in relation to all transport operating to schools catering for Special Education Needs and Social Care Transport. The Driver who will normally work on the Contract must attend the visit. If a Passenger Assistant is specified for the Contract, the Passenger Assistant who will normally work on the Contract must also attend the visit.
- 25.2. The visit must be recorded on the form provided by the Council. This record must be retained by the Contractor for reference and a copy sent to the Integrated Passenger Transport Group. More than one visit may be required.
- 25.3. Carriage of passengers in wheelchairs: Prior to the start of the Contract the Contractor must determine the procedure and equipment required for the safe carriage of wheelchair users inside of the Vehicle, including appropriate methods for securing the wheelchair and passenger. A copy of this assessment must be sent to the Integrated Passenger Transport Group.
- 25.4. Only Drivers or Passenger Assistants who have been appropriately trained must carry out the movement and securing of a wheelchair and use of passenger safety restraints.

26. Indemnity – supplementary provisions

- 26.1. The Contractor shall indemnify the Council against all claims that may be made against the Council by passengers or their parents or guardians or any passenger, employee of the Contractor or by third parties (including any damage to the property of passengers or to the property of the Contractor) arising from the Contract except where such liability is caused by the negligence of the Council.

27. Insurance – supplementary provisions

- 27.1. The Contractor is responsible for ensuring that appropriate insurance is held covering all Vehicles, Drivers and Passenger Assistants, including any self-employed staff. It will

be the Contractor who is contacted and must supply documentation to the Council on request. Failure to do so promptly may result in a termination of Contract

- 27.2. The Contractor shall when requested advise the Council of the frequency of payment arrangements in relation to insurance provision and the expiry dates of all insurance policies; and provide the registration numbers of all Vehicles covered by the insurance.
- 27.3. The Contract shall before engaging an owner Driver to perform any of its duties herein, ensure that insurance policies are in place that comply with the Contract requirements.

28. Monitoring

- 28.1. Contracts awarded by the Council will be subject to monitoring to ensure that Contractors provide safe transport and that these Contracts are being delivered in accordance with the conditions of these Contracts. Contractors must co-operate with staff and/or the agent of the Council assigned to undertake this monitoring function. From time to time the monitoring of these Contracts may be carried out as a multi-agency exercise, which can include the Police, DVSA (Driver and Vehicle Standards Agency), HM Customs and Excise, Council Taxi Licensing Officials or any other Agency as necessary.
- 28.2. In particular Contractors are required:
 - 28.2.1. To permit staff of the Council and/or its agent to stop any Vehicle on contract hire to the Council and to undertake an inspection of that Vehicle and/or undertake any reasonable check to ensure that the Contract is being undertaken in accordance with the Conditions of Contract.
 - 28.2.2. To provide any documentation, including details of any prohibition notices, requested by the Council and/or its agent which the Council determines at its sole discretion may be required to verify that the Contractor meets the requirements of the Contract and that this documentation shall be made available to the Council within 7 working days of a request being made by the Council or its agent.

29. Health and Safety – supplementary provisions

- 29.1. The Contractor shall at all times comply with the requirements of the Health and Safety at Work, etc. Act 1974, the Management of Health and Safety at Work Regulations 1999 (including the provision by the Contractor of copies of its risk assessments and policies under these Regulations when requested by the Council), and of other Acts, Regulations, Orders or rules of law pertaining to health and safety.
- 29.2. The Contractor shall, so far as the same may impact on the Council, in performing the Services adopt safe methods of work in order to protect the health and safety of its own employees and, to the extent applicable, the employees of the Council and all other persons (including members of the public).
- 29.3. The Contractor shall indemnify the Council for any loss, costs or damage caused to the Council for breach of this Condition.
- 29.4. The law requires that employers who employ 5 or more people must have a written statement of their health and safety policy. Contractors employing 5 or more people will be required under these Contracts to submit their health and safety policy to the Council for approval prior to the commencement of these Contracts. Where appropriate a Contract shall not commence until the Council has approved the relevant health and safety policy and the Council reserves the right to withdraw an offer/award

of these Contracts where a Contractor does not have their health and safety policy approved prior to these Contracts commencing.

30. Drugs and Substance Misuse

30.1. The Contractor must ensure that Drivers and Passenger Assistants are not in possession of, supplying or misusing illicit substances or supplying or misusing medication, volatile substances, cigarettes or alcohol. The consumption of alcohol by the Contractor or any employees and/or sub-Contractors are not permitted whilst engaged in carrying out these Contracts.

31. Confidentiality – supplementary provisions

- 31.1. The Council retains the right to share operator information pertaining to the safe operation of Contracts with other Teams within the Authority and/or organisations responsible for legislation and enforcement; for example Taxi Licensing and VOSA
- 31.2. Drivers and Passenger Assistants must not discuss service users individual needs or personal information (such as home addresses) other than is necessary to perform their obligations within the Contract.

32. Route, Stops & Timings

- 32.1. The Council shall determine the routes, stopping arrangements, times of collection and return which shall be used by the Contractor in the performance of the Contract. Any requests from Parents or carers for alternative stops and times must be referred to the Integrated Passenger Transport Group.
- 32.2. The Contract will operate on the basis of either
 - 32.2.1. collection and return of individual passengers from specific addresses (typically where the Contract entails the use of a taxi or minibus); this will be termed a Variable Route Contract; or
 - 32.2.2. fixed route and stopping places (typically where the Contract entails the use of larger Vehicle(s)); this will be termed a Fixed Route Contract.
 - 32.2.3. The Contract specification will state the basis of the Contract.
- 32.3. The Council may vary routes, stopping arrangements, times of collection and return subject to the Contractor being entitled to such additional or reduced payment, if any, as shall be agreed by the Council and subject to the provisions of regarding Contracts operating on a Variable Route basis.
- 32.4. Where the Contract is on a Variable Route basis, variations in the required route and stopping places will arise routinely during the Contract. Where such changes cause an increase or decrease in the Contract mileage, unless exceptional circumstances justify a different change in price the Contract Price will be varied at the applicable rate stated below:

	Contracted vehicle size:		
	Up to 4 passenger seats	5 to 8 passenger seats	9 to 16 passenger seats
Per mile carrying passengers, calculated in direct proportion to the change in miles as measured by the	£1.85	£2.70	£3.00

Council using a recognised route planning software system			
Per pick up or drop off stop	£3.00 per day, or £1.50 per day if the stop is only in AM or only in PM		

Where the Contract is specified to require a Passenger Assistant, a claim for an additional adjustment to the Contract Price will be considered by the Council if in the reasonable judgement of the Council it is evident that the variation causes a change in the Contractor's costs. The Contractor will be required to provide information to substantiate any such claim.

- 32.5. The Contractor must advise the Council as soon as possible prior to the first day of performance if the Contractor has cause to consider the determined route, stops or times of collection and return are not suitable. The Council will give confirmation in writing of any agreed changes.
- 32.6. The Contractor must advise the Council if circumstances during the period of the Contract alter in such a way that the determined route, stops and times become unsuitable. The Council will give confirmation in writing of any agreed changes.
- 32.7. The Contractor will liaise with the Head Teacher or social care establishment manager regarding the site traffic management plan and appropriate dropping off and picking up arrangements at each school/establishment.
- 32.8. Where the Contracts involves Passengers being delivered to a point outside the site of the school or social care establishment, Passengers must be set down and collected from the same side of the road as the school or establishment, with the Vehicle nearside door facing the pavement on both the morning and afternoon journeys.
- 32.9. Where a Passenger's journey requires the Passenger to be transferred from one Vehicle to another (a linking arrangement), the Passenger must not be left unattended to await the arrival of the Vehicle providing the next leg of the journey. In the afternoon the Vehicle for the second leg must be at the agreed meeting point in advance of the scheduled arrival of the link Vehicle. Where such a linking arrangement is not part of the Contract, Passengers must not be transferred from one Vehicle to another on route.
- 32.10. Vehicles shall not be used to perform a sequence of Contracts unless approved in writing by the Council. Approval will not be refused unless the Council considers that the performance of the Contract will be compromised.
- 32.11. The merging of journeys either within the Contract or with journeys under other Contracts is not allowed except with PRIOR instruction from Integrated Passenger Transport Group.

33. Seating of Passengers

- 33.1. All Passengers shall be provided with a seat irrespective of the type of Vehicle.
- 33.2. In vehicles with two or more front seats alongside the driver, no Passenger can be carried in the seat adjacent to the driver.
- 33.3. Children aged under 12 years, travelling in hackney carriage and private hire Vehicles, must use the correct child car seat/booster cushion when travelling, until the child reaches the height of 135cms (4'5").
- 33.3.1. The Contractor is responsible for determining whether a Service User who is a child requires an appropriate child car seat.

33.3.2. Should a child car seat be required, the Contractor should contact the Integrated Passenger Transport Group to arrange the provision of such. The equipment will be provided to the Contractor free of charge by the Council.

33.4. Operators must ensure that car seats used are suitable for the Vehicle used and use complies with legislation and manufacture recommendations.

34. Passengers

34.1. All Contracts are awarded on an individual basis and only Passengers who have been authorised under the particular Contract shall be carried. Contracts must not be merged unless specifically approved by the Council. Where the Contract is on a Variable Route basis, the Council will notify the names of the authorised Passengers to the Contractor. Otherwise, the Council will issue authorised Passengers with a pass which Drivers shall check on every journey before permitting the Passenger to travel. Where the Contract involves the operation of multiple routes, the passes may state the specific route on which it is valid.

34.2. The Council will notify the Contractor with the procedure that must be followed if a passenger seeks to travel but is unable to present a valid pass. The Contractor will ensure that Drivers are familiar with the requirements of the procedure.

34.3. Except as provided on Contracts allowing fare-paying Passengers, no persons other than the Driver, Passenger Assistant and authorised Passengers shall be carried in the Vehicle, except with the written approval of the Council.

34.4. Whilst waiting at schools or social care establishments for Passengers to board the Vehicle engine must be switched off.

34.5. Passengers must not be allowed on the Vehicle whilst it is unattended by the Driver or Passenger Assistant.

35. Fare-Paying Passengers

35.1. The Council shall be entitled to require the Contractor to carry fare-paying Service Users in addition to the Passengers on certain Contracts. Such a requirement will be detailed in the tender specification or in any subsequent variation in the Council's requirements as provided for under the Contract. A written instruction will be issued to the Contractor stipulating the maximum number of fare-paying passengers to be carried.

35.2. Where a requirement to carry fare-paying passenger is made, the Contractor will when required by legislation register the route as a local bus service. In such circumstances the Contractor will pay the appropriate registration fee.

36. Home to School transport

36.1. The Contractor shall collect Service Users named by the Council at approved points and convey them to the named school in time for the opening of the school in the morning and return them from the school at the close of the afternoon session to their respective approved points in the specification. By exception to meet Passenger requirements the Council may specify the journeys are to arrive or leave the school at a time other than the opening or closing of the school.

- 36.2. Unless specified otherwise by the Council, Vehicle(s) should arrive at the school site no earlier than 10 minutes before and no later than 5 minutes before the official start of the school.
- 36.3. Unless specified otherwise by the Council, Vehicles must be at the school site at least 5 minutes before the end of the school day. Vehicles must remain on site until loaded for up to a maximum of 10 minutes after school closing time, or until such time as Drivers are given permission to leave by the member of school staff on duty.
- 36.4. The Contractor should ensure that, when advised, passengers should be handed over to appropriate persons only.
- 36.5. If the Driver is concerned that a parent or representative is not at the agreed drop-off point to receive the Service User and the Service User may be at risk, the following steps should be undertaken:
 - 36.5.1. The Service User must be kept on the Vehicle and reassured as to the procedure that is to be followed to ensure their welfare. The Vehicle must remain at the drop-off location for 5 minutes; if no parent or representative has appeared, the Driver shall immediately telephone the Integrated Passenger Transport Group to seek direction.
 - 36.5.2. If there are any other Service Users remaining to be dropped off at subsequent stops, the remainder of the route should be performed, while still carrying the Service User who has not been met by a parent or representative.
 - 36.5.3. A second attempt should be made to deliver the Service User to the approved delivery point. On arrival the Driver must telephone Integrated Passenger Transport to give an update and if the Service User has still not been collected, further guidance will be offered.
 - 36.5.4. Should the incident occur after Integrated Passenger Transport office hours or if Integrated Passenger Transport cannot be contacted, then the Driver shall contact the Council's Social Care Direct and First Contact Service on 03000 267 979 to gain direction. Note this service should only be used in these circumstances. The issue should also be reported to the Integrated Passenger Transport Group promptly the following morning (Monday to Friday).

37. Behaviour on School Transport

- 37.1. Should the Driver or Passenger Assistant have any concerns relating to the behaviour of and the wellbeing or safety of Passengers, for example due to the behaviour of others in the Vehicle, then these incidents must be reported to the Council, who will then advise appropriately. Incidents must also be reported to the school and to a parent or representative where Passengers are handed over to a parent or representative on return from school.
- 37.2. The Contract shall be carried out in accordance with the Council's current 'Behaviour on School Transport' Policy Document and relevant codes of conduct and good practice, which periodically may be revised by the Council.
- 37.3. All Drivers and Passenger Assistants engaged in the performance of the Contract must abide by the provisions of the policy and codes of conduct and good practice.
- 37.4. The Council will not be liable for any costs that the Contractor may incur that arise from any damage caused by Passengers' behaviour.

37.5. Any damage caused by incontinence or similar soiling shall not give rise to any claim on Passengers.

38. Transport of Primary School Service Users and Service Users with Special Educational Needs

38.1. Contractors must agree with the Integrated Passenger Transport Group the method of collecting from and handing over Passengers to the parent, carer or responsible person at the start and end of the school day.

38.2. Contractors must agree with the head teacher the method of handing over Passengers on arrival at the school and at the end of the school day. Where it has been agreed with the head teacher that Service Users are set down outside the school grounds the Driver and/or Passenger Assistant **must** accompany the Service Users on to the school site and ensure the safe handing over of Service Users to a member of the school staff.

38.3. On the homeward journey the Driver or Passenger Assistant must ensure that the Service Users are returned to the pre-arranged point. If a parent or representative is not at the agreed drop-off point to receive the Service User, the following steps should be undertaken:

38.3.1. The Service User must be kept on the Vehicle and reassured as to the procedure that is to be followed to ensure their welfare. The Vehicle must remain at the drop-off location for 5 minutes; if no parent or representative has appeared, in cases where a telephone number has been provided by the Parent, the Driver or where provided the Passenger Assistant shall attempt to telephone them to establish a drop-off time which shall be as soon as possible. If it is not possible to speak to the Parent, the Driver or where provided the Passenger Assistant shall immediately telephone Integrated Passenger Transport to seek direction.

38.3.2. If there are any other Service Users remaining on the Vehicle to be dropped off at subsequent locations, the remainder of the route should be performed, while still carrying the Service User who has not been met by a parent or representative.

38.3.3. A second attempt should be made to deliver the Service User to the approved delivery point. On arrival the Driver must telephone Integrated Passenger Transport to give an update and if the Service User has still not been collected, further guidance will be offered. If you are advised to take the Service User to a safe location, a note with details of the action being taken should be posted at the Service User's home address.

38.3.4. Should the incident occur after Integrated Passenger Transport office hours or if Integrated Passenger Transport cannot be contacted, then the Driver shall contact the Council's Social Care Direct and First Contact Service on 03000 267 979 to gain direction. Note this service should only be used in these circumstances. The issue should also be reported to the Integrated Passenger Transport Group promptly the following morning (Monday to Friday).

38.4. Incidences of parent repeatedly being late or requesting changes to the arrangements for the handing over of Service Users should be reported to the Integrated Passenger Transport Group.

- 38.5. Unless notified otherwise by the Council, special needs contracts will require Passenger Assistant provision. The level of its provision will be determined by the Council and will be indicated in the tender documentation. Due to the nature of its transport provision continual review of Service User's needs is undertaken as it may be necessary for the Council to notify a requirement for a revision to Passenger Assistant provision during the period of contract, in which case a revised daily price will need to be agreed; failing agreement, the Contract may be terminated.
- 38.6. Passenger Assistants may be requested to undertake specialist awareness training where a Service User could require emergency treatment during the journey. If emergency treatment is required during the journey assistance must be summoned from the emergency services.
- 38.7. Where approved by Integrated Passenger Transport, medication prescribed to a Passenger may be required to be carried on the Contract. Specific directions will be issued by Integrated Passenger Transport Group with regard to the procedures to be followed.

39. Transport for Adult Social Care

- 39.1. The Council is committed to providing a high quality service to Service Users. Contractors are expected to provide the same high quality and it is a requirement that all staff employed on the contracts observe the following behavioural standards.
 - 39.1.1. Listen to the views and wishes of Social care passengers at all times
 - 39.1.2. Respond positively to social care passengers comments
 - 39.1.3. Ensure that social care passenger are comfortable and secure at all stages of the journey
 - 39.1.4. Respect all social care passenger and treat them fairly
 - 39.1.5. Be aware and recognise all social care passenger needs
 - 39.1.6. Recognise that all people are different and ensure that no one is discriminated against for any reason
- 39.2. Contractors must agree with the Integrated Passenger Transport Group the method of collecting from and handing over Passengers to the parent, carer or responsible person at the start and end of the school day.
- 39.3. Contractors must agree with the manager of the social establishment the method of handing over Passengers on arrival at the establishment and of collection at the end of the day. Where it has been agreed that Passengers are set down outside the establishment grounds the Driver and/or Passenger Assistant must accompany the Passengers onto the site and ensure the safe handing over of Passengers to a member of the staff.
- 39.4. The Contractor should ensure that, when advised, passengers should be handed over to appropriate persons only. If the Driver is concerned that a parent, carer or responsible person is not at the agreed drop-off point to receive the Passenger, the following steps should be undertaken:
 - 39.4.1. The Passenger must be kept on the Vehicle and reassured as to the procedure that is to be followed to ensure their welfare. The Vehicle must remain at the drop-off location for 5 minutes; if no parent or representative has appeared, in cases where a contact telephone number has been provided, the Driver or where provided the Passenger Assistant shall attempt to telephone the contact to establish a drop-off time which shall

be as soon as possible. If it is not possible to speak to the contact, the Driver or where provided the Passenger Assistant shall immediately telephone Integrated Passenger Transport to seek direction.

- 39.4.2. If there are any other Passengers remaining on the Vehicle to be dropped off at subsequent locations, the remainder of the route should be performed, while still carrying the Passenger who has not been met by parent, carer or responsible person
- 39.4.3. A second attempt should be made to deliver the Passenger to the approved delivery point. On arrival the Driver must telephone Integrated Passenger Transport to give an update and if the Passenger has still not been handed over, further guidance will be offered. If you are advised to take the Passenger to a safe location, a note with details of the action being taken should be posted at the Passenger's home address.
- 39.4.4. Should the incident occur after Integrated Passenger Transport office hours or if Integrated Passenger Transport cannot be contacted, then the Driver shall contact the Council's Social Care Direct and First Contact Service on 03000 267 979 to gain direction. Note this service should only be used in these circumstances. The issue should also be reported to the Integrated Passenger Transport Group promptly the following morning (Monday to Friday).

- 39.5. The Contractor shall collect social care Service Users named by the Council at approved points and convey them to the named establishment at the times prescribed by the Council. Service Users must not be delivered to the centre/establishment before the specified time.

40. Additional Requirements for Social care Passengers

- 40.1. The following additional conditions apply to journeys undertaken for social care passengers.
- 40.2. Social care transport contracts may require Passenger Assistant provision. The level of its provision will be determined by the Council and will be indicated in the tender documentation. Due to the nature of its transport provision continual review of Passenger's needs is undertaken as it may be necessary for the Council to notify a requirement for a revision to Passenger Assistant provision during the period of contract, in which case a revised daily price will need to be agreed; failing agreement, the Contract may be terminated.
- 40.3. Passenger Assistants may be requested to undertake specialist awareness training where a Service User could require emergency treatment during the journey. If emergency treatment is required during the journey assistance must be summoned from the emergency services.
- 40.4. Where approved by Integrated Passenger Transport, medication prescribed to a Passenger may be required to be carried on the Contract. Specific directions will be issued by Integrated Passenger Transport Group with regard to the procedures to be followed.

41. Behaviour on Social Care Transport

- 41.1. If an incident occurs in which behaviour of a social care passenger causes concerns for the safety or the wellbeing of Passengers, the Contractor must notify the Integrated Passenger Transport Group and centre/establishment manager of the name(s) of the social care passenger(s) involved, the time of the incident and provide brief details of

what took place. Incidents must also be reported to a parent or representative at the point of handover.

41.2. The Council will not be liable for any costs that the Contractor may incur that arise from any damage caused by Passengers' behaviour.

41.3. Any damage caused by incontinence or similar soiling shall not give rise to any claim on Passengers.

42. Exceptional and other conditions

42.1. Exceptional Conditions supplementing the foregoing conditions may be stated in the Specification of the Contract.

42.2. The Contract is made subject to the foregoing conditions (supplemented by such Exceptional Conditions as may be stated in the Specification) and if these conditions differ in any respect from conditions on any letters, forms or other documents tendered by the Contractor then the foregoing conditions shall prevail.

Annex 1

Specification for Wheelchair Accessible Vehicles

1. General

- 1.1. All entrances and exits for wheelchair users must have a boarding aid i.e. a ramp or a passenger lift.

2. Clamping

- 2.1. All seats and devices used to secure seats to the Vehicle shall comply to the relevant M1 or M2 standard relevant to the type of licence contained in the European Directive 76/115 EEC.
- 2.2. Where an electric wheelchair is being conveyed ramps must be fixed to the Vehicle with the manufacturers' recommended fixing kit.

3. Ramps

- 3.1. Access ramps must be capable of taking a minimum weight of 300kg and must have a slip resistant surface not less than 800mm wide. Due to the fact that some mobility aids are three-wheeled, and also that it is unsafe for an attendant to reverse a wheelchair down them, channel ramps must not be used. The transition from the ramp into the Vehicle must avoid severe changes of gradient, and every effort must be made to eliminate any vertical projections at the point where the ramp links to the floor in the doorway. Access ramps must also be capable of extending to ground level.
- 3.2. Deployment of a powered ramp must be indicated by an audible signal. Clear warning notices should be displayed to advise passengers not to board a moving ramp.
- 3.3. Ramps should be of such a length as to provide a maximum slope of 7° (approximately 1 in 8 or 12%), measured with the Vehicle suspension lowered if appropriate. This is the maximum slope which many wheelchair users can manage independently, and which also reduces the hazard of an attendant having an unacceptable load when boarding or alighting a wheelchair user.
- 3.4. For buses fitted with a ramp at a side entrance the maximum ramp slope is measured with the ramp fully extended to a reference kerb height of 125mm. It is also important to ensure that the ramp length does not cause excessive intrusion onto the pavement.
- 3.5. For rear entrances, the maximum ramp slope is measured to ground level. The ramp length must not exceed 2.7 metres. As a consequence, and of paragraph 3.3, Vehicles with a wheelchair entrance height in excess of 330mm when in the boarding condition should not be fitted with a ramp. For Vehicles where the boarding position is above this height, a lift is required.
- 3.6. If a portable ramp is used it must be carried on the Vehicle at all times and must always be available for intending users. It must be securely located when deployed, and be securely stowed when not in use in a manner that does not encroach on the space required by passengers.
- 3.7. Access ramps must be securely fixed the Vehicle when in use.

3.8. Where an electric wheelchair is being conveyed ramps must be fixed to the Vehicle with the manufacturers' recommended fixing kit.

4. Passenger lifts

4.1. A power-operated passenger lift must have a load-bearing capacity of at least 300kg, and have a platform size of at least 750mm wide and 1200mm long when deployed.

4.2. Passenger lifts should have colour contrasted handrails on both sides.

4.3. Deployment of a passenger lift must be indicated by an audible signal. Clear warning notices should be displayed to advise passengers not to board a moving lift.

4.4. Tail-Lifts should be constructed, installed, maintained and operated in accordance with:

4.4.1. European Standard (C.E.) PREN 1756 – or as amended

4.4.2. The Provision and Use of Work Equipment Regulations 1998 (PUWER) or as amended.

4.4.3. The manufacturers requirements/guidelines

4.4.4. Lifting Operations and Lifting Equipment Regulations 2002 (LOLER) or as amended

4.4.5. The Contractor must hold a LOLER (Lifting Operations and Lifting Equipment) Certificate when Lifting Equipment is carried on Vehicle. The Certificate must be displayed in accordance with all legal obligations and requirements. If the LOLER Certificate expires, is revoked, or requires renewing or updating, the Contractor must inform the Integrated Passenger Transport Team immediately and take appropriate steps to arrange renewal and inform the Integrated Passenger Transport Team that this has been done.

4.4.6. full compliance and specific guidance with: (EC) No. 661/2009

5. Height of doors and interior

5.1. Doors used for access by wheelchair users must have a minimum height of 1200mm.

5.2. The interior roof height shall be not less than 1350mm.

6. Other provisions

6.1. In the event of breakdown etc. replacement Vehicles should be compliant with this specification.

6.2. Any variation to this specification must be agreed prior to a Vehicle being used on the Contract.

PART 3 – Specification

This will be issued at the Call for Competition stage to all bidders who have been successful at the SQ stage.

Annex 2 General Data Protection Regulation (GDPR) Processing, Personal Data and Data Subjects

Implementation of GDPR requirements

The Contractor will comply with the requirements stated in Annex2 with regard to Processing, Personal Data and Data Subjects (as defined in Document 2 Part 1).

1. The Contractor shall comply with any further written instructions with respect to processing by the Council.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	Personal details of passengers
Duration of the processing	From the award of the contract until its expiry detailed in the contract documents
Nature and purposes of the processing	<p>The nature of the processing covers the following operations: collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means)</p> <p>The purpose is limited to the delivery of the transport under the Contract.</p>
Type of Personal Data	Type of data; names, date of birth, age, addresses, contact details and any relevant health/behavioural information
Categories of Data Subject	Categories; pupils/students, AHS service users
Plan for return and destruction of the data once the processing is complete UNLESS requirement under	From the award of the contract until its expiry detailed in the contract documents. Data to be destroyed at the expiry of the contract in accordance with best practice in compliance with General Data Protection Regulation (GDPR).

union or member state law to preserve that type of data	
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