

Dated

DEMAND RESPONSIVE TRANSPORT

between

WEST OF ENGLAND COMBINED AUTHORITY

and

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**THIS DEED** is dated

Parties

1. West of England Combined Authority 70 Redcliff Street, Bristol BS1 6AL
2. (Service Provider).

Background

1. West of England Combined Authority sought proposals for the provision of demand responsive transport in various zones by means of a public tender exercise. West of England Combined Authority placed a contract notice xxxxx dated xxxxx in Find a Tender seeking expressions of interest from potential providers for the provision of these demand responsive transport.
2. West of England Combined Authority has, through a competitive process, selected the Service Provider to provide these Services in relation to [the zones listed in Annexure 1] and the Service Provider is willing and able to provide the Services in accordance with the terms and conditions of this agreement.

Agreed terms

# Definitions and Interpretation

## The definitions and rules of interpretation in this clause apply in this agreement.

Associated Company**:** any holding company from time to time of the Service Provider and any subsidiary from time to time of the Service Provider, or any subsidiary of any such holding company.

Agreement Date: the date stated at the top of this agreement.

API: application programming interface software which serves as an intermediary to allow different applications to communicate and share information.

Authorised Representatives**:** the persons respectively designated as such by the West of England Combined Authority and the Service Provider, the first such persons being set out in Annexure 4.

Best Industry Practice**:** the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the term, the pricing structure, and any other relevant factors.

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.

Catastrophic Failure: any action by the Service Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of West of England Combined Authority Authorised Representative has or may cause significant harm to the reputation of West of England Combined Authority.

Change**:** any change to this agreement including to any of the Services.

Change Control Note**:** the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

Change Control Procedure**:** the procedure for changing this agreement, as set out in Annexure 5.

Charges**:** the charges which shall become due and payable by West of England Combined Authority to the Service Provider in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Annexure 3.

Commencement Date**:** the date of this agreement.

Contract Year**:** a period of 12 months, commencing on the Commencement Date.

Data Protection Legislation**:** means:

a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data; and

b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Service Provider is subject, which relates to the protection of Personal Data.

DRT Platform: means the application that will be used by service providers.

**DDRT Platform Data:** means all data, including Personal Data (in any form and whether anonymised or pseudonymised), that is:

(a) processed by the Service Provider; or

(b) derived or generated

from or in connection with the DDRT Platform or the provision of the Services.

Default Notice**:** is defined in clause 5.2.

Dispute Resolution Procedure**:** the procedure set out in clause 14.

EIRs**:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA**:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure**:** any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Service Provider, the Service Provider's Personnel or any other failure in the Service Provider's supply chain.

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

Health and Safety Policy**:** the health and safety policy of West of England Combined Authority as provided to the Service Provider on or before the Commencement Date and as subsequently provided to the Service Provider from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

Information**:** has the meaning given under section 84 of FOIA.

Initial Term**:** the period commencing on the Commencement Date and ending on the second anniversary of the Commencement Date.

Insolvency Event**:** where:

### the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;

### the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of that other party;

### a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

### an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider (being a company);

### the holder of a qualifying floating charge over the assets of the Service Provider (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;

### a creditor or encumbrancer of the Service Provider 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 other party's assets and such attachment or process is not discharged within 14 days;

### any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive);

### the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

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

MaaS: the Mobility as a Service (MaaS) Platform procured or to be procured by the Authority as part of the Future Transport Zone, through which members of the public will be able to access public transport information and book tickets across a range of transport providers.

Necessary Consents**:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service including without limitation a Public Sector Vehicle Operator Licence and appropriate registration with the Traffic Commissioner to provide the Services.

Payment Schedule: the schedule to the Specification for each route detailing which party is entitled to the Revenue.

Personal Data**:** shall have the same meaning as set out in the Data Protection Act 1998.

Public Service Vehicles: shall have the same meaning as set out in the Public Passenger Vehicles Act 1981.

Public Service Vehicle Operator Licence: a licence to provide a Register Local Service or a licence for any Public Service Vehicle operation which is not a local service issued by the Traffic Commissioner in the area in which the vehicle’s operating centre lies.

Prohibited Act**:** the following constitute Prohibited Acts:

### to directly or indirectly offer, promise or give any person working for or engaged by West of England Combined Authority a financial or other advantage to:

#### induce that person to perform improperly a relevant function or activity; or

#### reward that person for improper performance of a relevant function or activity;

### to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;

### committing any offence:

#### under the Bribery Act;

#### under legislation or common law concerning fraudulent acts;

#### defrauding, attempting to defraud or conspiring to defraud West of England Combined Authority.

### any activity, practice or conduct which would constitute one of the offences listed under clause 1.1(c), if such activity, practice or conduct had been carried out in the UK.

Registered Local Service: means any service at separate fares, and operated by a Passenger Service Vehicle allowing passengers to make journeys on it of less than 15 miles measured in a straight line or circumstances in which a passenger destination may be less than 15 miles measured in a straight line and where the route taken means that there are points or places en route which are more than 15 miles measured in a straight line. Probably needs updating to say flexibility registered service.

Relevant Transfer**:** a relevant transfer for the purposes of TUPE.

Remediation Notice**:** a notice served by West of England Combined Authority in accordance with clause 23.1(a).

Replacement Services**:** any services that are identical or substantially similar to any of the Services and which West of England Combined Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by West of England Combined Authority internally or by any Replacement Service Provider.

Replacement Service Provider**:** any third-party Service Provider of Replacement Services appointed by West of England Combined Authority from time to time.

Request for Information**:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

Revenue: income from the sales of bus tickets sold to passengers using the Services.

Schedule: references to Schedules refer to the schedules into which the Specifications are divided.

Service Provider Party**:** the Service Provider's agents and contractors, including each Sub-Contractor.

Service Provider's Personnel**:** all employees, staff, other workers, agents and consultants of the Service Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Service Provider's Tender**:** the tender submitted by the Service Provider and other associated documentation set out in Annexure 2.

Services**:** the services to be delivered by or on behalf of the Service Provider under this agreement, as more particularly described in the Specification.

Specification: the minimum levels to which the Service Provider must adhere when providing the Services set out in Annexure 1. There will be a separate Specification for each route that the Service Provider has been awarded.

Sub-Contract**:** any contract between the Service Provider and a third party pursuant to which the Service Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractor**:** the contractors or Service Providers that enter into a Sub-Contract with the Service Provider.

Supporting Data: the passenger and journey operation data as specified in detail in Schedule J.

Term**:** the period of the Initial Term as may be varied by:

### any extensions to this agreement which are agreed pursuant to clause 3; or

### the earlier termination of this agreement in accordance with its terms.

Termination Date**:** the date of expiry or termination of this agreement.

Termination Payment Default**:** is defined in Annexure 3.

Traffic Commissioner: the individual responsible for the control and licensing of Public Service Vehicles for Great Britain and any persons carrying out duties on the Traffic Commissioner’s behalf with regard to these duties.

Traveline: see Schedule N for detail.

TUPE**:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended.

**UK Data Protection Legislation:** any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

Working Day**:** Monday to Friday, excluding any public holidays in England and Wales.

## Clause, annexure and paragraph headings shall not affect the interpretation of this agreement.

## A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## The annexures form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the annexures.

## A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

## Words in the singular shall include the plural and vice versa.

## A reference to one gender shall include a reference to the other genders.

## A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

## A reference to **writing** or **written** includes faxes and e-mail.

## Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

## A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.

## References to clauses and annexures are to the clauses and annexures of this agreement; references to paragraphs are to paragraphs of the relevant annexure.

## Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:

### the clauses of the agreement;

### Annexure 1 to this agreement;

### the remaining annexures to this agreement other than Annexure 2;

### Annexure 2 to this agreement.

Commencement and duration

# Term

This agreement shall take effect on the Commencement Date and shall continue for the Term.

# Extending the initial term

## West of England Combined Authority may extend this agreement beyond the Initial Term by a further period or periods of up to 36 months (Extension Period). If West of England Combined Authority wishes to extend this agreement, it shall give the Service Provider at least six months' written notice of such intention before the expiry of the Initial Term or Extension Period.

## If West of England Combined Authority gives such notice then the Term shall be extended by the period set out in the notice.

## If West of England Combined Authority does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 27 shall apply.

# Due diligence and Service Provider's warranty

## The Service Provider acknowledges and confirms that:

### it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked West of England Combined Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;

### it has received all information requested by it from West of England Combined Authority pursuant to clause 4.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;

###  it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of West of England Combined Authority pursuant to clause 4.1(b);

### it has raised all relevant due diligence questions with West of England Combined Authority before the Commencement Date; and

### it has entered into this agreement in reliance on its own due diligence.

## Save as provided in this agreement, no representations, warranties or conditions are given or assumed by West of England Combined Authority in respect of any information which is provided to the Service Provider by West of England Combined Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

##  The Service Provider:

### as at the Commencement Date, warrants and represents that all information contained in the Service Provider's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to West of England Combined Authority prior to execution of the agreement; and

### shall promptly notify West of England Combined Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by West of England Combined Authority during such due diligence which materially and adversely affects its ability to perform the Services.

## The Service Provider shall not be entitled to recover any additional costs from West of England Combined Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to West of England Combined Authority by the Service Provider in accordance with clause 4.3(b) save where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of West of England Combined Authority and the Service Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Service Provider shall be entitled to recover such reasonable additional costs from West of England Combined Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

## Nothing in this clause 4 shall limit or exclude the liability of West of England Combined Authority for fraud or fraudulent misrepresentation.

The services

# Supply of services

## The Service Provider shall provide the Services to West of England Combined Authority in accordance with the provisions of this agreement.

## In the event that the Service Provider does not comply with the provisions of clause 5.1 in any way, West of England Combined Authority may serve the Service Provider with a notice in writing setting out the details of the Service Provider's default (a Default Notice).

## In the event that any of the contract standards outlined in Schedule B are not met then West of England Combined Authority may, without prejudice to any other rights it may have, apply the deduction(s) defined within that Schedule.

# Service standards

The Service Provider shall provide the Services, or procure that they are provided:

### in accordance with the Specification;

### in all respects in accordance with West of England Combined Authority’s policies set out in Annexure 1; and

### in accordance with all Applicable Laws.

# Compliance

## The Service Provider shall ensure that all Necessary Consents are in place to provide the Services and West of England Combined Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

## The Service Provider shall, upon request, provide West of England Combined Authority with evidence that it has obtained the Necessary Consents and shall notify West of England Combined Authority immediately in the event that any of the Necessary Consents are no longer held for any reason.

## Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.

## The Service Provider shall perform its obligations under this agreement (including those in relation to the Services) in accordance with all applicable Law regarding health and safety.

## Without limiting the general obligation set out in clause 6, the Service Provider shall (and shall procure that the Service Provider's Personnel shall):

### perform its obligations under this agreement (including those in relation to the Services) in accordance with:

#### all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise); and

#### any other requirements and instructions which West of England Combined Authority reasonably imposes in connection with any equality obligations imposed on West of England Combined Authority at any time under applicable equality law; and

### take all necessary steps, and inform West of England Combined Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

### at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Service Provider shall also undertake, or refrain from undertaking, such acts as West of England Combined Authority requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

## The Contractor shall deal with lost property in accordance with the Public Service Vehicles (Lost Property) Regulations 1978 as amended by the Public Service Vehicles (Lost Property) Regulations (Amendment) 1995.

Charges and payment

# Payment

## In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this agreement, West of England Combined Authority shall pay the Charges to the Service Provider.

## The Revenue shall be treated in accordance with the Payment Schedule applicable to that route. Any Revenue required to be paid to West of England Combined Authority in accordance with the Payment Schedule shall be set off against the Charges on the following months’ invoice.

## The Service Provider shall be required to pay all Traveline costs. In the event that the Service Provider fails to pay the Traveline costs, West of England Combined Authority will pay direct and shall be entitled to set off any such sums against a subsequent invoice, plus an administration charge of £100 to reflect the loss to West of England Combined Authority as a result of the failure by the Service Provider to comply with this clause 8.3.

## The Service Provider shall invoice West of England Combined Authority for payment of the Charges within 14 days of the end of each calendar month. All invoices shall be directed to West of England Combined Authority’s Authorised Representative and shall include Supporting Data.

## West of England Combined Authority shall pay the Service Provider any sums due under such an invoice no later than a period of 30 days from the date of receipt.

## Where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:

### provisions having the same effect as clause 8.5 of this agreement; and

### a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 8.5 of this agreement.

In this clause 8.6, "Sub-Contract" means a contract between two or more Service Providers, at any stage of remoteness from West of England Combined Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.

## Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 14. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the 14 days after resolution of the dispute between the parties.

## Subject to clause 8.7, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider shall not suspend the supply of the Services if any payment is overdue.

## The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Service Provider shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on West of England Combined Authority any time in respect of the Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this agreement.

## The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to West of England Combined Authority pursuant to this agreement. Such records shall be retained for inspection by West of England Combined Authority for twelve years from the end of the Contract Year to which the records relate.

## West of England Combined Authority may retain or set off any sums owed to it by the Service Provider which have fallen due and payable against any sums due to the Service Provider under this agreement or any other agreement pursuant to which the Service Provider or any Associated Company of the Service Provider provides goods or services to West of England Combined Authority.

## If West of England Combined Authority wishes to set off any amount owed by the Service Provider against any amount due to the Service Provider pursuant to clause 8.11 it shall give notice to the Service Provider within 30 days of receipt of the relevant invoice, setting out West of England Combined Authority’s reasons for withholding or retaining the relevant Charges.

## The Service Provider shall make any payments due to West of England Combined Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by West of England Combined Authority to the Service Provider.

Staff

# Personnel used to provide the services

## At all times, the Service Provider shall ensure that:

### each of the Service Provider's Personnel is suitably licensed, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

### there is an adequate number of Service Provider's Personnel to provide the Services properly; and

### all of the Service Provider's Personnel comply with all of the requirements set out in the Specification.

## West of England Combined Authority may require the removal from the Contract of any person employed by the Service Provider where in the opinion of West of England Combined Authority such person is not suitable. The Service Provider shall immediately comply with such instruction and as soon as it is reasonably practicable thereafter provide a substitute in order to ensure that the Services are maintained to Contract Standard. Any member of the Service Provider’s staff removed from work under the provision of this paragraph shall not be re-engaged in the delivery of Services without the written consent of West of England Combined Authority. West of England Combined Authority shall in no circumstances be liable either to the Service Provider or the employee in respect of any liability, loss or damage occasioned by such withdrawal, suspension or removal and the Service Provider shall fully indemnify West of England Combined Authority against any claim made by such employees. West of England Combined Authority shall not be obliged to divulge any information relating to any person affected by this clause.

## The Service Provider represents and warrants that it is compliant with its obligations under the Modern Slavery Act 2015 and that neither the Service Provider nor any of its officers, employees or other persons associated with it has been convicted of any offence involving slavery and human trafficking; or has been or is the subject of investigation, inquiry or enforcement proceedings by any governmental administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.  The Service Provider shall implement due diligence procedures for its own suppliers, subcontractors or other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

## The Service Provider shall not employ in the provision of the Services any ex-employee of West of England Combined Authority who has been dismissed on disciplinary grounds without the express written consent of West of England Combined Authority.

## The Service Provider shall maintain up-to-date personnel records on the Service Provider's Personnel engaged in the provision of the Services and shall provide information to West of England Combined Authority as West of England Combined Authority reasonably requests on the Service Provider's Personnel. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

## **SCHOOL SERVICES**

## West of England Combined Authority requires that the Service Provider follows a Safe Recruitment process which will mean no driver shall be used on any contract until they have completed a DBS check, all references are taken up and satisfied, employment records are checked and any gaps accounted for.

## West of England Combined Authority has a responsibility to protect children for whom they are responsible, therefore all Service Provider’s staff will be deemed exempt from the Rehabilitation of Offenders Act 1974.

## The Service Provider shall ensure that any person employed or seeking to be employed by the Service Provider shall disclose previous convictions for offences of any description and shall provide such information to West of England Combined Authority. West of England Combined Authority subject to its discretion, shall wish to approve those persons notified as having previous convictions.

## The Service Provider shall not employ any person under the Contract whom they have reasonable grounds for suspecting may have been convicted or is likely to commit an offence involving sexual misconduct with a minor, the inducement of a minor to commit a criminal offence, the sale or supply of illegal drugs to any person or any anti-social behaviour. No person convicted of drink and drive or drug drive offences shall be used for a period of two years from date of completion of banned period. The Service Provider shall not employ any person in and about the provision of the Services without the prior written consent of West of England Combined Authority.

## All Service Provider’s staff operating on the Contract shall have a current enhanced Disclosure & Barring Service check for all such persons to be employed or seeking to be employed by in the provision of the Services within 14 days of the award of Contract, and must notify West of England Combined Authority the details of any new employee not less than seven days before they commence employment to convey passengers. All checks will be deemed invalid after 3 years and will require a fresh application.

## Persons waiting for new Disclosure & Barring checks are not permitted to undertake work relating to West of England Combined Authority contracts until the presentation of the checks and approval given by the West of England Combined Authority.

## **EQUAL OPPORTUNITIES**

## The Service Provider shall:

9.12.1 not unlawfully discriminate either directly or indirectly or victimise or harass any person on such grounds as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation, and without prejudice to the generality of the foregoing the Service Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof),

9.12.2 take all reasonable steps to secure the observance of this clause by its employees,

9.12.3 co-operate with West of England Combined Authority in monitoring the Service Provider’s compliance with this clause including providing such information as West of England Combined Authority may reasonably request,

9.12.4 not knowingly do anything in the performance of this Agreement which might place West of England Combined Authority in breach of West of England Combined Authority’s duties and obligations under the Equality Act 2010,

9.12.5 indemnify West of England Combined Authority against any costs, claims and expenses West of England Combined Authority may incur as a consequence of the Service Provider’s (or its employees) breach of this clause 1.1.

9.13 The Service Provider shall:

9.13.1 have an equal opportunities, or equality and diversity, policy in respect of the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity race, religion or belief, sex and sexual orientation,

9.13.2 demonstrate effective implementation of its policies in relation to recruitment practices including evidence of open recruitment methods such as use of the Job Centre or press advertisements,

9.13.3 regularly review the full range of equality policies and procedures and take specific action to make any necessary changes,

9.13.4 support West of England Combined Authority in monitoring from different ‘protected characteristic’ groups issues such as access to services, satisfaction with services and complaints including how the monitoring process impacts upon the development of policy and practice,

9.13.5 Regularly monitor the composition of its workforce, (including training and development opportunities, promotions and disciplinary action), and monitor job applicants from ‘protected’ groups,

9.13.6 Collect, collate and provide any equalities monitoring information requested by West of England Combined Authority.

9.14 In the event that the Service Provider enters into any Subcontract it shall impose obligations on its Subcontractors in terms substantially similar to those imposed on it pursuant to this Clause.

# TUPE

The parties agree that the provisions of Annexure 6 shall apply to any Relevant Transfer of staff under this agreement.

Contract management

# Meetings

## The Authorised Representatives shall meet in accordance with the details set out in Annexure 4 and at other times during the Term as requested on reasonable notice by either party.

# Monitoring

## West of England Combined Authority will monitor the performance of the Services by the Service Provider.

## The Service Provider shall allow an authorised officer or agent of West of England Combined Authority to use the Services without charge from time to time for the purposes of monitoring performance.

## The Service Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with West of England Combined Authority in carrying out the monitoring referred to in clause 12.1 at no additional charge to West of England Combined Authority.

## The Service Provider shall send to West of England Combined Authority, within 7 days of receipt, all comments or complaints received about the Services or their performance. A copy of the written reply to a complaint must be forwarded to West of England Combined Authority within 21 days of the receipt of the original complaint.

## When West of England Combined Authority seeks written comments following a complaint, the Service Provider shall send a detailed response in writing to West of England Combined Authority within 10 days of the receipt of notification of the complaint. If the Service Provider does not respond within 10 days he shall be deemed to accept the validity of the complaint which thereafter West of England Combined Authority shall be entitled to uphold and in consequence the Service Provider shall be liable to all relevant deductions as set out at Schedule B.

# Change control and continuous improvement

## Any requirement for a Change shall be subject to the Change Control Procedure.

## The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Service Provider shall identify and report to the West of England Combined Authority’s Authorised Representative quarterly during the Term:

### the emergence of new and evolving relevant technologies which could improve the Services;

### new or potential improvements to the Services including the quality, responsiveness, procedures, performance mechanisms and customer support services in relation to the Services;

### new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or West of England Combined Authority which might result in efficiency or productivity gains or in reduction of operational risk; and

### changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to West of England Combined Authority.

## Any potential Changes highlighted as a result of the Service Provider's reporting in accordance with clause 13.2 shall be addressed by the parties using the Change Control Procedure.

# Dispute resolution

## If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

### either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;

### if the Authorised Representatives are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to West of England Combined Authority’s Head of Transport Integration Peter Mann who shall attempt in good faith to resolve it; and

### if West of England Combined Authority’s Head of Transport Integration Peter Mann is for any reason unable to resolve the Dispute within 14 days of it being referred to them, the parties may commence court or arbitration proceedings in relation to the Dispute under clause 39 which clause shall apply at all times.

# Sub-Contracting and assignment

## Subject to clause 15.3, neither party shall assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Service Provider sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of West of England Combined Authority, such consent not to be unreasonably withheld.

## In the event that the Service Provider enters into any Sub-Contract in connection with this agreement it shall:

### remain responsible to West of England Combined Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;

### impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and

### provide a copy, at no charge to West of England Combined Authority, of any such Sub-Contract on receipt of a request for such by West of England Combined Authority’s Authorised Representative.

## West of England Combined Authority shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by West of England Combined Authority.

## Provided that West of England Combined Authority has given prior written consent, the Service Provider shall be entitled to novate the agreement where:

### the specific change in contractor was provided for in the procurement process for the award of this agreement;

### there has been a universal or partial succession into the position of the Service Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

Liability

# Indemnities

The Service Provider shall indemnify and keep indemnified West of England Combined Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by West of England Combined Authority or its Representatives (excluding any Service Provider's Personnel).

# Limitation of liability

## Subject to clause 17.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

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

## Subject to clause 17.5, the Service Provider's total aggregate liability:

### is unlimited in respect of:

#### the indemnities in Annexure 6; and

#### any breach of clause 26;

### in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement , shall in no event exceed the aggregate Charges paid under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.

## Subject to clause 17.5, West of England Combined Authority’s maximum aggregate liability to the Service Provider for all claims arising in any Contract Year (other than a failure to pay any of the Charges that are properly due and payable and for which West of England Combined Authority shall remain fully liable) shall not in any circumstances exceed the aggregate Charges paid under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.

## Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

### fraud or fraudulent misrepresentation;

### death or personal injury caused by its negligence;

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

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

# Insurance

## The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum as a minimum the following levels of cover:

### public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims; and

### employer's liability insurance with a limit of indemnity of not less than £10,000,000in relation to any one claim or series of claims;

(the Required Insurances) The cover shall be in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider.

## The Service Provider shall give West of England Combined Authority copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

## If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, West of England Combined Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

## The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the agreement.

## The Service Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

Information

# Freedom of information

## The Service Provider acknowledges that West of England Combined Authority is subject to the requirements of the FOIA and the EIRs or any other applicable legislation or codes governing access to information. The Service Provider shall:

### provide all necessary assistance and cooperation as reasonably requested by West of England Combined Authority to enable West of England Combined Authority to comply with its obligations under the FOIA and EIRs;

### transfer to West of England Combined Authority all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

### provide West of England Combined Authority with a copy of all Information belonging to West of England Combined Authority requested in the Request For Information which is in its possession or control in the form that West of England Combined Authority requires within 5 Working Days (or such other period as West of England Combined Authority may reasonably specify) of West of England Combined Authority’s request for such Information; and

### not respond directly to a Request For Information unless authorised in writing to do so by West of England Combined Authority.

## The Service Provider acknowledges that West of England Combined Authority may be required under the FOIA and EIRs or any other applicable legislation or codes governing access to information to disclose Information without consulting or obtaining consent from the Service Provider. West of England Combined Authority shall take reasonable steps to notify the Service Provider of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) West of England Combined Authority shall be responsible for determining in its absolute discretion whether any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs or any other applicable legislation or codes governing access to information.

# Data protection

## The Service Provider shall (and shall procure that any of its Service Provider's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the Data Protection Legislation and both Parties shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with the agreement. Any fines resulting from a breach of data protection legislation by the supplier will be the sole responsibility of the supplier.

## The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

## DDRT Platform Data shall be and remain the property of the Authority and the Service Provider shall not delete or remove any proprietary notices or other notices contained within or relating to DDRT Platform Data.

## At the Authority’s request and in accordance with its obligations under the Data Protection Legislation, the Service Provider shall provide the Authority with a complete and secure encrypted and appropriately authenticated download file of all DDRT Platform Data held by the Service Provider in the format, and on the media, reasonably specified by the Authority.

# Confidentiality

## Subject to clause 21.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

## Clause 21.1 shall not apply to any disclosure of information:

### required by any applicable law, provided that clause 19.2 shall apply to any disclosures required under the FOIA or the EIRs;

### that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;

### where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 21.1;

### by West of England Combined Authority of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;

### to enable a determination to be made under clause 14;

### which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

### by West of England Combined Authority to any other department, office or agency of the Government; and

### by West of England Combined Authority relating to this agreement and in respect of which the Service Provider has given its prior written consent to disclosure.

## On or before the Termination Date the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of West of England Combined Authority’s employees, Council Tax payers or service users, are delivered up to West of England Combined Authority or securely destroyed.

# Audit

## During the Term and for a period of 12 years after the Termination Date, West of England Combined Authority may conduct or be subject to an audit for the following purposes:

### to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all Service Providers (including Sub-Contractors) of the Services;

### to review the integrity, confidentiality and security of any data relating to West of England Combined Authority or any service users;

### to review the Service Provider's compliance with the DPA, the FOIA, in accordance with clause 20 (Data Protection) and clause 19 (Freedom of Information) and any other legislation applicable to the Services;

### to review any records created [during the provision of the Services];

### to review any books of account kept by the Service Provider in connection with the provision of the Services;

###  to carry out the audit and certification of West of England Combined Authority’s accounts;

###  to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which West of England Combined Authority has used its resources;

### to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.

## Except where an audit is imposed on West of England Combined Authority by a regulatory body, West of England Combined Authority will not conduct an audit on a set frequency.

## Not undertake clause 22 more than twice in any calendar year.

## West of England Combined Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.

## Subject to West of England Combined Authority’s obligations of confidentiality, the Service Provider shall on demand provide West of England Combined Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

### all information requested by the above persons within the permitted scope of the audit;

### reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and

### access to the Service Provider's Personnel.

## West of England Combined Authority shall endeavour to (but is not obliged to) provide at least 15 days’ notice of its or, where possible, a regulatory body's, intention to conduct an audit.

## The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Service Provider in which case the Service Provider shall reimburse West of England Combined Authority for all West of England Combined Authority’s reasonable costs incurred in the course of the audit.

##  If an audit identifies that:

### the Service Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Service Provider's failure relates to a failure to provide any information to West of England Combined Authority about the Charges, proposed Charges or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;

### if West of England Combined Authority has overpaid any Charges, the Service Provider shall pay to West of England Combined Authority the amount overpaid within 20 days. West of England Combined Authority may deduct the relevant amount from the Charges if the Service Provider fails to make this payment; and

### if West of England Combined Authority has underpaid any Charges, West of England Combined Authority shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by West of England Combined Authority if this was due to a default by the Service Provider in relation to invoicing within 20 days.

Termination

# Termination for breach

## West of England Combined Authority may terminate this agreement with immediate effect by the service of written notice on the Service Provider in the following circumstances:

### if the Service Provider is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, West of England Combined Authority may only terminate this agreement under this clause 23.1 if the Service Provider has failed to remedy such breach within 28 days of receipt of notice from West of England Combined Authority (a Remediation Notice) to do so;

### if a Catastrophic Failure has occurred;

### if a Necessary Consent is no longer held by the Service Provider;

### if there is an Insolvency Event;

### if there is a change of control of the Service Provider within the meaning of section 1124 of the Corporation Tax Act 2010;

### if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

## West of England Combined Authority may terminate this agreement in accordance with the provisions of clause 25 and clause 26.

## If this agreement is terminated by West of England Combined Authority the Service Provider hereby indemnifies West of England Combined Authority against any such losses or costs which West of England Combined Authority may suffer as a result of any such termination for cause.

## The Service Provider may terminate this agreement in the event that West of England Combined Authority commits a Termination Payment Default by giving 30 days' written notice to West of England Combined Authority. In the event that West of England Combined Authority remedies the Termination Payment Default in the 30 day notice period, the Service Provider's notice to terminate this agreement shall be deemed to have been withdrawn.

# Termination on notice

Without affecting any other right or remedy available to it, West of England Combined Authority may terminate this agreement at any time by giving six months' written notice to the Service Provider.

# Force majeure

## Subject to the remaining provisions of this clause 25, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.

## In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:

### give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

### use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and

### resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

## A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

## The Service Provider cannot claim relief if the Force Majeure Event is one where a reasonable Service Provider should have foreseen and provided for the cause in question.

## As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Service Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.

## The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

## West of England Combined Authority may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Service Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 30 Working Days.

# Prevention of bribery

## The Service Provider represents and warrants that neither it, nor to the best of its knowledge any Service Provider's Personnel, have at any time prior to the Commencement Date:

### committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

### been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

## The Service Provider shall not during the term of this agreement:

### commit a Prohibited Act; and/or

### do or suffer anything to be done which would cause West of England Combined Authority or any of West of England Combined Authority’s employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

## The Service Provider shall during the term of this agreement:

### establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and

### keep appropriate records of its compliance with its obligations under clause 26.3(a) and make such records available to West of England Combined Authority on request.

## The Service Provider shall immediately notify West of England Combined Authority in writing if it becomes aware of any breach of clause 26.1 and/or clause 26.2, or has reason to believe that it has or any of the Service Provider's Personnel have:

### been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

### been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

### received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.

## If the Service Provider makes a notification to West of England Combined Authority pursuant to clause 26.4, the Service Provider shall respond promptly to West of England Combined Authority’s enquiries, co-operate with any investigation, and allow West of England Combined Authority to audit any books, records and/or any other relevant documentation in accordance with clause 22.

## If the Service Provider is in Default under clause 26.1 and/or clause 26.2, the Council may by notice:

### require the Service Provider to remove from performance of this agreement any Service Provider's Personnel whose acts or omissions have caused the Default; or

### immediately terminate this agreement.

## Any notice served by West of England Combined Authority under clause 26.6 shall specify the nature of the Prohibited Act, the identity of the Party who West of England Combined Authority believes has committed the Prohibited Act and the action that West of England Combined Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).

# Consequences of termination

## On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the Service Provider shall co-operate fully with West of England Combined Authority to ensure an orderly migration of the Services to West of England Combined Authority or, at West of England Combined Authority’s request, a Replacement Service Provider.

## On termination of this agreement the Service Provider shall procure that all data and other material belonging to West of England Combined Authority (and all media of any nature containing information and data belonging to West of England Combined Authority or relating to the Services), shall be delivered to West of England Combined Authority forthwith and the Service Provider's Authorised Representative shall certify full compliance with this clause.

## The provisions of clause 16 (Indemnities), clause 18 (Insurance), clause 19 (Freedom of Information), clause 20 (Data Protection), clause 22 (Audit), clause 23 (Termination for Breach) and this clause 27 (Consequences of termination) shall survive termination or expiry of this agreement.

General provisions

# Non-solicitation

Neither party shall (except with the prior written consent of the other) during the term of this agreement, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

# Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

# Rights and remedies

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

# Severability

## If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

## If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

# Partnership or agency

## Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

## Each party confirms it is acting on its own behalf and not for the benefit of any other person.

# Third party rights

## No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

## The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

# Publicity

The Service Provider shall not:

### make any press announcements or publicise this agreement or its contents in any way; or

### use West of England Combined Authority’s name or logo in any promotion or marketing or announcement of orders without the prior written consent of West of England Combined Authority;

except as required by law, any government or regulatory Council, any court or other Council of competent jurisdiction, without the prior written consent of West of England Combined Authority.

# Notices

## Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:

### delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

## Any notice shall be deemed to have been received:

### if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

### if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.

## This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

# Variations to agreement

## Any variations to this agreement must be in writing and agreed by both parties, subject to clause 36.2.

## West of England Combined Authority may vary this agreement to remove a route from Annexure 1 at any time by giving six months' written notice to the Service Provider. The Service Provider’s consent is not required for this variation. The provisions of clause 27 shall apply in relation to any route removed from the agreement in accordance with this sub-clause.

# Entire agreement

## This agreement, the annexures and the documents annexed to it or otherwise referred to in it constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

# Counterparts

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

# Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

# Jurisdiction

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

**IN WITNESS** whereof the parties have executed this contract as a deed the day and year first before written

The Common Seal of The West of England Combined Authority was hereunto affixed in the presence of:

Authorised signatory

Executed as a deed by

Acting by:

|  |  |
| --- | --- |
| Name IN CAPITALS | Signature |
| **Position in organisation** |

|  |  |
| --- | --- |
| Name IN CAPITALS | Signature |
| **Position in organisation** |

1. Specification - Schedules A – R
2. Service Provider's Tender
3. Charges and payment
4. Calculation of the Charges

The Charges shall be calculated on the basis of the rates and prices set out in this Annexure.

1. Charges based on a fixed price

[matrices to be included as relevant to the agreement with provider]

1. Termination Payment Default

In the event that at any time undisputed Charges of £20,000 have been overdue for payment for a period of 60 days or more, the Council will have committed a Termination Payment Default.

1. Contract management
2. Authorised representatives
	1. West of England Combined Authority’s initial Authorised Representative:
	2. The Service Provider's initial Authorised Representative:
3. Meetings
	1. Type – Performance Monitoring and Evaluation Framework Meetings
	2. Frequency - Quarterly
	3. Agenda - operation of service and complaints, defaults, quality assurance, reliability and punctuality, health and safety, innovation, equality and diversity, environmental policies, service improvements identified in accordance with clause 13.2 (other items may be added to the agenda as necessary and will be notified in advance of the meeting)
4. Change control
5. General principles
	1. Where West of England Combined Authority or the Service Provider sees a need to change this agreement, West of England Combined Authority may at any time request, and the Service Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Annexure 5.
	2. Until such time as a Change is made in accordance with the Change Control Procedure, West of England Combined Authority and the Service Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
	3. Any discussions which may take place between West of England Combined Authority and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
	4. Any work undertaken by the Service Provider and the Service Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Annexure 5, shall be undertaken entirely at the expense and liability of the Service Provider.
6. Procedure
	1. Discussion between West of England Combined Authority and the Service Provider concerning a Change shall result in any one of the following:
		1. no further action being taken; or
		2. a request to change this agreement by West of England Combined Authority; or
		3. a recommendation to change this agreement by the Service Provider.
	2. Where a written request for an amendment is received from West of England Combined Authority, the Service Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Service Provider to West of England Combined Authority within three weeks of the date of the request.
	3. A recommendation to amend this agreement by the Service Provider shall be submitted directly to West of England Combined Authority in the form of two copies of a Change Control Note signed by the Service Provider at the time of such recommendation. West of England Combined Authority shall give its response to the Change Control Note within three weeks.
	4. Each Change Control Note shall contain:
		1. the title of the Change;
		2. the originator and date of the request or recommendation for the Change;
		3. the reason for the Change;
		4. full details of the Change, including any specifications;
		5. the price, if any, of the Change;
		6. a timetable for implementation, together with any proposals for acceptance of the Change;
		7. a Annexure of payments if appropriate;
		8. details of the likely impact, if any, of the Change on other aspects of this agreement including:
			1. the timetable for the provision of the Change;
			2. the personnel to be provided;
			3. the Charges;
			4. the Documentation to be provided;
			5. the training to be provided;
			6. working arrangements;
			7. other contractual issues;
		9. the date of expiry of validity of the Change Control Note;
		10. provision for signature by the Council and the Service Provider; and
		11. details of how the costs that would be incurred by the parties if the Change subsequently results in the termination of this agreement under clause 23.1(f) will be apportioned.
	5. For each Change Control Note submitted by the Service Provider West of England Combined Authority shall, within the period of the validity of the Change Control Note:
		1. allocate a sequential number to the Change Control Note; and
		2. evaluate the Change Control Note and, as appropriate:
			1. request further information;
			2. accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Council and return one of the copies to the Service Provider; or
			3. notify the Service Provider of the rejection of the Change Control Note.
	6. A Change Control Note signed by West of England Combined Authority and by the Service Provider shall constitute an amendment to this agreement.
7. TUPE
8. Interpretation

The definitions and rules of interpretation in this paragraph apply in this Agreement:

Data Protection Legislation**:** the Data Protection Act 1998, the Data Protection Directive (*95/46/EC*), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (*SI 2000/2699*), the Electronic Communications Data Protection Directive (*2002/58/EC*), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (*SI 2426/2003*) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Effective Date**:** the date on which the Services (or any part of the Services), transfer from the Third Party Employer to the Service Provider, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Service Provider.

Employee Liability Information**:** the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE:

###  the identity and age of the employee;

### the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);

### information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;

### information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Service Provider arising out of the employee's employment with the transferor;

### information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

Employment Liabilities**:** All claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

Final Staff List**:** the list of all the Service Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Provisional Staff List**:** the list prepared and updated by the Service Provider of all the Service Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

Relevant Employees**:** those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Service Provider by virtue of the application of TUPE.

Relevant Transfer**:** a relevant transfer of the Services for the purposes of TUPE.

Replacement Services**:** any services that are fundamentally the same as any of the Services and which West of England Combined Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by West of England Combined Authority internally or by any Replacement Service Provider.

Replacement Service Provider**:** any third party supplier of Replacement Services appointed by West of England Combined Authority from time to time.

Service Transfer Date**:** the date on which the Services (or any part of the Services), transfer from the Service Provider to West of England Combined Authority or any Replacement Service Provider.

Staffing Information**:** in relation to all persons detailed on the Provisional Staff List, in an anonymised format, such information as West of England Combined Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

Sub-Contractor**:** the contractors or Suppliers engaged by the Service Provider to provide goods, services or works to, for or on behalf of the Service Provider for the purposes of providing the Services to West of England Combined Authority.

Third Party Employees**:** employees of Third Party Employers whose contracts of employment transfer with effect from the Effective Date to the Service Provider by virtue of the application of TUPE.

Third Party Employer**:** a provider engaged by West of England Combined Authority to provide the Services to West of England Combined Authority before the Effective Date and whose employees will transfer to the Service Provider on the Effective Date.

TUPE**:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*), as amended.

1. Transfer of employees to the Service Provider on the effective date
	1. West of England Combined Authority and the Service Provider agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Third Party Employees shall transfer to the Service Provider. The Service Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE. The Relevant Transfer shall occur on the [Effective Date **OR** [DATE]].
	2. The Third Party Employer shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Third Party Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions and otherwise, up to the Effective Date.
	3. The Service Provider shall be liable for and indemnify and keep indemnified the Council and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Third Party Employees and any other person who is or will be employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date.
	4. The Service Provider shall immediately on request by West of England Combined Authority and/or the Third Party Employer provide details of any measures that the Service Provider or any Sub-Contractor envisages it will take in relation to any Third Party Employees including any proposed changes to terms and conditions of employment. If there are no measures, the Service Provider will give confirmation of that fact, and shall indemnify West of England Combined Authority and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.
2. Employment exit provisions
	1. This Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (Subsequent Transfer). If a Subsequent Transfer is a Relevant Transfer then West of England Combined Authority or Replacement Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
	2. The Service Provider shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Agreement or otherwise, on request from West of England Combined Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services, the Provisional Staff List and the Staffing Information together with any additional information required by West of England Combined Authority, including information as to the application of TUPE to the employees. The Service Provider shall notify West of England Combined Authority of any material changes to this information as and when they occur.
	3. At least 28 days prior to the Service Transfer Date, the Service Provider shall and shall procure that any Sub-Contractor shall prepare and provide to West of England Combined Authority and/or, at the direction of West of England Combined Authority, to the Replacement Service Provider, the Final Staff List, which shall be complete and accurate in all material respects. The Final Staff List shall identify which of the Service Provider's and Sub-Contractor's personnel named are Relevant Employees.
	4. West of England Combined Authority shall be permitted to use and disclose the Provisional Staff List, the Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Service Provider for any services that are substantially the same type of services as the Services (or any part of the Services).
	5. The Service Provider warrants to West of England Combined Authority and the Replacement Service Provider that the Provisional Staff List, the Final Staff List and the Staffing Information (TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Final Staff List.
	6. The Service Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
	7. West of England Combined Authority regards compliance with this paragraph 3 as fundamental to the Agreement. In particular, failure to comply with paragraph 3.2 and paragraph 3.3 in respect of the provision of accurate information about the Relevant Employees shall entitle West of England Combined Authority to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph 3.7 shall not exceed an amount equivalent to the Charges that would be payable in the three month period following the Service Provider's failure to comply with paragraph 3.2 or paragraph 3.3, as the case may be.
	8. Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this Agreement shall not (so far as reasonably practicable) take place without West of England Combined Authority’s prior written consent, unless such changes are required by law. The Service Provider shall and shall procure that any Sub-contractor shall supply to West of England Combined Authority full particulars of such proposed changes and West of England Combined Authority shall be afforded reasonable time to consider them.
	9. In the six months prior to termination of this Agreement, the Service Provider shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without West of England Combined Authority’s prior written consent.
	10. The Service Provider shall indemnify and keep indemnified in full West of England Combined Authority and each and every Replacement Service Provider against all Employment Liabilities relating to:
	11. any person who is or has been employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of any of the Services; or
	12. any trade union or staff association or employee representative,
	13. arising from or connected with any failure by the Service Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
	14. The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
	15. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraph 3.2 to paragraph 3.14, to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider or West of England Combined Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
	16. Despite paragraph 3.15, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.