Dated 20 [---]

**(1) BATH & NORTH EAST SOMERSET COUNCIL**

**-and-**

**(2) [THE CONTRACTOR]**

**AGREEMENT**

relating to the supply of

Passenger Transport DPS 1 April 2019 to 31 March 2023

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A. GENERAL PROVISIONS

**A1 Definitions and Interpretation**

A1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

**“Agreement”** means this Contract.

“**Approval**” means the written consent of the Council.

“**Council**” means Bath & North East Somerset Council

“**Commencement Date**” means the date of the Contract.

“**Commercially Sensitive Information**” means the information listed in the Commercially Sensitive Information Schedule comprised of information:

(a) which is provided by the Contractor to the Council in confidence for the period set out in that Schedule; and/or

(b) that constitutes a trade secret.

“**Confidential Information**” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA 2018. Confidential Information shall not include information which:

(a) was public knowledge at the time of disclosure (otherwise than by breach of clause E3 (Confidential Information));

(b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

(d) is independently developed without access to the Confidential Information.

“**Contract**” means this written agreement between the Council and the Contractor consisting of these clauses and any attached Schedules.

“**Contracting Authority**” means any contracting authority as defined in Part 1 of the Public Contracts Regulations 2015.

“**Contractor**” means the person, firm or company with whom the Council enters into the Contract.

“**Contract Period**” means the period from the Commencement Date to:

(a) the date of expiry set out in clause A2 (Initial Contract Period), or

(b) following an extension pursuant to clause F8 (Extension of Initial Contract Period), the date of expiry of the extended period,

or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of the Contract.

“**Contract Price**” means the price (exclusive of any applicable VAT), payable to the Contractor by the Council under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause C4 (Price Adjustment on Extension of Initial Contract Period).

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

**“DPA 2018”** means Data Protection Act 2018

**“Data Protection Impact Assessment”** meansan assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

“**Data Protection Legislation”** means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent ] to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy;

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

“**Default**” means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

“**Environmental Information Regulations**” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“**Equipment**” means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

“**Fees Regulations**” means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

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

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

(a) any industrial action occurring within the Contractor’s or any sub-contractor’s organisation; or

(b) the failure by any sub-contractor to perform its obligations under any sub-contract.

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

**“GDPR”** means the General Data Protection Regulation (Regulation (EU) 2016/679)

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

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

“**Initial Contract Period**” means the period from the Commencement Date to the date of expiry set out in clause A2 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

“**Intellectual Property Rights**” means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“**Key Personnel**” means those persons named in the Specification as being key personnel.

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

“**LED”** means Law Enforcement Directive (Directive (EU) 2016/680)

“**Monitoring Schedule**” means the Schedule containing details of the monitoring arrangements.

“**Month**” means calendar month.

“**Party**” means a party to this Agreement;

“**Premises**” means the location where the Services are to be supplied, as set out in the Specification.

“**Pricing Schedule**” means the Schedule containing details of the Contract Price.

“**Property**” means the property, other than real property, issued or made available to the Contractor by the Council in connection with the Contract.

**“Protective Measures”** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**“Provider Personnel”** means all directors, officers, employees, agents, consultants and contractors of the Provider and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;

“**Quality Standards**” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule.

“**Receipt**” means the physical or electronic arrival of the invoice at the address of the Council detailed at clause A5.3 or at any other address given by the Council to the Contractor for the submission of invoices.

“**Regulatory Bodies**” means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.

“**Replacement Contractor**” means any third party service provider appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

“**Request for Information**” shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

"**Relevant Convictions**" means a conviction that is relevant to the nature of the Services or as listed by the Council and/or relevant to the work of the Council

“**Schedule**” means a schedule attached to, and forming part of, the Contract.

“**Services**” means the services to be supplied as specified in the Specification.

“**Specification**” means the description of the Services to be supplied under the Contract as set out in the Specification Schedule including, where appropriate, the Key Personnel, the Premises and the Quality Standards.

“**Specification Schedule**” means the Schedule containing details of the Specification.

“**Staff**” means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract.

“**Staff Vetting Procedure**” means the Council’s procedures for the vetting of personnel and as advised to the Contractor by the Council.

**“Sub-processor”** means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement

“**Tender**” means the document(s) submitted by the Contractor to the Council in response to the Council’s invitation to suppliers for formal offers to supply it with the Services.

“**Variation**” has the meaning given to it in clause F3.1 (Variation).

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

“**Working Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

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

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

(a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;

(b) words importing the masculine include the feminine and the neuter;

(c) reference to a clause is a reference to the whole of that clause unless stated otherwise;

(d) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

(e) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

(f) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

(g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

**A2 Initial Contract Period**

The Contract shall take effect on the Commencement Date and shall expire automatically on [……… 20--], unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause F8 (Extension of Initial Contract Period).

**A3 Contractor’s Status**

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

## A4 Council’s Obligations

Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Contractor.

**A5 Notices**

A5.1Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

A5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause A5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given [2] Working Days after the day on which the letter was posted, or [4] hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

A5.3 For the purposes of clause A5.2, the address of each Party shall be:

(a) For the Council:

[Address: ]

[ ]

For the attention of:

Tel: [ ]

Email: [ ]

(b) For the Contractor:

[Name ]

[Address: ]

[ ]

For the attention of:

Tel: [ ]

Email: [ ]

A5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

**A6 Mistakes in Information**

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

#### A7 Conflicts of Interest

A7.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the provisions of the Contract. The Contractor will disclose to the Council full particulars of any such conflict of interest which may arise.

A7.2 The Council reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

B. SUPPLY OF SERVICES

B1 The Services

B1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Council’s requirements as set out in the Specification and the provisions of the Contract in consideration of the payment of the Contract Price. The Council may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.

B1.2 If the Council informs the Contractor in writing that the Council reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Council, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.

B1.3 Subject to the Council providing written consent in accordance with clause B2.2 (Provision and Removal of Equipment), timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

**B2 Provision and Removal of Equipment**

B2.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.

B2.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.

B2.3 All Equipment brought onto the Premises shall be at the Contractor’s own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Council’s Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

B2.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

B2.5 The Contractor shall, at the Council’s written request, at its own expense and as soon as reasonably practicable:

(a) remove from the Premises any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with the Contract; and

(b) replace such item with a suitable substitute item of Equipment.

B2.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

# B3 Manner of Carrying Out the Services

B3.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Council prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

B3.2 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

###### B4 Key Personnel

B4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Council. [The Key Personnel shall be responsible for . . . ].

B4.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

B4.3 Any replacements to the Key Personnel shall be subject to the agreement of the Council. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

B4.4 The Council shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

**B5 Contractor’s Staff**

B5.1 The Council may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises:

(a) any member of the Staff; or

(b) any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Council, be undesirable.

B5.2 At the Council’s written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.

B5.3 The Contractor’s Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.

B5.4 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

B5.5 The Council may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure & Barring Service (DBS) check as per the Staff Vetting Procedures. The Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the DBS check or otherwise) is employed or engaged in the provision of any part of the Services.

B5.6 If the Contractor fails to comply with clause B5.2 within [2] Months of the date of the request and in the reasonable opinion of the Council, such failure may be prejudicial to the interests of the Crown, then the Council may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

B5.7 The decision of the Council as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final and conclusive.

**B6 Inspection of Premises**

Save as the Council may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

###### B7 Licence to occupy Premises

B7.1 Any land or Premises made available from time to time to the Contractor by the Council in connection with the Contract, shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

B7.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Council may reasonably request.

B7.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Council at the Contractor’s expense. The Council shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Council.

B7.4 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Council, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

B7.5 The Parties agree that there is no intention on the part of the Council to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Council retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

**B8 Property**

B8.1 Where the Council issues Property free of charge to the Contractor such Property shall be and remain the property of the Council and the Contractor irrevocably licences the Council and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Council. The Contractor shall take all reasonable steps to ensure that the title of the Council to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Council’s request, store the Property separately and ensure that it is clearly identifiable as belonging to the Council.

B8.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Council otherwise within 5 Working Days of receipt.

B8.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.

B8.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Council’s reasonable security requirements as required from time to time.

B8.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Council’s Default. The Contractor shall inform the Council within [2] Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

## B9 Offers of Employment

For the duration of the Contract and for a period of 12 months thereafter neither the Council nor the Contractor shall employ or offer employment to any of the other Party’s staff who have been associated with the procurement and/or the contract management of the Services without that other Party’s prior written consent.

C PAYMENT AND CONTRACT PRICE

**C1 Contract Price**

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

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

**C2 Payment and VAT**

C2.1 The Council shall pay all sums due to the Contractor within 30 days of Receipt of a valid invoice, submitted monthly in arrears.

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

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

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

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

C2.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Council on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

**C3 Recovery of Sums Due**

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

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

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

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

C4 Price adjustment on extension of the Initial Contract Period

C4.1 The Contract Price shall apply for the Initial Contract Period. In the event that the Council agrees to extend the Initial Contract Period pursuant to clause F8 (Extension of Initial Contract Period) the Council shall, in the 6 month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Contractor (for a period of not more than 30 Working Days) to agree a variation in the Contract Price.

C4.2 If the Parties are unable to agree a variation in the Contract Price in accordance with clause C4.1, the Contract shall terminate at the end of the Initial Contract Period.

C4.3 If a variation in the Contract Price is agreed between the Council and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.

C4.4 Any increase in the Contract Price pursuant to clause C4.1 shall not exceed the percentage change in the Office of National Statistics’ Consumer Prices Index (CPI) (or another such index specified in the Pricing Schedule) between the Commencement Date and the date 6 Months before the end of the Initial Contract Period.

D. STATUTORY OBLIGATIONS AND REGULATIONS

**D1 Prevention of Corruption**

D1.1 The Contractor shall not offer or give, or agree to give, to the Council or any other public body or any person employed by or on behalf of the Council or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.

D1.2 The Contractor warrants that it has not paid commission or agreed to pay commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with the Contract.

D1.3 If the Contractor, its Staff or anyone acting on the Contractor’s behalf, engages in conduct prohibited by clauses D1.1 or D1.2, the Council may:

(a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or

(b) recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of those clauses.

**D2 Prevention of Fraud**

D2.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Council.

D2.2 The Contractor shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

D2.3 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Crown (including the Council) the Council may:

(a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or

(b) recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause.

**D3 Discrimination**

D3.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D3.2 The Contractor shall take all reasonable steps to secure the observance of clause D3.1 by all Staff and the staff of its sub-contractors if appointed.

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**D4 The Contracts (Rights of Third Parties) Act 1999**

A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

#### D5 Environmental Requirements

The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Council’s environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

**D6 Health and Safety**

D6.1 The Contractor shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Council shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.

D6.2 While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working there.

D6.3 The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

D6.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.

D6.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

**D7** **Modern Slavery Act 2015**

D7.1 The Contractor shall prepare a slavery and human trafficking statement for each financial year in accordance with the Modern Slavery Act 2015 showing:

(a) a statement of the steps the Contractor has taken during the financial year to ensure that slavery and human trafficking is not taking place

(i) in any of its supply chains, and

(ii) in any part of its own business, or

(b) a statement that the Contractor has taken no such steps.

E PROTECTION OF INFORMATION

E1 Data Protection Act

E1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in the Data Processing Schedule by the Customer and may not be determined by the Contractor.

E1.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

E1.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:

(a) a systematic description of the envisaged processing operations and the purpose of the processing;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

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

E1.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

(a) process that Personal Data only in accordance with the Data Processing Schedule, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:

(i) nature of the data to be protected;

(ii) harm that might result from a Data Loss Event;

(iii) state of technological development; and

(iv) cost of implementing any measures;

(c) ensure that :

(i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Data Processing Schedule);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Contractor’s duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or

LED Article 37) as determined by the Customer;

(ii) the Data Subject has enforceable rights and effective legal remedies;

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

(iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

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

E1.5 Subject to clause E1.6, the Contractor shall notify the Customer immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

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

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

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

or

(f) becomes aware of a Data Loss Event.

E1.6 The Contractor’s obligation to notify under clause E1.5 shall include the provision of further information to the Customer in phases, as details become available.

E1.7 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause E1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

(a) the Customer with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the Customer to enable the

Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

(c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the Customer following any Data Loss Event;

(e) assistance as requested by the Customer with respect to any request from the Information Commissioner’s Office, or any consultation by the Customer with the Information Commissioner's Office.

E1.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

(a) the Customer determines that the processing is not occasional;

(b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

(c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

E1.9 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer’s designated auditor.

E1.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

E1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:

(a) notify the Customer in writing of the intended Sub-processor and processing;

(b) obtain the written consent of the Customer;

(c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E1 such that they apply to the Sub-processor; and

(d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

E1.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

E1.13 The Customer may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

E1.14 The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Customer may on not less than 30 Working Days’ notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

E2 Confidential Information

E2.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

1. treat the other party's Confidential Information as confidential and safeguard it accordingly; and
2. not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

E2.2 Clause E2.1 shall not apply to the extent that:

(a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause E4 (Freedom of Information);

(b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

(c) such information was obtained from a third party without obligation of confidentiality;

(d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

(e) it is independently developed without access to the other party's Confidential Information.

E2.3 The Contractor may only disclose the Council's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

E2.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement.

E2.5 At the written request of the Council, the Contractor shall procure that those members of the Staff identified in the Council's notice signs a confidentiality undertake ng prior to commencing any work in accordance with this Agreement.

E2.6 Nothing in this Agreement shall prevent the Council from disclosing the Contractor's Confidential Information:

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

(b) to any consultant, contractor or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;

(c) for the purpose of the examination and certification of the Council's accounts; or

(d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.

E2.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E2.6 is made aware of the Council's obligations of confidentiality.

E2.8 Nothing in this clause E2 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

E3 Freedom of Information

E3.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

E3.2 The Contractor shall and shall procure that any sub-contractors shall transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within [two] Working Days of receiving a Request for Information;

(a) provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within [five] Working Days (or such other period as the Council may specify) of the Council's request; and

(b) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

E3.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations

E3.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.

E3.5 The Contractor acknowledges that (notwithstanding the provisions of Clause E4) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (**“the Code”**), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:

1. without consulting the Contractor; or
2. following consultation with the Contractor and having taken their views into account;

provided always that where E3.5(a) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

E3.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

E3.7 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Council may be obliged to disclose it in accordance with this clause E3.

E4 Publicity, Media and Official Enquiries

E4.1 Without prejudice to the Council’s obligations under the FOIA, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

E4.2 Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause E4.1.

E5 Security

E5.1 The Council shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Council while on the Premises, and shall ensure that all Staff comply with such requirements.

E5.2 The Council shall provide the Contractor upon request copies of its written security procedures and shall afford the Contractor upon request with an opportunity to inspect its physical security arrangements.

E6 Intellectual Property Rights

E6.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):

(a) furnished to or made available to the Contractor by or on behalf of the Council shall remain the property of the Council; and

(b) prepared by or for the Contractor on behalf of the Council for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Council;

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

E6.2 The Contractor hereby assigns to the Council, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E6.1(b). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

E6.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.

E6.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Council a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Council to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Council.

E6.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Council and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

(a) items or materials based upon designs supplied by the Council; or

(b) the use of data supplied by the Council which is not required to be verified by the Contractor under any provision of the Contract.

E6.6 The Council shall notify the Contractor in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

E6.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

(a) shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;

(b) shall take due and proper account of the interests of the Council; and

(c) shall not settle or compromise any claim without the Council’s prior written consent (not to be unreasonably withheld or delayed).

E6.8 The Council shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor’s obligations under the Contract and the Contractor shall indemnify the Council for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Council in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause E6.5(a) or (b).

E6.9 The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the Contractor in connection with the performance of its obligations under the Contract.

E6.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Council and, at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed), use its best endeavours to:

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or

(b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council,

and in the event that the Contractor is unable to comply with clauses E6.7(a) or (b) within [20] Working Days of receipt of the Contractor’s notification the Council may terminate the Contract with immediate effect by notice in writing.

E6.11 The Contractor grants to the Council a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Council reasonably requires in order exercise its rights and take the benefit of this Contract including the Services provided.

E7 Audit

The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request afford the Council or the Council’s representatives such access to those records as may be requested by the Council in connection with the Contract.

F. CONTROL OF THE CONTRACT

F1 Transfer and Sub-Contracting

F1.1 Except where F1.4 and 5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

F1.3 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Contractor to the Council as soon as reasonably practicable.

F1.4 Notwithstanding clause F1.1, the Contractor may assign to a third party (“**the Assignee**”) the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which the Council incurs under clause C2.6). Any assignment under this clause F1.4 shall be subject to:

(a) reduction of any sums in respect of which the Council exercises it right of recovery under clause C3 (Recovery of Sums Due);

(b) all related rights of the Council under the contact in relation to

the recovery of sums due but unpaid; and

(c) the Council receiving notification under both clauses F1.5 and F1.6.

F1.5 In the event that the Contractor assigns the right to receive the Contract price under clause F1.4, the Contractor or the Assignee shall notify the Council in writing of the assignment and the date upon which the assignment becomes effective.

F1.6 The Contractor shall ensure that the Assignee notifies the Council of the Assignee’s contact information and bank account details to which the Council shall make payment.

F1.7 The provisions of clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Council.

F1.8 Subject to clause F1.10, the Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

(a) any Contracting Authority; or

(b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or

(c) any private sector body which substantially performs the functions of the Council,

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor’s obligations under the Contract.

F1.9 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Council.

F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.8 to a body which is not a Contracting Authority or if there is a change in the legal status of the Council such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the **“Transferee”**):

(a) the rights of termination of the Council in clauses H1 (Termination on insolvency and change of control) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and

(b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F1.11 The Council may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor’s obligations under the Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor’s obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F1.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

F2 Waiver

F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A6 (Notices).

F2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

**F3** **Variation**

F3.1 Subject to the provisions of this clause F3, the Council may request a variation to the Specification provided that such variation does not amount to a material change to the Specification. Such a change is hereinafter called a “Variation”.

F3.2 The Council may request a Variation by notifying the Contractor in writing of the “Variation” and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Council shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.

F3.3 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Council may;

(a) allow the Contractor to fulfil its obligations under the Contract without the variation to the Specification;

(b) terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at Clause I2.

F3.4 The Council reserves the right to renegotiate the terms of the Contract in the event of changes in Service(s) demand or policy. Similarly the Council recognises the right of the Provider to request a renegotiation of the Contract terms.

F3.5 Any variation to the terms of the Contract must be recorded in writing and executed by the Council’s Representative and the Provider’s Representative or such other authorised Representatives of the parties. Such record of the variation in question must address all consequential amendments required to be made to the Contract as a result of such variation, including adjustment to the Contract Price.

F3.6 Variations will take effect as from the date specified in the signed record of variation and shall not have retrospective effect unless expressly provided for in such record.

F4 Severability

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

F5 Remedies in the event of inadequate performance

F5.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor’s obligations under the Contract, then the Council shall notify the Contractor, and where considered appropriate by the Council, investigate the complaint. The Council may, in its sole discretion, uphold the complaint and take further action in accordance with clause H2 (Termination on Default) of the Contract.

F5.2 In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Council may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:

(a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Council that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;

(b) without terminating the whole of the Contract, terminate theContract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

(c) terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.

F5.3 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Council may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

F5.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Council may direct.

F5.5 In the event that:

(a) the Contractor fails to comply with clause F5.4 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or

(b) the Contractor persistently fails to comply with clause F5.4 above,

the Council may terminate the Contract with immediate effect by notice in writing.

F6 Remedies Cumulative

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

F7 Contract Management

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

F8 Extension of Initial Contract Period

Not applicable.

**F9 Entire Agreement**

F9.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F9.2 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

(a) the clauses of the Contract;

(b) the Schedules; and

(c) any other document referred to in the clauses of the Contract.

**F10 Counterparts**

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

G LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party excludes or limits liability to the other Party for:

(a) death or personal injury caused by its negligence; or

(b) Fraud; or

(c) fraudulent misrepresentation; or

(e) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.

G1.4 Subject always to clause G1.1, the liability of either Party for Defaults shall be subject to the following financial limits:

(a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed five million pounds in respect of any one incident or series of connected incidents.

G1.5 Subject always to clause G1.1, in no event shall either Party be liable to the other for any:

(a) loss of profits, business, revenue or goodwill; and/or

(b) indirect or consequential loss or damage.

G1.6 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.

G1.7 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor’s performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

G1.8 The Contractor shall hold employer’s liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

G1.9 The Contractor shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker’s verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.10 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.

G2 Professional Indemnity

Clause not used

## G3 Warranties and Representations

The Contractor warrants and represents that:

(a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;

(b) in entering the Contract it has not committed any Fraud;

(c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract;

(d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;

(e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;

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

(g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

(h) in the three 3 years prior to the date of the Contract:

(i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

(ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

(i) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

**H DEFAULT, DISRUPTION AND TERMINATION**

H1 Termination on insolvency and change of control

H1.1 The Council may terminate the Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:

(a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

(b) a shareholders’ meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

1. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors’ meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
2. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

(e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

(f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

(g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

(h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Council may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:

(a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor’s creditors; or

(b) a petition is presented and not dismissed within 14 days or order made for the Contractor’s bankruptcy; or

(c) a receiver, or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

(d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or

(e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor’s assets and such attachment or process is not discharged within 14 days; or

(f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or

(g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

H1.3 The Contractor shall notify the Council immediately if the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (**“change of control”**). The Council may terminate the Contract by notice in writing with immediate effect within six months of:

(a) being notified that a change of control has occurred; or

(b) where no notification has been made, the date that the Council becomes aware of the change of control,

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

H2 Termination on Default

H2.1 The Council may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

(a) the Contractor has not remedied the Default to the satisfaction of the Council within 25 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or

(b) the Default is not, in the opinion of the Council, capable of remedy; or

(c) the Default is a material breach of the Contract.

#### H2.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

#### H2.3 If the Council fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under clauses C3.1 (Recovery of Sums Due).

H3 Break

The Council shall have the right to terminate the Contract at any time by giving 4 weeks written notice to the Contractor.

H4 Consequences of Expiry or Termination

H4.1 Where the Council terminates the Contract under clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Council may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause H2 (Termination on Default), no further payments shall be payable by the Council to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Council), until the Council has established the final cost of making the other arrangements envisaged under this clause.

H4.2 Subject to clause H1, where the Council terminates the Contract under clause H3 (Break), the Council shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Council shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Council, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause H3 (Break).

H4.3 The Council shall not be liable under clause H4.2 to pay any sum which:

(a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

(b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or

(c) is a claim by the Contractor for loss of profit, due to early termination of the Contract.

H4.4 Save as otherwise expressly provided in the Contract:

(a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

(b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Corruption), E1 (Data Protection Act), E2 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E3 (Confidential Information), E4 (Freedom of Information), E7 (Intellectual Property Rights), E8 (Audit), F6 Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Expiry or Termination) and I1 (Governing Law and Jurisdiction).

H5 Disruption

H5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.

H5.2 The Contractor shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

H5.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.

H5.4 If the Contractor’s proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Council acting reasonably, then the Contract may be terminated with immediate effect by the Council by notice in writing.

H5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Council, the Contractor may request a reasonable allowance of time and in addition, the Council will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H6 Recovery upon Termination

H6.1 On the termination of the Contract for any reason, the Contractor shall:

(a) immediately return to the Council all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;

(b) immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Contractor under clause B8. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

(c) assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress.

(d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Contractor to conduct due diligence.

H6.2 If the Contractor fails to comply with clause H6.1 (a) and (b), the Council may recover possession thereof and the Contractor grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

H6.3 Where the end of the Contract Period arises due to the Contractor’s Default, the Contractor shall provide all assistance under clause H6(c) and (d) free of charge. Otherwise, the Council shall pay the Contractor’s reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

H7 Force Majeure

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

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

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

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

Subject to the provisions of clause I2, the Council and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

I2 Dispute Resolution

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the [finance director (or equivalent)] of each Party.

I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless

(a) the Council considers that the dispute is not suitable for resolution by mediation; or

(b) the Contractor does not agree to mediation.

I2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator (the **“Mediator”**) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the President of the Law Society of England to appoint a Mediator.

(b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from an appropriate mediation provider to provide guidance on a suitable procedure.

(c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

(d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

(e) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts [unless the dispute is referred to arbitration pursuant to the procedures set out in clause I2.6].

I2.6 Subject to clause I2.2, the Parties shall not institute court proceedings until the procedures set out in clauses I2.1 and I2.3 have been completed save that:

(a) the Council may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7.

(b) if the Contractor intends to commence court proceedings, it shall serve written notice on the Council of its intentions and the Council shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7.

(c) the Contractor may request by notice in writing to the Council that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which the Council may consent as it sees fit.

I2.7 In the event that any arbitration proceedings are commenced pursuant to clause I2.6:

### (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;

(b) the Council shall give a written notice of arbitration to the Contractor (the **“Arbitration Notice”**)stating:

(i) that the dispute is referred to arbitration; and

(ii) providing details of the issues to be resolved;

### (c) the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

(d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

(e) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Council under clause I2.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

(f) the arbitration proceedings shall take place in London and in the English language; and

(g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

Special terms

Interpretation

In these special terms:

“the Council” means Bath and North East Somerset Council.

“Environmental Services” is a department within Bath and North East Somerset Council.

“Transport Services and

Passenger Transport” are sections within Environmental Services.

“the Contract” is the Passenger Transport DPS 2019 to 2023 of which the Conditions of Contract and Special Terms apply throughout.

“a route” means the precise journey detail that has been previously agreed to enable the Operator to carry out the particular journey.

“Ad hoc work” the term

"Ad Hoc Work" will apply to transport required on a specific date or dates that does not reoccur on a regular basis and has not been allocated a route reference number for the purpose of the Contract.

“Operator” means the Company, Firm or Individual that has been awarded a route or routes under the terms of this Contract.

“Passenger vehicle” means a motor vehicle designed for the carriage of passengers and where required by statute or local bylaws are licensed accordingly.

“Pick up and set-down

points” means the pre-determined location where a vehicle must stop for the collection or setting down of passengers.

“Regular work” will apply to all passenger transport routes that have been allocated a route reference number for the duration of the Contract.

“Sub-contracting” means the use of any vehicle not owned by the Operator and for which they do not hold a statutory licence and which is not driven by the Operator or their employee.

1. **OBLIGATION**

Where applicable the Operator shall be provided with specific details of routes, pick up points and times by the Passenger Transport Section of Environmental Services.

The Operator will only convey passengers in accordance with these provisions and shall not amend these conditions unless instructed to do so by the Passenger Transport Section of Environmental Services.

From time to time, routes may need to be modified by the Council, either over the short term, or for extended periods, or the routes can change completely. In all of these cases, as soon as the changes are known by the Council, it will endeavour to advise the Operator at the earliest opportunity of the extent of the changes and any material changes to the Contract to deliver those journeys.

The Operator shall ensure that all agreed routes, timetables, pick up points and setting down points are adhered to at all times. Any proposed modifications by the Operator, for whatever reason, should immediately be submitted to the Council, who will then confirm or deny acceptance of the modifications.

The Operator must not merge, register the Contract as a local bus service, nor alter any route without prior written approval of the Council or convey any person not authorised by the Council.

1. **VARIATION**

The Council, acting through the Passenger Transport Section of Environmental Services, may issue reasonable instructions to the Operator varying part or all of the services to be provided under this Contract for a specified period which may result in a corresponding change in the payments made by the Council to the Operator.

1. **CANCELLATION OR SUSPENSION OF SERVICES**

The Council shall have the right to suspend any or all journeys and/or Route Schedules for whatever reason.

The Council may at any time by notice to the Operator cancel or suspend all or part of the services to be provided under this Contract for any day(s) specified in such notice.

In the case of Taxi routes, a charge will only be applicable where cancellation is made after the vehicle has arrived at the first pick up.

In the case of PCV routes the Council will pay the Operator 25% of the agreed daily price for any previously agreed day(s) on which the transport is not required and for which notice of cancellation was not given by 16:00 hours on the previous working day.

In the event of this specified period of notice or longer being given by the Council to the Operator, no payment shall be due for the period of cancellation.

In the case of severe weather Operators should monitor email communication, the Council’s web site and the Passenger Transport Facebook Page to check for information on establishment closures; provided notification is posted in line with other cancellation timescales this will constitute notice.

1. **TERMINATION**

The Council will have the right to terminate the Contract or any specific route operated under the Contract by four weeks’ notice in writing. The Operator will have the right to terminate the Contract or any specific route operated under the Contract by four weeks’ notice in writing.

The Operator will have the right to appeal against the termination of any specific route by writing to the Group Manager, Transport and Parking within fourteen days of the termination or action being taken, stating their reason for appeal. Details of how to appeal will be sent with any termination or action correspondence.

1. **SUBSTITUTION**

If the Operator fails to observe or perform any of the terms or conditions of this Contract to the satisfaction of the Council or the Contract is terminated, suspended or action taken against the Operator, the Council may employ another person or persons to perform any part or all of the Operator's obligation under this Contract and the Operator will not be paid the sums due during these periods. If the Council is required to pay to that person or those persons a sum of money greater than that due to the Operator the excess may be recovered by the Council from the Operator as a debt due from the Operator to the Council.

The Council may deduct from any monies for the time being owed by the Council to the Operator under this Contract, or any other Contract between the Operator and the Council, the amount including that excess or any part thereof.

1. **PAYMENTS**

The Council will pay the Operator in accordance with the agreed rates or as modified from time to time as provided for in this Contract. Such payments may be adjusted for variations in service performance as specified in Clause 20 of these Special Terms -Failure to Perform Agreement Services.

The Operator shall submit to the Passenger Transport Section a VAT invoice at the end of each calendar month and this shall be presented within five working days of the end of the month. The invoice shall be supported by a record of operation of the service and other information as requested by the Passenger Transport Section. Payment shall not be made unless the required supporting information is supplied. Invoices that are incorrectly prepared will be returned to the Operator for amendment.

Any account showing charges for services ordered which have not been carried out, or which are not in accordance with these conditions shall be returned unpaid to the Operator for correction. Invoices presented later than the required date may not be processed in time for payment that month.

The Council shall pay the Operator within 30 days of the date of an agreed invoice.

1. **PRICE FLUCTUATIONS**

The Contract rates shall remain fixed for a period of twelve months to 31 March 2020. Thereafter the Contract price shall be reviewed on 1st April of each subsequent year of the Contract.

1. **SUITABILITY OF EMPLOYEES**

Within five working days of the award of any Contract, the Operator must provide the Council in writing a list of names and addresses of all their employees who will be used on this Contract and **must**, during the period of the Contract, notify the Council of the names and addresses of any new employee not less than fourteen working days before he/she commences employment on this Contract.

The Council has a responsibility to protect children and vulnerable adults for whom they are responsible. Therefore all drivers that an Operator wishes to use under this Contract will be deemed exempt from the ‘Rehabilitation of Offenders Act 1974’.

**DBS Checks** - All drivers to be used on this Contract must have an Enhanced Disclosure and Barring Scheme (DBS) Certificate including a Children and Vulnerable Adult Barring List check or complete a new DBS application.

Drivers currently registered with the Council will not need to complete another DBS form if they are registered with the checking service. Details of their registration are to be given to the Council and a status check will be performed. If they have not previously registered with the checking service, then a new DBS check will be required.

Drivers who have received authorisation from Taxi Licensing may require a new DBS if their Enhanced DBS certificate does not include the vulnerable adult and children barring list check.

Any new driver wishing to join a company with a current DBS form may do so if they have registered for the checking service and a check has been carried out by an authorised Officer of the Council.

Where a new DBS is required, the Operator will be charged £50 for each DBS processed.

No drivers may be used on the Contract until one of the above processes has been completed.

**Safeguarding Training** - In addition to the DBS checks it is a mandatory requirement for all drivers used on the Contract to undertake a Safeguarding of Children training course. This course will be certificated, is transportable and will last for the period of the Contract. The cost of this training is £50 per driver. Drivers that may have undertaken this training for other Authorities may provide a certificate of training and details of the course content. This will be presented to the Local Safeguarding of Children Board (LSCB) who will decide if the course is suitable. If the LSCB decide the content is not suitable the driver will have to undertake the Bath and North East Somerset course.

All drivers must have completed this training within six months of the commencement of the Contract, or within six months of starting work with the Operator

If, after having made all relevant enquiries, the Council is of the opinion that any of the Operator’s employees are not suitable to be engaged under the terms of this Contract the Operator will be notified in writing and on receipt of such notification the use of any individual named shall no longer be permitted under this Contract. An Operator will be in breach of the Contract if any named individual continues to be used under the terms of this Contract and this breach will enable the Council to terminate the Contract forthwith. If in the opinion of the Council the reason an Operator’s employee may not be used on the Contract is sufficiently serious the Operator will be informed by phone or e-mail and the named employee must be removed from the Contract immediately. This will be confirmed to the Operator in writing.

Certain routes will require the Operator to convey Guide Escorts provided by the Council, in which case full details will appear on the schedule. In some instances, the Operator may be requested to provide an escort as part of the Contract or in emergency situations. Any person employed in a Guide Escort role by the Operator is to also meet the DBS and Safeguarding requirements.

1. **THE DRIVER/SUPERVISOR**

The Operator shall provide a driver, and will not permit any person to drive the vehicle in the execution of the Contract unless the Operator has ascertained that the person has all necessary licences to drive the vehicle under the Contract. A regular driver, who must be of clean and smart appearance, should be used on each route awarded.

The Operator shall enter into a binding written agreement with each and every driver, which shall provide that:

1. The driver must take all proper precautions to ensure the safety of passengers being carried.

b) The driver should ensure that their vehicle is not overloaded, and that each passenger should have his or her own allocated seat with seat belts secured.

c) Any instances of overloading or potential overloading should be reported immediately to the Passenger Transport Section.

d) All drivers shall be of clean and smart appearance. P.C.V. and Section 19 permit drivers must carry appropriate current approved photographic identification, which for this Contract will be an ID card issued by the Council. Hackney Carriage and Private Hire Vehicle drivers must always wear the appropriate badge issued to him/her by the relevant Licensing Authority whilst undertaking this Contract.

e) The driver shall not smoke at any time when in charge of the vehicle or allow anyone to smoke on, or in the vicinity, of the vehicle at any time.

f) It shall be the personal duty of the driver to ensure the safety and wellbeing of the passengers while in the vehicle or while entering or alighting from the same and shall report immediately to the Head of the school or establishment attended any cases of disorderly or unruly conduct including any passengers that do not remain seated or do not wear their seat belts during the journey and must also complete a drivers report to be sent to the Passenger Transport Section.

g) It shall be the responsibility of the Operator to obtain adequate insurance to cover the costs incurred as a result of damage to a vehicle caused by the passengers.

h) The driver will personally open, close and properly secure the door(s) of the vehicle before and after any passengers enter or alight from the vehicle and ensure that all such operations be carried out in a safe manner.

i) The driver shall provide all reasonable assistance with and be responsible for the loading or unloading of passengers and belongings to/from vehicles within sight or reasonable proximity of premises.

j) The driver must carry a timetable inclusive of pick-up points and times.

k) Drivers must not carry unauthorised passengers on a vehicle whilst employed under the terms of this Contract.

l) Drivers must not give to, or receive gifts from any passenger. Any driver found to be giving or receiving gifts would be removed from the Contract immediately.

m) Drivers must not become over familiar with passengers and should behave in a courteous and professional manner at all times.

n) The driver is responsible for checking their vehicle at the end of every route to ensure that all children have vacated the vehicle and that there is no damage or items left behind. Any incidences are to be reported to the Passenger Transport Section immediately.

The Operator shall personally ensure that drivers understand the nature of their duties and shall take all reasonable steps to ensure these duties are fully discharged at all times.

The Operator may be required to convey a supervisor, authorised Officer or escort provided by the Council.

The Operator must ensure that all drivers are issued with the Council's 'Contractor Drivers Handbook', the requirements of which must be adhered to at all times.

1. **VEHICLE REQUIREMENT**

Vehicles with over eight passenger seats should be licensed as a Passenger Carrying Vehicle and equipped with suitable first aid and fire extinguishing equipment.

Vehicles with eight or less passenger seats should be licensed as a Hackney Carriage or Private Hire Vehicle by the Council having jurisdiction where they are to operate.

**SECTION 19** – Community Groups that operate under Section 19 permits are permitted to join the Contract. In line with Department for Transport guidelines, work carried out within this Contract is considered commercial activity. Bids from Section 19 operators will therefore only be considered if they are at least 10% lower than the cheapest commercial operator bid, or no commercial operator is available to carry out the route.

NB: The Council anticipates this is how the Section 19 permits will be considered however it reserves the right to change its mind should the Government consultation process conclude that a different approach is needed. The Council will confirm the approach to Section 19 permits once Government consultation results are known.

The Operator will provide a motor vehicle which is to the satisfaction of the Council and in all respects suitable for the purpose of the Contract and will see that the said vehicle is kept clean, adequately heated and ventilated, and in a proper state of repair and good running order at all times and that it complies with such regulations as may be made under or by virtue of the Road Traffic Acts and the Public Passenger Vehicle Act 1981. Failure to comply with the necessary legislation may render the Contract invalid.

The Operator shall inform the Council of the vehicle make, model, number of seats, registration number and date of first registration for each vehicle being used on the Contract within 14 days of the Contract start. Any change of vehicle is to be reported accordingly.

Should a vehicle be considered unfit for use under the Terms of this Contract, the vehicle must not be used by the Operator for any route until the vehicle has been inspected by an authorised Officer of the Council and has been passed as fit. The associated costs in effecting the improvements required to satisfy the requirements of the Contract, including the inspection of the vehicle, must be met by the Operator.

It shall be the duty of an Operator to comply with the Public Service Vehicles (Conditions of Fitness, Equipment and Use) Regulations 1981, notwithstanding the fact that they may not be required by Law to so comply.

All vehicles provided under the terms of this Contract must be fitted with seat belts.

All cars provided under the terms of this Contract shall be constructed so as to have at least four doors and be fitted with seat belts.

It is the Operator's responsibility to display any signs, certificates, discs etc. as required by the Council.

The Operator must comply with any Act, Regulation or directive now in force, or to be enacted in the future relating to warning signs for school buses and shall be responsible for any associated costs.

The Operator shall ensure any special seats or harnesses etc., supplied by the Council shall be fitted to any vehicle used in the performance of this Contract and any such installations shall be to a standard designated and approved by the Council or its agents. It is the Operator’s responsibility to report to the Council any damage to this equipment.

In the case of PCV Vehicles the use of side facing seats will not be permitted.

Any vehicle provided under the terms of this Contract shall be available at all reasonable times for inspection by a duly authorised Officer of the Council.

All vehicles over 12 years of age, except those covered by other regulatory bodies (Hackney Carriage and Private Hire), during the lifetime of the Contract will be subject to an annual inspection. The cost of this inspection for vehicles up to 16 passenger seats is £100 and for vehicles 17 passenger seats and above £395.

Although no age limit applies to vehicles being used on the Contract (except those covered by other regulatory bodies) all vehicles are expected to be in a good clean condition. Any vehicle deemed to be unsuitable by the Council can be removed from the Contract, even if it meets all legal requirements.

Operation of a PCV aged over 12 years that has not had this check may result in a fine as per section 18.2.

Any vehicle supplied to the Council for the carriage of wheel-chair-bound clients must comply with the Department of Transport Code of Practice, The Safety of Passengers in Wheelchairs on Buses, (Publication 87/1) even though the vehicle may not be registered as a Passenger Carrying Vehicle. The Operator must ensure the driver of such a vehicle shall have received adequate training in the securing of wheelchairs in the vehicle. All wheelchair restraints, runners and securing tracking must be kept in good condition.

Occasionally it is necessary that a child/client be secured to his/her seat by means of a safety harness. In this event the Head teacher, Unit Supervisor of the establishment concerned, or the Passenger Transport Section will advise the Operator. The appropriate equipment will then be issued on loan to the Operator, who will be responsible for its safekeeping and correct fitting to an existing seat.

Where the schedule requires the Operator to supply a vehicle with a tail lift or ramp for wheelchair access they shall only install, employ or have fitted a recognised manufacturer’s custom built accessible adaptation, which may be subject to inspection by Transport Services.

Some passengers may have difficulty accessing vehicles with high steps. Where specified a low floor/entrance vehicle will be supplied by the Operator.

The Operator will at all times keep proper records of all routine services, inspections, repairs and work carried out on their vehicles even where this is not a legal requirement and all such records shall be produced whenever required for inspection by any authorised Officer from the Council.

The Operator must comply with the drivers’ hours’ regulations, and retain records as proof of compliance, such records must be available for inspection by any authorised Officer from the Council.

The Operator will be required to carry out daily inspections to ensure that all equipment is properly maintained. Any equipment found to be defective must be immediately reported to the Passenger Transport Section.

The Operator must keep a record of any complaints received from schools, parents or clients, together with details of resolution. This record is to be available for inspection by a Council Officer on request.

1. **VEHICLE INSURANCE**

The Operator shall maintain throughout the Contract a policy of Insurance in respect of every vehicle used in the execution of the Contract against all claims for loss or damage to property or injury to or death of any person arising out of the use of any such vehicle by the Operator, their servants or agents. The policy must extend to provide an indemnity to the Council, of at least £5,000,000 per claim or series of connected claims.

1. **VEHICLE DOCUMENTS**

The Operator shall, at least seven working days before the commencement of the Contract, deliver to the Council the original policy and certificate of insurance, together with any test certificate and vehicle licence(s) including Operators Licence and Section 19 permits issued and further will produce all such documents at any time during the Contract to the Council or its representatives on request and will permit the Council to make and retain copies of such documents. Upon any amendment being made on such policy of insurance and upon the renewal thereof, the Operator will further produce all documents affected.

1. **PUPIL TRAVEL PASSES**

Every pupil authorised to be carried by the Council by coach or bus will be issued with a pass, indicating that pupil's entitlement to travel on the service, and it shall be the duty of the Operator to ensure that such passes are examined when boarding. Any pupil failing to produce a pass should be reported immediately to the Passenger Transport Section and the Head Teacher of the relevant school.

Pupils in school uniform without a valid pass should not be prevented from boarding and travelling on the inbound journey providing it is safe to do so, and the vehicle is not overcrowded. Sixth form students may be refused travel.

Any pupils or students that board without a pass are to have their names taken and care to be reported to the Passenger Transport Section via a Drivers Report, where instructions will be issued to the Operator. Students are to be informed that they must source a temporary pass from the school; otherwise travel may be refused on the homeward journey.

Pupils without a pass on the outbound journey can be left at the school premises, but a member of the school staff must be fully informed of the situation.

Passes issued by the Council shall be valid only on the route and days and within the times specified in the Contract unless otherwise agreed by the Operator and the Council to meet exceptional circumstances. All passes contain a barcode that relates specifically to the child it has been issued to. If requested, drivers are to scan this barcode on each journey.

The pupils shall be picked up and set down only at such places and within the range of times as specified or as from time to time may be specified in writing by the Council.

Passes are not issued to pupils or vulnerable adults travelling on taxis or minibuses. In this instance drivers should refer to their route schedule to check that they are only collecting those that have been authorised by the Council. Passenger Transport will provide a new route schedule whenever there is a change to the route or passengers.

1. **REPORTING OF ACCIDENTS**

In the event of an accident involving the vehicle at any time during which it is being used for the performance of this Contract, whether injury has been sustained or not, the details of such an accident must immediately be reported by telephone or e-mail to the Passenger Transport Section (Tel: 01225-394371, e-mail [Passenger\_transport@bathnes.gov.uk](mailto:Passenger_transport@bathnes.gov.uk)). A written report concerning the accident is to be received within 24 hours. If an accident involving a vehicle that is to be used on the Contract should occur at a weekend or evening the Operator must confirm details in writing on the next working day. In the event that an Operator fails to report an accident the Council reserves the right to make deductions from monies otherwise owed.

1. **ADDITIONAL STANDARD ELEMENTS**

The Operator will only convey the designated passengers in accordance with these provisions and shall not amend these conditions unless instructed to do so by the Transport Services Section.

The Operator will ensure any variations in the route or timetable requested by the Council are implemented. Variance in route length in excess of 10% can be reviewed and may be re-priced where appropriate. If any revised rate is unacceptable to the Council, the Council shall have the right to terminate the Contract and seek an alternative Operator.

The Operator may supply a larger vehicle than needed for the Contract at their own discretion providing the Council is charged at the smaller vehicle rate.

If, at any time the number of passengers to be carried rises to such an extent that it is no longer safe or practicable to convey them in a vehicle originally specified the existing Operator will be invited to supply a larger vehicle. If extra cost is involved in supplying a larger vehicle the Council reserves the right to re-price or re-tender the route.

If, at any time the number of passengers to be carried falls to such an extent that the Council regards it as no longer practicable to convey them in the vehicle originally specified the Council reserves the right to re-price or re-tender the route.

If mileage on any route decreases by more than 10% the Council reserves the right to re-price or re-tender the route.

If mileage on any route increases by more than 10% the Operator may apply for a price increase. The Council would still reserve the right to re-tender the route if the price increase sought by the Operator was deemed excessive.

The Council will only take responsibility for payment of journeys that have been modified if confirmation of acceptance has been given to the Operator in writing.

It is the Council’s responsibility to communicate the first day of term for each school and any inset days, School opening and closing times are correct at the time of issuing journey schedules however they are subject to change. Operators providing Home to School services should make every attempt to acquaint themselves with School dates via liaison with the Schools, web sites for the School and the Council.

The Operator shall make every reasonable effort to provide the same driver and, where applicable, guide escort, for the same routes and passengers on a regular basis.

The Operator shall ensure that all staff, including drivers and guide escorts, are prohibited from taking photographic and video images of passengers, with the exception of authorised Closed Circuit Television (CCTV) equipment. If a Operator has CCTV fitted, they must advise the Passenger Transport Section.

The Operator will ensure that drivers and guide escorts shall not smoke, drink or eat whilst performing their duties, and are prohibited from offering food, drink, medicines, money, cigarettes or any other substances to all passengers.

Where a passenger must eat as part of their condition, for example passengers with diabetes, the food eaten must only be that supplied by the passenger or their parent or guardian.

1. **Punctuality**

The Operator shall ensure that its drivers are aware of the importance of them arriving at each passengers home or designated location at the planned times for both pick up and dropping off.

Operators need to contact the Passenger Transport Section to report if they anticipate they will be over 15 minutes late.

On occasions when delays are unavoidable, the driver must provide explanations and,when appropriate, apologise for the delay to both passengers and their carers (if applicable), i.e. offer the reasonable courtesy most individuals expect under such circumstances.

Drivers must manage potential punctuality problems on route by using on-board communication system to keep their management/base up to date with the circumstances affecting their progress. The Operator must then immediately liaise with the Council for that specific journey in order that schools, care establishments and/or carers can be kept informed.

If Operators are made aware that a passenger no longer requires transport, this is to be reported to the Passenger Transport Section.

1. **Passengers not available or not ready**

Taxis & Minibuses - The Operator should ensure that the passengers and/or carer is aware that transport has arrived. If the passenger is not ready to travel, then a ‘waiting period’ of 3 minutes should be applied beyond the agreed pick-up time. Once the ‘waiting period’ has elapsed the driver must tell the passenger and/or carer that the vehicle cannot delay any longer before proceeding. If there are other children in the car, then the driver is only permitted to leave the vehicle to make the passenger/carer aware they are there if there is also a guide escort on board. This is to be reported to the Passenger Transport Unit using a Driver Report Form as the passenger should not be expecting the driver to go to the door.

However, if the vehicle has arrived before the agreed pick-up time, the 3 minutes waiting time should only begin once the agreed pick-up time has been reached.

If the passenger is not at the pick-up point, then a ‘waiting period’ of 3 minutes should be applied. Once the 3 minutes is completed the vehicle can proceed without the passenger. The driver or their manager should then telephone the Passenger Transport Section to inform them of the situation. A written record should be maintained by the Operator detailing all occurrences of the non-delivery of the service in these circumstances, as each incident will be reviewed.

Buses and Coaches – at no time should the vehicle leave the stop before the designated time in the route schedule. Drivers are to be alert to children who may be rushing to catch their bus and should never pull away if they are aware of passengers nearby. Persistent lateness is to be reported on a Driver Report Form and submitted to Passenger Transport.

1. **COMPLIANCE OF CONTRACT**

The Operator must permit the Council's authorised Officers to act as Inspectors on any vehicle used by the Operator when in service under the terms of this Contract. The said Officers shall be permitted to board vehicles provided for the purpose of surveying passenger movements, the reliability or regularity and standard of service provided and, where applicable, to inspect tickets, passes and permits, waybills or other records or equipment kept by the Operator's drivers or other staff.

1. **ASSIGNMENT AND SUB CONTRACTING**

Except in emergencies, the Operator shall not transfer, sublet or assign directly or indirectly to any person whatever any part of the Contract without prior written permission of the Passenger Transport Manager.

With any sub-contracting the Operator will be held responsible and liable as if they had carried out the work with their own vehicles and staff.

Sub-contractors and the circumstances under which they are employed must be acceptable to the Council.

In the event that the Operator sub-contracts without prior permission, the Council reserves the right to make deductions from monies otherwise due to the Operator.

The above conditions shall not apply in the event of any emergency arising from or due to breakdown or accident of a vehicle used in the performance of this Contract in which case the Operator may sub-contract or assign this Contract for a period not exceeding three days provided the Council reserves the right to prohibit the use of any specified person or Operator for this purpose and subject to approval by the Passenger Transport Manager within 24 hours of the event.

1. **FAILURE TO PERFORM AGREEMENT SERVICES**

If the Operator shall fail fully or in part to perform to the satisfaction of the Council any of the services set out in the schedule below then the Council may make a deduction or deductions from the daily Contract price set out therein in accordance with the following terms:

|  |  |
| --- | --- |
| 1. Failure to notify any change of operational details (address, telephone number etc) | 100% of the daily Contract Price. |
| 1. Failure to carry appropriate driver identification | 100% of the daily Contract price |
| 1. Usage of a driver or escort not previously notified to, or approved by, the Council. | 100%of the daily Contract price |
| 1. Failure to operate all or part of the Contract. | Up to 100% of the daily Contract price |
| 1. Poor timekeeping, including early arrival at destination | Up to 100% of the daily Contract price |
| 1. Failure to fit any harness or special seat provided by the Council | 100%of the daily Contract price |
| 1. Provision of a vehicle which, in the opinion of the Council, is not of an adequate standard, clean, properly maintained, and/or adequately heated. | Up to 100% of the daily Contract price |
| 1. Operation of a vehicle not previously notified to or approved by the Council. | 100% of the daily Contract price |
| 1. Usage of a PSV aged 12 years or more without a satisfactory Council vehicle inspection report | Up to 100% of the daily Contract price |
| 1. Failure to provide an adequate number of seats | 100% of the daily Contract price plus the cost of any additional transport required due to failure. |
| 1. The carrying of unauthorised passengers | Up to 100% of the daily Contract price |
| 1. Failure to provide the vehicle or driver documentation for inspection | 50% of the daily Contract price until the documents are produced |
| 1. Failure to display any marking or notice required by the Council including any legal requirements | 50% of the daily Contract price until the situation is rectified |
| 1. Failure to operate in accordance with the details of the Route Schedule without the prior approval of the Council. | 50% of the daily Contract price |
| 1. Failure to produce insurance, licensing documentation, health and safety information or complaint details with 7 days of a request by an authorised Council Officer. | 50% of the daily Contract price until the situation is rectified |
| 1. Failure to report accidents to the Council within specified time scale. | 50% of the daily Contract price |
| 1. Poor performance i.e. performing in a manner which, in the opinion of the Council, is inappropriate, unprofessional or liable to bring the Council into disrepute. | Up to 100% of the daily Contract price |
| 1. Smoking in the vehicle | 100% of the daily Contract price |
| 1. Sub-contracting without the Council’s written approval | 100% of the daily Contract price |

The Council will inform the Operator in writing of any deduction that is to be made, detailing the reasons why. The Council will then invoice the Operator for the full amount to be repaid. Should the Operator disagree then the Operator should inform the Group Manager, Transport and Parking in writing, giving the reasons for the disagreement no more than seven working days after receipt of the deduction notice.

The Operator must ensure that payment is made (unless wishing to appeal) within seven working days of receipt of the deduction notice and invoice. Failure to comply may result in termination of the Contract.

The Group Manager, Transport and Parking is authorised to waive any penalty if they are satisfied that the failure to operate or irregular operation arose as a result of difficult weather conditions, particular cases of traffic delay or other unforeseen circumstances. It is the responsibility of the Operator to advise the Passenger Transport Section of any instances of non-performance. Where the Group Manager, Transport and Parking considers that there are reasonable mitigating circumstances, penalties will not be applied.

It is the responsibility of the Operator to provide a replacement vehicle in the event of the original vehicle being unavailable for whatever reason.

The Passenger Transport Section will not authorise payment in respect of emergency bookings made directly with clients outside of normal office hours, unless full details are reported by the Operator before 10.00am the following working day and the Operator produces written confirmation of their booking when submitting their invoice for the work.

1. **COMMUNICATIONS (e-mail is an acceptable form of communication for this section)**

Operators must ensure that appropriate personnel are available to respond to telephone enquiries between the hours of 8.00am and 4.30pm. Provision must also be made by Operators to allow contact outside of normal office hours.

Where a written response is required, Operators must ensure that correspondence is acknowledged within seven working days.

Changes in Operators telephone numbers or corresponding address must be notified in writing to the Passenger Transport Section within 24 hours of the change.

The Operator shall send the Council, within seven days, all written comments or complaints they receive about any Contract or its performance. The Operator should reply in writing to such correspondence, and forward a copy of the reply to the Council, within fourteen days of the original comment or complaint.

1. **COMPLIANCE WITH HEALTH & SAFETY AT WORK ACT**

Without prejudice to the general Law relating to the Health and Safety at Work (etc) Act 1974 (hereinafter called "the Act") the Operator shall ensure that any vehicle hired under this Contract shall be examined at appropriate regular intervals and shall be inspected as required, to conform to the Act and any other relevant legal provision that may be in force at the time, and that all requirements shown to be necessary as a result of such examination or inspection be carried out before it is hired for use by the Council for the carriage of passengers. All documents and certificates relating to such inspections and legislation shall be produced whenever required for inspection by any Officer authorised by the Council.

Operators must ensure that they satisfy all current Health and Safety legislation for all work carried out on behalf of the Council and that Risk Assessments have been completed and are reviewed by the Operator on a regular basis. Proof of Risk Assessments must be kept by the Operator and made available for inspection by authorised Council Officers when required. Risk Assessments may be monitored by the Council to ensure that Operators incorporate Health and Safety Management Systems effectively.

Operators shall ensure that their employees undergo all necessary training and refresher training appropriately in the course of the Contract relating to Safe Working Practices.

The Council shall have the right to suspend any part or the whole of the Contract if there is any reference to the Traffic Commissioner or other licensing body regarding supervision, suspension or revocation of any or the whole of the licences of the Operator's fleet of vehicles. If the Council shall suspend this Contract it may be so suspended for a period or periods at the Council's discretion that the Council may consider necessary having regard to the cause of the suspension, supervision or revocation of the said licences by the Traffic Commissioner or other licensing body.

The Operator must immediately inform in writing to the Passenger Transport Manager any decision (or pending decision) by the Traffic Commissioner or any containment, revocation or variation by the Traffic Commissioner of the Operators competence to hold an Operator’s licence.

**IN WITNESS** of which this Agreement has been duly executed by the parties.

**SIGNED** for and on behalf of **Bath & North East Somerset Council**

**Signature……………………………**

**Name………………………………..**

**Position……………………………..**

**Date…………………………………**

**SIGNED** for and on behalf of **[*Contractor*]**

**Signature……………………………**

**Name………………………………...**

**Position………………………………**

**Date………………………………….**

SPECIFICATION SCHEDULE

*[insert description of the Services to be supplied including, where appropriate, the Key Personnel, the Premises and the Quality Standards]* PRICING SCHEDULE

*[insert pricing provisions as appropriate]*

CONTRACT MANAGEMENT SCHEDULE

*[insert monitoring provisions as appropriate]*

DATA PROCESSING SCHEDULE

**Processing, Personal Data and Data Subjects**

1. The Contractor shall comply with any further written instructions with respect to processing by the Customer.

2. Any such further instructions shall be incorporated into this Schedule.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of the  processing | Home, school, care home, day centre, transport times and other necessary details required for the safe transportation of children and vulnerable adults on B&NES contracted transport. |
| Duration of the  processing | The Contract is for four years, however routes may be required for shorter periods within the four years. |
| Nature and purposes of the processing | Information may be forwarded to the contractor by e-mail or post. |
| Type of Personal Data | Name, address, contact telephone number, specific needs (ie, car seat, harness) and details of any specific learning or behavioural difficulty only  insofar as it relates to providing safe and suitable transport for the child/client.  Name, address and contact number of B&NES Guide Escort allocated to the route (where applicable) |
| Categories of Data  Subject | Staff, customers/ clients, patients,  students / pupils, |
| Plan for return and  destruction of the data  once the processing is  complete UNLESS  requirement under union or member state law to preserve that type of data | The Contract is for four years, however information should be held only as long as the contract is in force.  Contractors are to delete/destroy any information after this time. |

COMMERCIALLY SENSITIVE INFORMATION SCHEDULE

*[insert commercially sensitive information as appropriate and if known the dates that the information will remain commercially sensitive]*