

Dynamic Purchasing System (DPS)

**For the provision of Passenger Transport
for Somerset County Council**

Volume 0 – Conditions

Contents

Clause

1.	Definitions and Interpretation.....	6
2.	Term.....	15
3.	Extending the DPS Term.....	15
4.	Due diligence and Supplier's warranty	16
5.	Supply of Services.....	17
6.	Suspension.....	18
7.	Service standards.....	21
8.	Compliance	22
9.	Authority's Assets	23
10.	Performance measurement.....	10
11.	Payment	25
12.	Service Credits	26
13.	Key Personnel	27
14.	Other personnel used to deliver the Services.....	28
15.	Safeguarding children and vulnerable adults	29
16.	TUPE.....	29
17.	Reporting and meetings	29
18.	Monitoring.....	30
19.	Call-off Specification, Change control and Continuous Improvement	31
20.	Dispute resolution.....	31
21.	Sub-Contracting and assignment	31
22.	Indemnities	33
23.	Limitation of liability	33
24.	Insurance.....	33
25.	Freedom of Information	34
26.	Data protection	35
27.	Confidentiality.....	38
28.	Audit	39
29.	Not Used	Error! Bookmark not defined. 42
30.	Equal Opportunities	Error! Bookmark not defined. 42
31.	Termination on notice.....	42
32.	Force majeure	42
33.	Prevention of bribery	43
34.	Consequences of termination.....	45

35.	Non-solicitation	45
36.	Waiver	46
37.	Rights and remedies	46
38.	Severability	46
39.	Partnership or agency	46
40.	Third party rights	47
41.	Publicity	47
42.	Not Used	47
43.	Entire Agreement	47
44.	Counterparts.....	47
45.	Governing law	48
46.	Jurisdiction	48
47.	Policies.....	49

Volume

Volume 0 - Terms and Conditions

Volume 1 Service Specification Conditions 51

Schedule 1 Exit Plan.....**Error! Bookmark not defined.**

Schedule 2 Call-Off Specification Change Control Procedure 81

Schedule 3 TUPE 85

THIS AGREEMENT is dated the Commencement Date

Parties

- (1) SOMESET COUNTY COUNCIL, County Hall Taunton Somerset TA1 4DY (**Authority**).
- (2) [FULL COMPANY NAME as per System registration details] (Approved **Supplier**).

Background

- (A) The Authority sought proposals for the provision of a multi Lot Dynamic Purchasing System by means of an electronic public tender exercise taking the form of a multi Lot Dynamic Purchasing System to encompass the provision of Call-Off Contracts and Accelerated Call-Off Contracts for:
 - (a) Lot 1 – Vehicles with 23 Passenger seats or more;
 - (b) Lot 2 –Vehicles with between 9 and 22 Passenger seats or fewer, including the driver)
 - (c) Lot 3 - Vehicles with up to 8 Passenger seats or fewer.
 - (d) Lot 4 –Vehicles with up to 8 passenger seats where Service is required on an accelerated timescale.
- (B) The Approved Supplier has applied for admission to the DPS and the Authority has, through a competitive, electronic and transparent process, selected the Approved Supplier to provide Services for one or more of the Lots and the Approved Supplier is willing and able to provide the selected Services for the Payment in accordance with the terms and conditions of this Agreement.

WHEREAS:-

- (A) The Authority required the Services to be provided, as set out in this Agreement, and any subsequently let Call-Off Contracts and/or Accelerated Call-Off Contracts.
- (B) To this end, the Authority has, through a competitive, electronic and transparent process, selected the Approved Supplier to provide one or more of these Services and the Approved Supplier is willing and able to provide the selected Services in accordance with the terms and conditions of this Agreement.
- (C) The Authority in compliance with the restricted procedure has evaluated and admitted providers to the DPS that have satisfied the Pre-Qualification Questionnaire and Quality Submission selection criteria and submitted a Tender which complies with the Authority's requirements. The DPS remains open

throughout its lifetime and the Authority shall evaluate any new Tenders received from possible providers at any time.

- (D) The Approved Supplier has been admitted to the DPS and is entitled to submit Offers for Call-Off Contracts and/or Accelerated Call-Off Contracts to be awarded under the DPS within the Lots for which the supplier has been awarded the status of Approved Supplier, but the Approved Supplier is not guaranteed any award of work or as a result of being admitted to this DPS.
- (E) The Authority intends to use this DPS and has formulated an intention to award Call-Off Contracts and Accelerated Call-Off Contracts under the DPS and will invite all those providers admitted onto the DPS to submit Offers as opportunities arise within the relevant Lots.
- (F) The supplier was first invited to submit a Pre-Qualification Questionnaire response, which once completed to the Authority's satisfaction, provided the supplier with the status of Registered Supplier. The Registered Supplier was then invited to complete its Quality Submission for each Lot applicable to the Services it provides, which once completed to the Authority's satisfaction provided the Registered Supplier with the status of Approved Supplier for the appropriate Lots.
- (G) The Approved Supplier submitted a Tender which contains the Approved Suppliers proposals for meeting the Authority's requirements and on the basis of the Approved Suppliers Tender the Authority wishes to engage the services of the Approved Supplier to provide the Services (as hereafter defined).
- (H) The Approved Supplier may amend its Tender to include additional Lots, as required, by completing an additional Quality Submission response which is specific to the Lot it wishes to add to its offering to the Authority.
- (I) The Approved Supplier is willing to provide such Services to the Authority on and subject to the terms and conditions of this Contract and hereinafter set out.

IT IS HEREBY AGREED AS FOLLOWS:-

Agreed terms

1. Definitions and Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Accelerated Call-Off Contract	means a Call-Off Contract let on a reduced timeframe due to the particular needs of the Call-Off Contract
Approved Supplier	means a Registered Supplier who has completed and met, or exceeded, the minimum standard required by the Authority within the Quality Submission to become an Approved Supplier, and who is not currently Suspended.
Authorised Representatives:	the persons respectively designated as such by the Authority and the Supplier, through the Call-Off Specification. The term shall be deemed to be preceded by 'or appropriate delegate' and the term Key Personnel as per clause 13 shall be used accordingly as relates to an Approved Supplier.
Authority Assets:	any vehicle or equipment owned or held by the Authority and provided by the Authority for use in providing the Services where applicable.
Bribery Act:	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
Call-Off Specification Change	means a required addition or reduction to the scope of a Call-Off Contract or Accelerated Call-Off Contract which has taken place after the initial execution of such a contract that requires a change to be made to the Service and/or price.
Call-Off Specification Change Control Procedure	means the process through which a Call-Off Specification Change may be executed.
Call-Off Contract	means a requirement for the provision of a service, which is not Out Of Hours or an Accelerated Call-Off Contract, to be let under the terms of this System, and any additional

	Call-Off Terms and Conditions, which will be offered to all Approved Suppliers within the Lot and Geographical Area to which it pertains.
Call-Off Specification	means the particular requirements required for the Approved Supplier's delivery of a Call-Off Contract or Accelerated Call-Off Contract as specified at the point that the Call-Off Contract or Accelerated Call-Off Contract is let through the System.
Call-Off Award Criteria	means the weighting between price and quality that the award for the Call-Off Contract or Accelerated Call-Off Contract will be based upon.
Call-Off Terms and Conditions	will be as per the terms and conditions set out in this document, save for additional Terms and Conditions which are specific to a Call-Off Contract or Accelerated Call Off-Contract as set out in the Call-Off Specification.
Control:	has the same meaning as the word "control" in section 450 of the Corporation Tax Act 2010 (so that there shall be a change of control for the purposes of this Agreement whenever there would be a change of control under that section) and, to the extent not so taken to have control under that section, a person shall be deemed to control another if that other is its subsidiary and the word "Controls" shall be construed accordingly;
Change of Control	a change in Control of the Approved Supplier or a Sub-Contractor.
CEDR	Centre for Effective Dispute Resolution.
Commencement Date:	the date that the Registered Supplier becomes an Approved Supplier
Consistent Failure:	means instances of the Approved Supplier failing to operate Journeys, and instances of the Approved Supplier committing Defaults and/or Service Failures, as per the frequency described in clause 11 to volume 1.
Customer	any individual who receives a service or benefits from a service under this Agreement.
Data Processor:	shall have the same meaning as set out in the Data Protection Act 1998.
Data Protection	the Data Protection Act 1998 (DPA), the EU Data

Legislation:	Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
Default Notice:	is the notice given by the Authority to the Approved Supplier in the event that he commits a Default.
Default	means the failure of an Approved Supplier to perform a task or obligation expected of it as part of its delivery of the Services as detailed under this Agreement, including the requirements of the Call-Off Specification.
Dispute Resolution Procedure:	the procedure set out in clause 20.
Documents	means all approvals, certificates, authorisations, permissions, licences, permits, regulations, consents, validation or self-validation, and any other particulars required by the Authority from the Registered Suppliers or Approved Suppliers to provide assurance to the Authority of the suitability of the Registered Supplier or Approved Supplier to carry out the Service.
DPS Suspension	means the temporary relinquishment of the right to Offer or provide Services under the DPS.
DPS Term	means the period commencing on the date as specified in the OJEU advert ("Dynamic Purchasing System for the Provision of Passenger Transport for Somerset County Council") and ending on the date specified in the OJEU advert subject to any extension or termination.
Dynamic Purchasing System	means the procurement method used for the provision of the required Services, as set out in this Agreement. The Dynamic Purchasing System is an entirely electronic means of procurement which will remain open through the DPS Term to allow Registered Suppliers who meet the criteria to become an Approved Supplier to join the

	system to tender for Call-Off Contracts and Accelerated Call-Off Contracts. The terms System and DPS will be used interchangeably and shall be interpreted accordingly.
EIRs:	the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
Exit Data	means the information identified as such in schedule 1 (Exit Plan) and all other information which is agreed (whether in the Exit Plan or otherwise) to be provided to the Authority by the Approved Supplier under Schedule 1 on termination of this Agreement.
FOIA:	the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
Force Majeure:	any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.
Geographical Area	means areas within Somerset, using District Council borders to allow Approved Suppliers to further break down Call-Off Contracts and Accelerated Call-Off Contracts within Lots.
Health and Safety Policy:	where the Authority has not agreed an Approved Supplier's Health and Safety Policy, the Authority's Health and Safety Policy will apply.
Information:	has the meaning given under section 84 of FOIA.
Lots	means the division of the required services let through this System, which will be made known to Registered Suppliers as part of its application to become an Approved Supplier. Lots may be further subcategorised

	by Geographical Location at the discretion of the Authority.
Law:	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Approved Supplier is bound to comply;
Minimum Level Of Service	means, with consideration to all of the terms of this Agreement, including those additional Call-Off Terms and Conditions contained within the Call-Off Contract Specification awarded to the Approved Supplier, the level of performance and service acceptable to the Authority in the delivery of the Services.
Necessary Consents:	means all Documents necessary to be provided by the Registered Supplier or Approved Supplier for the performance of the Service including at the point in which a Registered Supplier seeks to become an Approved Supplier, and on an on-going basis as Documents expire or approach expiry, or at the sole discretion of the Authority for audit purposes.
Offer	means the response of the Approved Supplier as a result of the Authority issuing a Call-Off Contract or Accelerated Call-Off Contract through the System.
Offer Price	means the element of the Offer that states the rate of remuneration by the Authority to the Approved Supplier
Out Of Hours	means Call-Off Contracts or Accelerated Call-Off Contracts let outside, or let for delivery outside of, the standard operating times of 07:30-17:00 Monday through Friday.
Parties	means the Authority and the Approved Supplier and a reference to a Party shall mean a reference to either one of them;
Payments:	the Charges which shall become due and payable by the Authority to the Approved Supplier in respect of the Services in accordance with the provisions of this Agreement.

PCR 2015	Means the Public Contracts Regulations 2015
Personal Data:	shall have the same meaning as set out in the Data Protection Act 1998.
Pre-Qualification Questionnaire	means the initial set of requirements that the supplier must complete, to the satisfaction of the Authority, in order to become a Registered Supplier.
Prohibited Act:	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; (c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; (iii) defrauding, attempting to defraud or conspiring to defraud the Authority. (d) any activity, practice or conduct which would constitute one of the offences listed under <i>clause 1.1(c)</i>, if such activity, practice or conduct had been carried out in the UK.
Quality Submission	means the step taken by a Registered Supplier, by providing responses of a minimum standard to questions of Service competence; upload or validation of documents (as required by the Authority); within the Lots and Geographical Areas selected by the Registered Supplier, in order to become an Approved Supplier
Registered	means those suppliers who have completed and met, or

Supplier	exceeded, the requirements provided in the Pre-Qualification Questionnaire on the System.
Regulated Activity:	in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
Relevant Transfer:	a relevant transfer for the purposes of TUPE.
Replacement Services:	any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this Agreement, whether those services are provided by the Authority internally or by any Replacement Supplier.
Replacement Supplier:	any third party provider of Replacement Services appointed by the Authority from time to time.
Reputational Damage	any action by the Approved Supplier, whether in relation to the Services in this Agreement or otherwise, which in the opinion of the Authority's Authorised Representative has or may cause significant harm to the reputation of the Authority.
Request for Information:	a Request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.
Service Credits:	the sums attributable to a Service Failure as specified in the Call-Off Specification.
Service Failure	where an Approved Supplier is unable to meet the requirements of any awarded Call-Off Contracts or Accelerated Call-Off Contracts
Supplier's Personnel:	all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.
Service:	the services to be delivered by or on behalf of the Approved Supplier under this Agreement, as more particularly described in volume 0, and any subsequently

	let Call-Off Contracts and/or Accelerated Call-Off Contracts.
Sub-Contract:	any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.
Sub-Contractor:	the contractors or suppliers that enter into a Sub-Contract with the Approved Supplier.
Tender	the complete response from the Approved Supplier, including any additions made to the PQQ and Quality Submission, and all Quality Submissions submitted for each Lot.
Termination Date:	the date of expiry, subject to any extensions, or Termination of this Agreement.
Termination Period	means the period commencing on the date of Notice of any termination by the Authority or Approved Supplier in relation to this Agreement, or Call-Off Contracts let under this Agreement, as deemed necessary by the Authority, and in any event twelve Months before the expiry of this Agreement.
TUPE:	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).
Working Day:	Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)[and that person's legal and personal representatives, successors and permitted assigns].
- 1.4 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes communication through the System.
- 1.10 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.12 References to clauses, volumes and schedules are to the clauses, volumes and schedules of this Agreement, unless otherwise specified; references to paragraphs are to paragraphs of the relevant volume or schedule.
- 1.13 Where any statement is qualified by the expression **so far as the Authority is aware** or **to Authority's knowledge** or any similar expression, including with reference to the Registered Supplier or Approved Supplier, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.14 The Authority reserves the right to invite competitive quotations and/or place orders elsewhere for other or complementing services during the DPS Term. The Approved Supplier shall co-operate to the fullest extent possible with any other suppliers appointed to provide such other or complementing services.
- 1.15 The Authority is entitled to place orders for the Services as and when required through Call-Off Contracts and/or Accelerated Call-Off Contracts. No guarantee is given or implied by the Authority as to the volume or frequency of any such orders.
- 1.16 Where there is any conflict or inconsistency between the provisions of this Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the clauses of this Agreement;
- (b) Volume 1 to this Agreement;
- (c) the remaining schedules to this Agreement

- 1.17 Where there is any conflict or inconsistency between any clause or provisions of this Agreement with that of the Call-Off Terms and Conditions, the Call-Off Terms and Conditions will be deemed to take precedence, notwithstanding the requirement for the Approved Supplier to ensure that the remaining provisions of this Agreement are adhered to in full.
- 1.18 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.

Commencement and duration

2. Term

This Agreement shall take effect on the Commencement Date and shall continue for the DPS Term, notwithstanding any Call-Off Contracts or Accelerated Call-Off Contracts let under the Agreement the provision of which may extend beyond the DPS Term but in any event will be subject to the terms of this Agreement.

3. Extending the DPS Term

- 3.1 The Authority may extend this Agreement beyond the DPS Term by a further period or periods of up to two (2) years (Extension Period). If the Authority wishes to extend this Agreement, it shall give the Approved Suppliers at least two [2] months' written notice of such intention before the expiry of the DPS Term or Extension Period.
- 3.2 If the Authority gives such notice then the DPS Term shall be extended by the period set out in the notice up to a maximum period of two (2) years.
- 3.3 If the Authority does not wish to extend this Agreement beyond the DPS Term this Agreement shall expire on the expiry of the DPS Term and the provisions of clause 34 shall apply.

4. Due diligence and Supplier's warranty

4.1 The Approved Supplier acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement;
- (b) it has received all information requested by it from the Authority pursuant to clause 4.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Agreement;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to clause 4.1(b);
- (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
- (e) it has entered into this Agreement in reliance on its own due diligence.

4.2 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Approved Supplier by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

4.3 The Approved Supplier:

- (a) as at the Commencement Date, warrants and represents that all information contained in the Approved Supplier's Tender remains true, accurate and not misleading, including where the Registered Supplier has electronically validated aspects of the Tender to provide assurance to the Authority that any electronic representations of required Documents is a true and accurate likeness of that which it pertains to be, in its application to become an Approved Supplier save as may have been specifically disclosed in writing to, and accepted by, the Authority prior to execution of the Agreement;
- (b) will electronically validate updates to the Tender to provide assurance to the Authority that any electronic representations of required documents is a true and accurate likeness of that which it pertains to be, as is required due to the expiration or invalidity of previously accepted documents or as required at the sole discretion of the Authority, save as may have been specifically disclosed in writing to, and accepted by, the Authority prior to execution of the Agreement;

- (c) shall promptly notify the Authority in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services.

- 4.4 The Approved Supplier shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Approved Supplier in accordance with clause 4.3(c) save where such additional costs or adverse effect on performance have been caused by the Approved Supplier having been provided with fundamentally misleading information by or on behalf of the Authority and the Approved Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided.
- 4.5 The Approved Supplier is available and able to provide, from the Commencement Date, the required Services promptly (and in any event within any timeframes set out in the Call-Off Specifications) and in a professional and courteous manner so as to reflect and promote a positive image of the Authority.
- 4.6 The Approved Supplier will act at all times and deliver the Services strictly in accordance with the Call-Off Specifications and all provisions of the Agreement.
- 4.7 The Approved Supplier acknowledges that, as part of the Authority's own due diligence process, the Authority may undertake to carry out physical premises, equipment, vehicle, and/or Document checks to ensure that the information provided by the Approved Supplier as part of its Tender or any subsequent Offer is a materially true representation. For the avoidance of doubt, any Approved Suppliers who have not had a physical inspection as part of this or any other agreement held by the Authority within the previous 12 months will be inspected by the Authority's Key Representative (or appropriate delegate) before the execution of any Call-Off Contract or Accelerated Call-Off Contract let under this Agreement.
- 4.8 Nothing in this clause 4 shall limit or exclude the liability of the Authority or the Approved Supplier for fraud or fraudulent misrepresentation.

5. Supply of services

- 5.1 The Approved Supplier shall be available to provide the agreed Services to the Authority with effect from the Commencement Date and for the duration of the DPS Term in accordance with the provisions of this Agreement specific to all Call-Off

Contracts and Accelerated Call-Off Contracts awarded to the Approved Supplier under this Agreement.

- 5.2 In the event that the Approved Supplier does not comply with the provisions of clause 5.1 in any way, the Authority may serve the Supplier with a notice of DPS Suspension in writing setting out the details of the DPS Suspension and the steps that the Approved Supplier must take in order to have the DPS Suspension lifted, as per clause 6.

6. Suspension

- 6.1 The Approved Supplier will provide the Service in a manner that is, at least, equal to that Minimum Level Of Service.
- 6.2 The Authority will monitor Minimum Levels Of Service, as per this Agreement and as set out in the Call-Off Specification, and will use this information, if required, to apply a DPS Suspension to an Approved Supplier who falls below this Minimum Level Of Service. Such DPS Suspension will be at the discretion of the Authority and in line with the Minimum Levels Of Service criteria.
- 6.3 The Authority may Suspend the Approved Supplier, or Suspend any provision of any part of the Agreement by written notice to the Approved Supplier with immediate effect if the Approved Supplier commits a Default and if;
- (a) the Approved Supplier has not remedied the Default to the satisfaction of the Authority within 10 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied
 - (b) the Approved Supplier fails (in whole or in part) to perform any material obligation of the Approved Supplier owed to the Authority; or
 - (c) the Default is not capable of remedy; or
 - (d) the Default is a fundamental breach of the Agreement; or
 - (e) the Approved Supplier repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
 - (f) the Approved Supplier is in default of any duty of care or any fiduciary or statutory duty owed to the Authority or agent of the Authority. In the event that through any Default of the Approved Supplier, data transmitted or

processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Approved Supplier shall provide a full credit in respect of any charge levied for its transmission and will reimburse the Authority for any costs charged in connection with such Default of the Approved Supplier; or

- (g) the Approved Supplier purports to assign all, or any of, its obligations under this Agreement in breach of clause 21; or
- (h) where the Approved Supplier is a company and in respect of the Approved Supplier;-
 - (i) a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of its creditors; or
 - (ii) 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
 - (iii) 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
 - (iv) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - (v) 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
 - (vi) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
 - (vii) any event similar to those listed occurs under the law of any other jurisdiction
- (i) where the Approved Supplier is an individual and ;-
 - (i) 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 Approved Supplier's creditors; or
 - (ii) a petition is presented and not dismissed within 14 days or order made for the Approved Supplier's bankruptcy; or

- (iii) a receiver, or similar officer is appointed over the whole or any part of the Approved Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
 - (iv) the Approved Supplier 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
 - (v) a creditor 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 Approved Supplier's assets and such attachment or process is not discharged within 14 days; or
 - (vi) if the Approved Supplier, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Authority shall be entitled to Suspend this Agreement by notice to the Approved Supplier or the his representative with immediate effect; or.
 - (vii) the Approved Supplier halts or ceases, or threatens to halt or cease, to continue to deliver on all or a substantial part of his business.
- (j) The Authority shall be entitled to recover from the Approved Supplier the amount of any Loss resulting from Suspension under clause 6.
 - (k) The Approved Supplier agrees that upon Suspension for any reason (under clause 6 or otherwise) or on expiry of the DPS Term, it shall not be entitled to make a claim against the Authority in relation to costs incurred by the Approved Supplier in providing the Services, or costs incurred in acquiring assets or equipment and/or materials used in the provision of the Services, or in engaging third parties in connection with the Services, whether or not such costs were amortised in the calculation of the Offer Price payable by the Authority under this Agreement. For the avoidance of doubt, whether or not the Approved Supplier has been awarded Call-Off Contract or Accelerated Call-Off Contracts during the DPS Term shall have no relevance to the interpretation of this clause (k).
 - (l) The Approved Supplier acknowledges and accepts that where the Authority places reliance on the DPS to award Call-Off Contracts and Accelerated Call-Off Contracts there may be a number of such instances in place between the Authority and the Approved Supplier, where the Authority Suspend this Agreement in whole or in part the Authority shall have the right to Suspend all other Call-Off Contracts or Accelerated Call-Off Contracts with the Approved Supplier at its sole discretion.

- 6.4 In the event of a DPS Suspension being applied to an Approved Supplier by the Authority, the Approved Supplier will not be able to Offer for any further Call-Off Contracts, or Accelerated Call-Off Contracts in addition to those which are already held until such time that the Authority removes the DPS Suspension.

7. Service standards

- 7.1 Without prejudice to the Minimum Level of Service the Approved Supplier shall provide the Services, or procure that they are provided:
- (a) with reasonable skill and care and in accordance with industry best practice relevant to the industry or industries to which the Service pertains and all respects in accordance with the Authority's policies set out in volume 0 and as part of the Tender; and
 - (b) in accordance with all Applicable Laws.
- 7.2 Save for any instances where the Authority has provided use of Authority Assets, as part of the Call-Off Specification, the Approved Supplier shall provide at its own expense all staff, equipment, tools, appliances, materials or items required for the provision of Services to the Minimum Level Of Service.
- 7.3 To the extent that the Call-Off Specification includes the date, format and method of delivery of the Services and requirements, the applicable performance levels and methods of performance measurement, and any additional Call-Off Terms & Conditions in respect of the Services, the Approved Supplier will abide by the same.
- 7.4 The Authority will use its reasonable endeavours to provide Approved Suppliers with response times to Call-Off Contracts of not less than 10 Working Days whenever possible. The expiration period for Approved Suppliers to make Offers for Call-Off Contracts will be made clear in each case from the outset, including instances where the Call-Off Specification makes it clear that providing 10 Working Days to respond is not possible.
- 7.5 The Approved Supplier agrees that, in making itself available to Offer for Accelerated Call-Off Contracts, that there is no minimum period of notice which it can expect to be given prior to the closure of the Offer period for an Accelerated call-Off Contract. This includes the understanding that Accelerated Call-Off Contracts may be advertised and awarded within the same day.

8. Compliance

- 8.1 The Approved Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 8.2 Where there is any conflict or inconsistency between the provisions of the Agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Approved Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 8.3 The Approved Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
 - (b) the Health and Safety Policy
- 8.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards of which it becomes aware and which relate to, or arise in connection with, the performance of this Agreement. The Approved Supplier shall instruct the Supplier's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 8.5 Without limiting the general obligation set out in clause 8 the Approved Supplier shall (and shall procure that the Approved Supplier's Personnel shall):
- (a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Authority's equality and diversity policy as provided to the Approved Supplier from time to time; and
 - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality law; and

- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
- (c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

9. Authority's Assets

- 9.1 The Approved Supplier shall ensure that:
 - (a) where using any specified Authority Assets they are kept properly secure and it will comply and cooperate with the Authority's Authorised Representative's reasonable directions regarding the security of the same;
 - (b) any Authority Assets used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted).
- 9.2 The Approved Supplier shall maintain and repair the Authority Assets, unless otherwise specified, including, where such maintenance or repair arises directly from the act, omission, default or negligence of the Approved Supplier or its representatives (fair wear and tear excluded). Any costs incurred by the Authority in maintaining and repairing the same shall be recoverable from the Approved Supplier as a debt, unless otherwise agreed.
- 9.3 The Approved Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Approved Supplier, its agents, employees or Sub-Contractors to any property or Authority Asset of the Authority, or to any property or asset of any other recipient of the Services in the course of providing the Services.

10. Performance Measurement

- 10.1 In addition to any more specific obligations imposed by the terms of the Agreement, it shall be the duty of the Approved Supplier to provide the Services to the Minimum Level Of Service which in all respects shall be to the satisfaction of the Authority's Authorised Representative.

- 10.2 The Approved Supplier shall institute and maintain a properly documented system of quality control which is to the satisfaction of the Authority's Authorised Representative to ensure that the Minimum Level of Service is met
- 10.3 In addition to any other rights of the Authority under the Agreement, the Authority's Authorised Representative, or his appropriate delegate, shall be entitled to inspect the Approved Supplier's quality control system referred to in Clause 10.2 above.
- 10.4 During the DPS Term, the Authority's Authorised Representative, or appropriate delegate, may inspect and examine the provision of the Services being carried out by the Approved Supplier without notice at any time. The Approved Supplier shall provide to the Authority all such facilities as the Authority may require for such inspection and examination.
- 10.5 Remedies in the event of inadequate performance of the Services
- (a) 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 Approved Supplier's obligations under the Agreement, then the Authority shall take all reasonable steps to investigate the complaint. The Authority may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 6 of the Agreement.
- 10.6 In the event that the Authority is of the opinion that there has been a material breach of the Agreement by the Approved Supplier, then the Authority may, without prejudice to its rights under Clause 6, do any of the following:
- (a) without Suspending the Approved Supplier from the Agreement, itself supply or procure the supply of all or part of the Services until such time as the Approved Supplier shall have demonstrated to the reasonable satisfaction of the Authority that the Approved Supplier will once more be able to supply all or such part of the Services in accordance with the Agreement; and/or
 - (b) without Suspending the Approved Supplier from the Agreement, terminate and re-let the Call-Off Contract or Accelerated Call-Off Contract in and thereafter itself supply or procure a third party to supply such part of the Services; and/or
 - (c) Suspend the Approved Supplier in line with its rights under clause 6.

Charges and Payment

11. Payment

- 11.1 In consideration of the provision of the Services by the Approved Supplier in accordance with the terms and conditions of this Agreement, the Authority shall make the Payment to the Approved Supplier (in accordance with the Call-Off Specification and Offer Price) arising from the award, and subsequent delivery of Call-Off Contracts and/or Accelerated Call-Off Contracts following the Authority's acceptance of an Offer from the Approved Supplier.
- 11.2 The Approved Supplier shall invoice the Authority for Payment at the time the Charges are expressed to be payable in accordance with the Call-Off Specification. All invoices shall be directed to the Authority's Authorised Representative. Any such invoices shall take into account any Service Credits (where applicable) which have been accrued as part of the Approved Supplier's operations under this Agreement.
- 11.3 The Authority shall pay the Charges which have become payable in accordance with the Call-Off Specification within 30 days of receipt of an undisputed invoice from the Approved Supplier.
- 11.4 Where any party disputes any sum to be paid by it then a Payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 20. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 30 days after resolution of the dispute between the parties.
- 11.5 Subject to clause 11.4, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Approved Supplier shall not suspend the supply of the Services if any payment is overdue [unless it is entitled to terminate this Agreement].
- 11.6 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Approved Supplier shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Approved Supplier's failure

to account for, or to pay, any VAT relating to payments made to the Approved Supplier under this Agreement.

- 11.7 The Approved Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this Agreement. Such records shall be retained for inspection by the Authority for 6 years from the end of the calendar year to which the records relate.
- 11.8 Where the Approved Supplier enters into a Sub-Contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Approved Supplier to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 11.9 The Authority may retain or set off any sums owed to it by the Approved Supplier which have fallen due and payable against any sums due to the Approved Supplier under this Agreement or any other agreement pursuant to which the Approved Supplier or any Associated Company of the Approved Supplier provides goods or services to the Authority.
- 11.10 If The Authority wishes to set off any amount owed by the Approved Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Approved Supplier pursuant to clause 11.9 it shall give notice to the Approved Supplier within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.
- 11.11 The Approved Supplier shall make any payments due to the Authority [or to the Crown or any part of the Crown] without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Approved Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Approved Supplier.

12. Service credits

- 12.1 If the Supplier commits a Service Failure, the Supplier shall pay to the Authority the Service Credit set out in the Call-Off Specification.

13. Key Personnel

- 13.1 The Approved Supplier shall appoint the persons named as such as part of the Tender or Offer. The Key Personnel will have the authority to act on behalf of the Approved Supplier on the matters for which they are expressed to be responsible.
- 13.2 The Approved Supplier, from time to time and at the sole discretion of the Authority, will be required to include Key Personnel as part of its Offer and in line with the particular requirements of that Call-Off Specification.
- 13.3 The Approved Supplier shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Authority;
 - (b) the person is on long-term sick leave;
 - (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
 - (d) the person ceases to be employed by the Approved Supplier; or
 - (e) the Approved Supplier obtains the prior written consent of the Authority.
- 13.4 The Approved Supplier shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within 5 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 13.5 The Approved Supplier shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 10 Working Days without prior written agreement from the Authority. Any replacement shall be as, qualified or more qualified and as experienced or more experienced as the incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Approved Supplier or the Authority becoming aware of the role becoming vacant.
- 13.6 The Authority may require the Approved Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

- 13.7 If the Approved Supplier replaces the Key Personnel as a consequence of this clause 13, the cost of effecting such replacement shall be borne by the Approved Supplier.

14. Other personnel used to deliver the Services

- 14.1 At all times, the Approved Supplier shall ensure that:
- (a) each of the Approved Supplier's Personnel is suitably qualified, adequately trained, appropriately licenced, and capable of providing the applicable Services in respect of which they are engaged;
 - (b) there is an adequate number of Supplier's Personnel to provide the Services properly with consideration to the scale of all Offers for which it has decided to submit, irrespective of whether the Authority has made a decision as to the award of any of the Offers in question.
 - (c) all of the Approved Supplier's Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority's Premises.
- 14.2 The Authority may refuse to grant access to, and remove, any of the Approved Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 14.3 The Approved Supplier shall replace any of its Personnel whom the Authority decides has failed to carry out its duties with reasonable skill and care. Following the removal of any of the Approved Supplier's Personnel for any reason, the Approved Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 14.4 The Approved Supplier shall maintain up-to-date personnel records on the Approved Supplier's Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Approved Supplier's Personnel. The Approved Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 14.5 The Approved Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision

or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

15. Safeguarding children and vulnerable adults

- 15.1 The parties acknowledge that the Approved Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006

16. TUPE

- 16.1 The parties agree that the provisions of 0 shall apply to any Relevant Transfer of staff under this Agreement.
- 16.2 If TUPE applies to this Agreement the Approved Supplier is required to comply fully with all relevant legislation.
- 16.3 During the final year of this Agreement, or such other time as requested by the Authority, the Approved Supplier shall supply on demand, within reasonable time and in any event within 20 Working Days of a request, such information concerning the terms and conditions of service, of all staff who are engaged in the delivery of the Service specified by the Authority so that it can come to a view as to whether the TUPE Regulations 2006 are likely to apply to the award of a further agreement and make such provision in the tender documentation. Failure to provide such information may result in the Approved Supplier being excluded from being able to tender for future agreements.
- 16.4 The Approved Supplier shall warrant the accuracy and completeness of all information provided to the Authority (as per Condition 16.3) and authorises the Authority to use any and all the information as it may consider necessary for the purposes of its business or for informing any future tenderer. Further, the Approved Supplier shall notify the Authority promptly of any changes after the date the aforesaid information is supplied.

17. Reporting and meetings

- 17.1 If required, the Approved Supplier shall provide the management reports in the form and at the intervals set out in the Call-Off Specification.

- 17.2 The Authorised Representatives and relevant Key Personnel shall meet as required by the Authority, and the Approved Supplier shall, at each meeting, present its previously circulated Management Reports [and Financial Reports] in the format required by the Authority.

18. Monitoring

- 18.1 The Authority may monitor the performance of the Services by the Approved Supplier.
- 18.2 The Approved Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 18.1 at no additional charge to the Authority.

19. Call-Off Specification Change Control and Continuous Improvement

- 19.1 Any requirement for a Change to an existing Call-Off Contract or Accelerated Call-Off Contract shall be subject to the Call-Off Specification Change Control Procedure.
- 19.2 The Call-Off Specification Change Control Procedure will be invoked by the Authority in the event that the requirements within the scope of the Call-Off Contract or Accelerated Call-Off Contract are required to materially increase or decrease from that which was let as part of the Authority's initial requirements or the Approved Supplier's Offer.
- 19.3 The Approved Supplier shall have an on-going obligation throughout the DPS Term to identify new or potential improvements to the Services. As part of this obligation the Approved Supplier shall identify and report to the Authority's Authorised Representative, if requested, up to every [six] months for the duration of the DPS Term on:
- (a) the emergence of new and evolving relevant technologies which could improve the Services;
 - (b) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and

- (c) changes in ways of working, including review of upcoming Call-Off Contracts that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Authority.

19.4 Any potential Changes highlighted as a result of the Approved Supplier's reporting in accordance with clause 19.3 shall be considered by the Authority as it deems appropriate.

20. Dispute resolution

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

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within [15] Working Days of service of the Dispute Notice, the Dispute shall be referred to such senior officers within the respective organisations (such as Director or equivalent) Representatives who shall attempt in good faith to resolve it; and
- (c) if the Party's senior officer are for any reason unable to resolve the Dispute within [10] Working Days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than [14] days after the date of the ADR notice.]

20.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under *clause 45* which shall apply at all times.

21. Sub-Contracting and assignment

21.1 Subject to clause 21.3, the Approved Supplier shall not assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the

prior written consent of the Authority, neither may the Approved Supplier Sub-Contract the whole or any part of its obligations under this Agreement except with the express prior written consent of the Authority.

21.2 In the event that the Approved Supplier enters into any Sub-Contract in connection with this Agreement it shall:

- (a) remain responsible to the Authority for the performance of its obligations under the Agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Agreement and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.
- (d) provide an acknowledgement by the Approved Supplier and the Sub-Contractor that the Authority may in its own right under the Contracts (Rights of Third Parties) Act 1999 or otherwise enforce the Sub-Contractor's obligations to the Approved Supplier under the Sub-Contract.
- (e) provide the Approved Supplier with the contact details for key staff engaged in the delivery of the Services.

21.3 The Authority shall be entitled to novate all, or part of, the Agreement (including current Call-Off Contracts or Accelerated Call-Off Contracts) to any other body which substantially performs any of the functions that previously had been performed by the Authority.

21.4 If there is a proposal by the Approved Supplier for there to be a Change of Control, the Approved Supplier or a Sub-Contractor shall give at least 3 months notice to the Authority of the proposal and shall seek consent from the Authority for any assignment or novation of its rights and obligations under this Agreement,. Such consent may be given or withheld at the Authority's discretion.

21.5 Should there be any assignment or novation, or purported assignment or novation, of any facets of this Agreement without prior agreement by the Authority, the Authority will be entitled to Suspend the Approved Supplier from the System.

22. Indemnities

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

23. Limitation of liability

- 23.1 Neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 23.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Agreement.
- 23.3 Notwithstanding any other provision of this Agreement neither party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence;
 - (c) breach of any obligation as to title implied by statute; or
 - (d) any other act or omission, liability for which may not be limited under any applicable law.

24. Insurance

- 24.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum, and subject to variation by the Authority via Notice to the Approved Supplier, the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;]
- (b) employer's liability insurance with a limit of indemnity of not less than £5,000,000 **OR** in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;]
- (c) professional indemnity insurance with a limit of indemnity of to be at an appropriate level for each Call-Off Contract or Accelerated Call-Off Contract in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

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

- 24.2 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 24.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 24.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Agreement.
- 24.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the Agreement.

Information

25. Freedom of information

- 25.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

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

26. Data protection

- 26.1 The Supplier shall (and shall procure that any of its Supplier's Personnel involved in the provision of the Agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the Agreement.
- 26.2 The parties acknowledge that for the purposes of the DPA, the Authority is the Data Controller and the Approved Supplier is the Data Processor.
- 26.3 Notwithstanding the general obligation in clause 26.1, where the Supplier is processing Personal Data as a Data Processor for the Authority, the Supplier shall ensure that it has in place appropriate technical and contractual measures to

ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

- (a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA;
- (b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 26.3; and
- (c) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.
- (d) only Process Personal Data to the extent, and in such a manner, as is necessary for the performance of the Services or as is required by law or any Regulatory Body and in accordance with The Authority's instructions from time to time;
- (e) promptly comply with any request from the Authority requiring Personal Data to be amended, transferred, extracted or deleted;
- (f) keep a record of any Processing of Personal Data it carries out on behalf of the Authority;
- (g) not Process or transfer Personal Data outside the European Economic Area without the prior written consent of the Authority;
- (h) provide the Authority with full co-operation and assistance in relation to any request made by an individual who is the subject of Personal Data to have access to that person's Personal Data;
- (i) ensure that all staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 26;
- (j) maintain and update as necessary from time to time policies relating to the DPA and the security of information relating to Service Users and make such policies available to all Supplier Personnel with a written record that this has been done. The Approved Supplier shall ensure that all staff have an awareness and understanding of their responsibilities;
- (k) ensure that none of the staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- (l) encrypt any Personal Data stored or processed on any portable devices including laptops, mobile devices, discs and pen drives;

- (m) permit the Authority or the Authority's Authorised Representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect the Approved Supplier's data processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Approved Supplier is in full compliance with its obligations under this Agreement;
- (n) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Approved Supplier is complying with its obligations under the DPA;
- (o) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 26.3;
- (p) Process and retain the Personal Data in a data system and format approved by the Authority; and
- (q) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of its obligations under the DPA.

26.4 If the Approved Supplier receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data or to either party's compliance with the DPA it shall immediately notify the Authority and it shall provide the Authority with full co-operation and assistance in relation to any such complaint, notice or communication.

26.5 The Approved Supplier may only transfer Personal Data to a Sub-Contractor and authorise the Sub-Contractor to process the Personal Data in the provision of the Services;

- (a) with the Authority's prior written consent;
- (b) provided that the Sub-Contractor's contract is on terms which are substantially the same as those set out in this Agreement.
- (c) provided the Sub-Contractor Process and retain the Personal Data in a data system and format approved by the Authority; and
- (d) provided that the Sub-Contractor's contract terminates automatically on termination of this Agreement for any reason.

26.6 At the termination or expiry of this Agreement, the Authority may require information relating to the Service Users is returned to the Authority or retained by the Approved Supplier in accordance with the terms of this Agreement.

- 26.7 The Approved Supplier shall obtain informed consent from all Service Users regarding the processing of Personal Data and Sensitive Personal Data where such Processing is required.
- 26.8 Where the Approved Supplier is providing other Services to the Authority under other contractual agreements the Approved Supplier shall implement and maintain data systems which keeps all information, Personal Data and Sensitive Personal Data relating to the Services and the Service Users separate and kept in a format approved by the Authority.
- 26.9 The Approved Supplier shall indemnify the Authority and keep it indemnified fully at all times against all claims, demand, actions, proceedings, damages, losses, costs and expenses which are made or brought against or incurred by the Authority as a result of the Approved Supplier or any Sub-Contractor breaching the provisions of this clause 26.
- 26.10 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

27. Confidentiality

- 27.1 Subject to clause 27.2, the parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.
- 27.2 Clause 27.1 shall not apply to any disclosure of information:
- (a) required by any applicable law, provided that clause 25.2 shall apply to any disclosures required under the FOIA or the EIRs;
 - (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Agreement;
 - (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 27.1;
 - (d) by the Authority of any document to which it is a party and which the parties to this Agreement have agreed contains no commercially sensitive information;
 - (e) to enable a determination to be made under clause 20;

- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Authority to any other department, office or agency of the Government; and
- (h) by the Authority relating to this Agreement and in respect of which the Approved Supplier has given its prior written consent to disclosure.

27.3 On or before the Termination Date the Approved Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authority's employees, rate-payers or service users, are delivered up to the Authority or securely destroyed.

28. Audit

28.1 During the DPS Term and for a period of 6 years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services.
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
- (c) to review the Approved Supplier's compliance with the DPA, the FOIA, in accordance with clause 26 and clause 25 and any other legislation applicable to the Services;
- (d) to review any records created [during the provision of the Services];
- (e) to review any books of account kept by the Approved Supplier in connection with the provision of the Services;
- (f) to carry out the audit and certification of the Authority's accounts;
- (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (h) to verify the accuracy and completeness of the Management Reports delivered or required by this Agreement.

28.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 28 more than twice in any calendar year.

- 28.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 28.4 Subject to the Authority's obligations of confidentiality, the Approved Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites controlled by the Approved Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Approved Supplier's Personnel.
- 28.5 The Authority shall endeavour to (but is not obliged to) provide at least 10 days notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 28.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Agreement in any material manner by the Approved Supplier in which case the Approved Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 28.7 If an audit identifies that:
- (a) the Approved Supplier has failed to perform its obligations under this Agreement in any material manner, the parties shall agree and implement a remedial plan. If the Approved Supplier's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Approved Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - (b) the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within 20 days. The Authority may deduct the relevant amount from the Charges if the Approved Supplier fails to make this payment; and
 - (c) the Authority has underpaid any Charges, the Authority shall pay to the Approved Supplier the amount of the under-payment [less the cost of audit

incurred by the Authority if this was due to a default by the Supplier in relation to invoicing] within 20 days.

29. Not Used

30. Equal Opportunities

- 30.1 The Approved Supplier adopts a policy, which will be its own organisation's policy or in the event that any such policy does not exist or does not exist to the standard of the Authority's policy will be the Authorities Policy, to comply with its statutory obligations under;
- (a) The Equality Act 2010
 - (b) Any other equalities legislation introduced during the DPS Term
- and accordingly does not treat one group of people less favourably than others because of their colour, race, nationality, ethnic origin, sex, sexual orientation, religion or belief, age or any disability or for any other reason specified in any legislation introduced during the DPS Term, in relation to decisions to recruit train or promote or otherwise in relation to the terms and conditions on which it engages its Employees and does not discriminate on such groups in selection of any Sub-Contractors or other suppliers.
- 30.2 In the event of any finding of unlawful discrimination being made against the Approved Supplier by any court or tribunal, or of any adverse finding in any formal investigation by the Equality and Human Rights Commission the Approved Supplier takes appropriate steps to prevent repetition of the unlawful discrimination and, on request, provides the Authority with details of any steps taken.
- 30.3 The Approved Supplier, on request, provides the Authority with examples of the instructions and other documents, recruitment advertisements and other literature
- 30.4 The Approved Supplier observes as far as possible the Equality and human Rights Commission's Codes of Practice in employment.
- 30.5 The Approved Supplier will ensure that Sub-Contractors comply with this Clause as if reference to the Approved Supplier were a reference to any Sub-Contractor.
- 30.6 The Approved Supplier implements procedures and systems which would fulfil the Service in respect of avoidance of discrimination and the support of equal opportunities.

- 30.7 The Approved Supplier, on request, provides the Authority with information and access to such documents as the Authority may require to enable it to satisfy itself that the Approved Supplier complies and will continue to comply with all current legislation in respect of equality and diversity.

31. Termination on notice

- 31.1 Without affecting any other right or remedy available to it, the Authority may terminate this Agreement, in whole or in part, at any time by giving 12 weeks written notice to the Approved Supplier.
- 31.2 The Approved Supplier may terminate its obligations for any Call-Off Contract or Accelerated Call-Off Contract by giving 12 weeks written notice to the Authority.
- 31.3 Notwithstanding its rights under clause 6 the Authority may terminate the Approved Suppliers obligations for the delivery of any Call-Off Contract or Accelerated Call-Off Contract, for any reason, by giving 12 weeks notice to the Approved Supplier.

32. Force majeure

- 32.1 Subject to the remaining provisions of this clause 32, neither party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such non-performance is due to a Force Majeure Event.
- 32.2 In the event that either party is delayed or prevented from performing its obligations under this Agreement by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

- 32.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 32.4 The Approved Supplier cannot claim relief if the Force Majeure Event is one where a reasonable supplier should have foreseen and provided for the cause in question.
- 32.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. Where the Approved Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 32.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 32.7 The Authority may, during the continuance of any Force Majeure Event, terminate this Agreement, in whole or in part, by written notice to the Approved Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 10 Working Days.

33. Prevention of bribery

- 33.1 The Approved Supplier represents and warrants that neither it, nor to the best of its knowledge any Approved Supplier's Personnel, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

33.2 The Approved Supplier shall not during the term of this Agreement:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

33.3 The Approved Supplier shall during the term of this Agreement:

- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under *clause 33.3(a)* and make such records available to the Authority on request.

33.4 The Approved Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of *clause 33.1* and/or *clause 33.2*, or has reason to believe that it has or any of the Supplier's Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

33.5 If the Approved Supplier makes a notification to the Authority pursuant to *clause 33.4*, the Approved Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with *clause 28*.

33.6 If the Approved Supplier is in Default under *clause 33.1* and/or *clause 33.2*, the Authority may by notice:

- (a) require the Approved Supplier to remove from performance of this Agreement any Approved Supplier's Personnel whose acts or omissions have caused the Default; or
- (b) immediately terminate this Agreement.

33.7 Any notice served by the Authority under clause 33.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

34. Consequences of termination

- 34.1 On the expiry of the DPS Term or if this Agreement is terminated in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and the Approved Supplier shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier.
- 34.2 On termination of this Agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Approved Supplier shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Supplier's Authorised Representative shall certify full compliance with this clause.
- 34.3 The provisions of clause 22,, clause 24, clause 25, clause 26, clause 28, clause 31 and this clause 34 shall survive termination or expiry of this Agreement.
- 34.4 Further consequences of termination are described in clause 17 of volume 1.

General provisions

35. Non-solicitation

Neither party shall (except with the prior written consent of the other) during the term of this Agreement[, and for a period of one year thereafter,] solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this Agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of

employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

36. Waiver

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

37. Rights and remedies

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

38. Severability

- 38.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 38.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

39. Partnership or agency

- 39.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 39.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

40. Third party rights

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

41. Publicity

The Approved Supplier shall not:

- (a) make any press announcements or publicise this Agreement or its contents in any way; or
- (b) use the Authority's name or logo in any promotion or marketing or announcement of orders,

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

42. Not Used

42.1

43. Entire Agreement

- 43.1 This Agreement, the schedules and the documents annexed to it or otherwise referred to in it including all Documents, Call-Off Contracts and/or Accelerated Call-Off Contracts let under this Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 43.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

44. Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all

the counterparts shall together constitute the same Agreement. No counterpart shall be effective until each party has executed at least one counterpart.

45. Governing law

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

46. Jurisdiction

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

47. Policies

On the Commencement Date and for the DPS Term the Approved Supplier will ensure that the following policies and procedures are in place and made available to the Authority on request. These policies shall be, in all material respects, identical to the corresponding policies and procedures of the Authority (as amended from time to time), unless otherwise agreed in writing by the Authority:

- (a) Equal Opportunities, Diversity and Disability;
- (b) Whistle Blowing;
- (c) Recruitment and selection, staff supervision and appraisal, Training and development (including induction and on-going training);
- (d) Health and Safety;
- (e) Data Protection Act, Information Sharing, Freedom of Information;
- (f) Anti-bribery; and
- (g) Complaints

This Agreement has been entered into on the Commencement Date.

Signed for and on behalf of
SOMERSET COUNTY
COUNCIL

.....
Authorised Signatory

Signed by [NAME OF
DIRECTOR]
for and on behalf of [NAME OF
APPROVED SUPPLIER]

.....
Director

Volume 1 - Service Specification Conditions

1. Definitions and Interpretation

1.1 Definitions

In these Conditions the following words and phrases shall have the following meanings:

Emergency Duty Team	means The Emergency Duty Team of the Authority's Social Services Department
Concessionary Fare	means the application, and operation, of the free National concessionary scheme, and the discretionary scheme, for eligible people due to either age or disability under the Somerset concessionary Travel scheme.
Contract Vehicle	means any vehicle or vehicles used or intended to be used by the Approved Supplier, whether belonging to him or not, for the conveyance of Passengers which conforms to the requirements set out in the Agreement; The term Vehicle shall be used accordingly.
DBS	means Disclosure and Barring Service
Driver	means a person employed to operate a Contract Vehicle, which may include the Approved Supplier themselves.
DRT/Slinky	means a journey or vehicle that provides a demand responsive transport service for the Authority.
Employee	Has the same meaning as Supplier Personnel and in this case means all persons including Drivers, Passenger Assistants and other staff employed by the Approved Supplier to perform the Call-Off Contract or Accelerated Call-Off Contract together with the Approved Supplier's servants, agents, Sub-Contractors used in the performance of the Call-Off Contract or Accelerated Call-Off Contract;
Passenger Assistant	means a competent and reliable person, conversant with all of the equipment provided for the safety and comfort of the Passengers. The term

	Escort will be used interchangeably and interpreted accordingly.
Fares	means the sums chargeable by the Approved Supplier to Passengers in respect of their conveyance in a Contract Vehicle;
Information	has the meaning given under section 84 of the FOIA;
ISA	means Independent Safeguarding Authority
Journey	means the movement of the Contract Vehicle from the Approved Supplier's or Driver's premises, as detailed within the Call-Off Specification, until the point that the requirement of the Call-Off Specification is completed;
Letter of Acceptance	means the Authority's written confirmation, sent through the System, that it has accepted the Approved Supplier's Offer;
Local Service	specifically a local bus service (within the meaning of Section 2 of the Transport Act 1985) for the carriage of passengers by road.
Notice	includes any notice, demand, consent or other written communication sent through the System ;
Passenger	has the same meaning as Customer and in this case refers to any person (save for any employee, Sub-Contractor, agent or representative of the Approved Supplier) travelling in a Contract Vehicle during the performance of the Service;
PCV	means Passenger Carrying Vehicle as defined in the Road Traffic Act 1988;
Registered Body	means the Authority registered with the Disclosure and Barring Scheme
Request for Information	shall have the meaning set out in FOIA or the EIR as relevant. The term Request shall be interpreted accordingly.
Route	means a route specified in the within the Call-Off Specification over which the Service is to be provided and includes any Call-Off Specification Change made thereof in accordance with the Call-Off Specification Change Procedure;
School Contract	specifically a Journey and/or Contract Vehicle as stated in the Call-Off Specification that caters solely

	or in majority for the carriage of school children;
Social Care/ Health Contract	specifically a Journey and/or Contract Vehicle as stated in the Call-Off Specification that caters solely or in majority for the carriage of Passengers in the care or management of Children's or Adult Social Care or Health;
Timetable	means the information incorporated into the Call-Off Specification indicating the dates on which and the times at which the Service is to be provided.
Unsuitable Person	means a person unsuitable to be employed by the Approved Supplier to perform the Service, with the Authority at all times having absolute discretion to determine who is, or which criteria are applied to determine whether someone is an Unsuitable Person. For the avoidance of doubt, the Authority is the final arbiter of who is an Unsuitable Person
Value For Money	means the most economically advantageous Offer as relates to the Call-Off Award Criteria.

1.2 Interpretation

- (a) a reference to a statute or statutory provision includes
 - (i) any subordinate legislation (as defined in Section 21(1), Interpretation Act 1978) made under it;
 - (ii) any repealed statute or statutory provision which it re-enacts (with or without modification); and
 - (iii) any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it;
- (b) a reference to:
 - (i) any party includes its successors in title and permitted assigns;
 - (ii) paragraphs and sub-paragraphs are references to the paragraphs and sub-paragraphs of the Conditions in which they appear;
- (c) the headings are for convenience only and shall not affect the interpretation of these Conditions.

2. Call-Off / Accelerated Call-Off Contract Duration

2.1 The duration of each Call-Off Contract or Accelerated Call-Off Contract will be stated in the Call-Off Specification.

2.2 The Call-Off Contract or Accelerated Call-Off Contract duration may be extended as per the provisions of the Call-Off Specification by the subsequent agreement of both Parties in writing.

3. Approved Supplier General Obligations

3.1 The Approved Supplier shall provide the Service in strict accordance with the Agreement including all requirements of the Call-Off Specifications awarded under this Agreement. Should the requirements for the number of Passengers carried, or the Route

taken, materially change, this will be amended using the provisions of the Call-Off Specification Change Control Procedure taking into account the changes necessary to fulfil the amended obligations and supported by an impact analysis that clearly demonstrates the effect to the Offer Price of such changes.

3.2 The Approved Supplier shall at all times during the DPS Term, and for the duration of any Call-Off Contractor Accelerated Call-Off Contracts which run beyond the DPS Term, hold the appropriate Licences or Permits to legally carry out the business of conveying Passengers for hire or reward for the type and size of Contract Vehicles.

3.3 If the Licence or Permit referred to in paragraph 3.2 shall be revoked, suspended or modified by the Traffic Commissioner, or if the Traffic Commissioner calls the Approved Supplier to a public inquiry, the Approved Supplier shall notify the Authority's Authorised Representative in writing forthwith. If it is revoked, suspended or so modified as to prevent the Approved Supplier of the Service delivery, as specified in Agreement, the Approved Supplier shall be Suspended with effect from the date of such revocation, suspension or modification, in line with the provisions of clause 6 to volume 0 of this Agreement. .

3.4 The Approved Supplier shall, as requested by the Authority or as otherwise notified through the System, complete and submit any such Documents as may be required in order to demonstrate the Approved Supplier's continued ability to deliver the Services specified under this Agreement, including registration applications to the Traffic Commissioner and claims for Bus Service Operators Grant .

3.5 The Approved Supplier shall pick up and set down the Passengers at any point on the Route described in the Call-Off Specification subject to any statutory prohibitions or Traffic Regulation Orders and having regard to the safety of Passengers and other users of the highway, save that the Approved Supplier shall be entitled to establish fixed stopping places in consultation with the Authority and the Police. If the Approved Supplier wishes to establish stopping places otherwise than the highway it shall be his sole responsibility to make any necessary arrangements and pay any necessary charges in that regard.

3.6 The Approved Supplier shall throughout the DPS Term, and for the duration of any Call-Off Contracts or Accelerated Call-Off Contracts which run beyond the DPS Term, and at his own expense produce copies of the Timetable in a form suitable for use by the general public to the standard as specified in the Authority's Bus Information Strategy (a copy of which is available from the Authority) and make them available to any person or body reasonably requesting them. Such copies shall acknowledge the Authority's financial support for the Service in terms to be agreed with the Authority in advance.

3.7 The Approved Supplier shall make satisfactory arrangements to deal with lost property in accordance with the Public Vehicles (Lost Property) Regulations 1978 (as amended).

3.8 The Approved Supplier shall comply at all times and in all respects with the requirements of the Public Passenger Vehicles Act 1981, the Transport Act 1985, the Road Traffic Act 1988, the Transport Act 2000 and any other Act of Parliament relating to Health and Safety, road traffic, the carriage of passengers by road or to any other matter affecting in any way the operation of the Agreement and the performance of the Service.

3.9 The Approved Supplier shall at no time make any manoeuvre which contravenes highway law without the express permission of a suitable official such as the Police.

3.10 The Approved Supplier of a subsidised Local Service will be responsible for meeting any departure costs required by any bus or rail station. The Authority will not be responsible for meeting the cost.

3.11 When operating a Service the Approved Supplier must adhere to the dates and times in the Call-Off Specification for the picking up and setting down of Passengers and/or as notified as variations thereto, via the Call-Off Specification Change Control Procedure, by the Authority.

3.12 The Approved Supplier shall provide the Authority with all requested information for the purposes of communication, including, but not limited to, contact telephone number, an out of normal office hours contact number and an e-mail address to facilitate communications and to be held on the System. If the contact details of the Approved Supplier should change then they are responsible for immediately notifying the Authority.

4. Minimum Levels of Service

4.1 The Approved Supplier shall ensure that only such persons who are competent and reliable are engaged as Drivers and shall ensure that all Drivers are properly licensed with legal entitlement to drive the Contract Vehicles.

4.2 All Drivers shall hold a valid driving licence appropriate to the Contract Vehicle operated by them and shall hold such a licence at all times when performing the Service. The Driver must produce their driving licence, or any other Documents required for the operation of the Contract Vehicle, for inspection on demand by an authorised Authority Representative.

4.3 When operating School Contracts the Driver should be familiar with and comply with the “Passenger Transport Guidelines” and the leaflet “Emergency Procedures for Drivers”. The leaflet “Emergency Procedures for Drivers” must be carried on all journeys.

4.4 The requirement for a Passenger Assistant in the delivery of the Service will be stated within the Call-Off Specification, The Passenger Assistant should be familiar with and comply with “Passenger Transport Guidelines”. The Passenger Assistant should comply with the guidelines contained in this document and sign a form to confirm that they have read and understood them when they are recruited. The Approved Supplier will make this signed form available to the Authority upon request for viewing at any time.

4.5 All Drivers and Passenger Assistants must be able to communicate with the Passengers.

4.6 Unless specified by the Authority the Driver and Passenger Assistant must wear, and display prominently, the appropriate photographic identity badge.

4.7 Smoking in Contract Vehicles of any type is prohibited under the Smoke-Free (Exemptions and Vehicles) Regulations 2007. Drivers and Passenger Assistants must not smoke at any time whilst the Contract Vehicle is being used in the performance of the Service and will not allow or encourage others to smoke at any time. Smoking on school premises and at all Authority establishments is forbidden.

4.8 When required to do so by the Authority, and before the Driver or Passenger Assistant is involved in the conveyance of any Passenger, the Approved Supplier will make arrangements as necessary to facilitate the attendance of all Drivers and Passenger Assistants at appropriate training sessions organised by or on behalf of the Authority and any cost for attending the training session, including course fees, will be met by the Approved Supplier.

4.9 The Driver, or any other Employee, should not allow any person to travel on or board a Contract Vehicle who is not entitled to do so. When operating a School Contract or Social Care Contract this includes a child Passenger whose details have not been given to the Approved Supplier by the Authority as an authorised Passenger. The Driver shall inspect the validity of all Passenger tickets where such tickets have been issued by the Authority or any other body or organisation.

4.10 The Approved Supplier must inform the Authority of any accidents, incidents or misconduct of Passengers as soon as possible, and in any event within the day in which the accident, incident or misconduct of Passengers occurs. A written report to the Authority must be provided within 24 hours of such notification.

4.11 In the event of a road accident involving a Contract Vehicle, the Approved Supplier must inform the Authority immediately whether or not Passengers were being carried at the time of the accident. The Approved Supplier shall co-operate with any requests for further information made by the Authority, the Police or any other appropriate organisation in relation to the accident.

4.12 The Approved Supplier shall ensure that all Drivers have the use of two way communication (provided at the Approved Supplier's expense) for use in emergencies. At all other times mobile phones should be switched off during any journey.

4.13 Contract Vehicles fitted with seatbelts must display signs reminding all passengers that they should be worn at all times whilst the Contract Vehicle is in motion.

4.14 Any other requirement pertaining to the Minimum Level Of Service of a Call-Off Contract or Accelerated call-Off Contract will be included in the Call-Off Terms and Conditions within the Call-Off Specification

5. DBS Checks and Safe Practices

5.1 When providing a DRT/Slinky, School, Health or Social Care Contract, or any other Call-Off Contract or Accelerated Call-Off Contract that constitutes a Regulated Activity as provided under this Agreement, the Approved Supplier shall ensure that all Employees (and the Approved Supplier himself if engaged as a Driver or Passenger Assistant) shall:

5.1.1 complete an enhanced DBS Disclosure Application Form which the Approved Supplier shall make available to the Authority;

5.1.2 provide written details of any convictions that might be relevant to their duties which the Approved Supplier shall forward to the Authority;

5.1.3 monitor the level and validity of the checks under this clause 5 for each Employee;

5.1.4 ensure all enhanced DBS are renewed every 3 years for existing staff who have chosen not to sign up to the on-line up-date service;

5.1.5 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out the Regulated Activity or who may otherwise present a risk to Passengers. .

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

5.2 The Approved Supplier agrees to comply with the requirements of the DBS and to pay all costs associated with the DBS checking process.

5.3 The Authority, as a Registered Body, will provide the Approved Supplier with the DBS Disclosure Application Forms and will process, countersign and submit the forms to the DBS.

5.4 No person may be employed by the Approved Supplier in the performance of a DRT/Slinky, School, Health or Social Care Contract (or for any Call-Off Contract or Accelerated Call-Off Contract that could constitute a Regulated Activity) until a satisfactory DBS check has been completed, cleared and has been received by the Authority.

5.5 The Approved Supplier shall notify the Authority of any proceedings brought against the Approved Supplier or an Employee for offences committed under road traffic legislation or any other legislation that occurs during the performance of the Service. The Approved Supplier shall also notify the Authority of any attendance at a Public Inquiry and any action taken against the Approved Supplier by the Traffic Commissioner. The Approved Supplier shall immediately notify the Authority of any concerns or complaints made by Passengers or other individuals relating to the Call-Off Contract or Accelerated Call-Off Contract, the Approved Supplier or the Employees in the performance of the Service. The Approved Supplier shall respond to complaints to the Passenger or other affected individual, in writing, within 10 Working Days of receipt. The Approved Supplier shall provide the Authority with written details of the complaint and the action taken within 10 Working Days of receipt or earlier if requested by the Authority.

5.6 The Approved Supplier shall immediately notify the Authority of any investigation or action taken by the Police in relation to the Approved Supplier, the Employees or any aspect of the performance of the Agreement. In the event of the Authority notifying the Approved Supplier that a person is an Unsuitable Person, the person shall not be employed to undertake any aspect of this Agreement, with immediate effect. .

5.7 In the event of the Authority discovering that an Employee already employed in the performance of any aspect of the Agreement is an Unsuitable Person, the Authority shall inform the Approved Supplier and the Approved Supplier shall remove the Employee from undertaking any aspect of this Agreement.

5.8 The Authority shall not be liable to the Approved Supplier, any Employee or any individual deemed to be an Unsuitable Person. The Approved Supplier shall indemnify the Authority against all loss, damage, costs and any other expenses whatsoever incurred in respect of any disputes, claims or proceedings brought by an Employee or an Unsuitable Person arising from a decision not to employ a person under this Agreement.

5.9 The Approved Supplier shall ensure that he is fully compliant with the provisions of the Safeguarding Vulnerable Groups Act 2006.

5.10 At the request and discretion, of the Authority, the Approved Supplier will be asked to provide a copy of the original enhanced DBS check certificates which will be loaded to the System. Subject to Audit, the Approved Supplier may be given the option of self-validating that the enhanced DBS certificates which are loaded to the System are a true and valid likeness of such certificates. Ensuring that copies of the original certificates are sent to the Authority through the System for validation, shall be the Approved Supplier's responsibility. For the avoidance of doubt, should the Authority wish to see the original certificates outside of the System the Approved Supplier must make this available to the Authority within the timescale that the Authority shall determine, subject to the provisions of this Agreement and particularly clause 6 of volume 0.

5.11 For the avoidance of doubt, the enhanced DBS certificates will not be held indefinitely on the System and will be removed by the Approved Supplier once the Authority has confirmed the self-validation in writing, or has carried out an appropriate Audit.

5.12 The Approved Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to service users.

5.13 The Approved Supplier shall immediately notify the Authority of any information that it requests to enable it to be satisfied that the obligations of this clause 5 have been met.

6. Contract Vehicles

6.1 The Approved Supplier will provide Contract Vehicles that meet the minimum specification as set out in the Call-Off Specification. This includes any additional equipment specified by the Authority or equipment that the Approved Supplier agreed to provide at the time of the award of the Call-Off Contract; Accelerated Call-Off Contract; as part of his tender; or as varied through the Call-Off Specification Change Control Procedure at a later date. The Authority will confirm all variations and additional equipment requirements as part of the Call-Off Specification.

6.2 The Approved Supplier shall ensure that all Contract Vehicles are maintained in a proper and roadworthy condition and shall be kept clean and tidy both internally and externally, and the Authority shall determine the extent to which a vehicle is deemed to be clean and tidy.

6.3 If a PSV, the Approved Supplier shall at all times comply as to fitness, licence construction and in all other respects with the requirements of Part II of the Public Passenger Vehicles Act 1981.

6.4 Subject to any minima or maxima specified in the Call-Off Specification the Contract Vehicle must have suitable and adequate accommodation for the number of Passengers using the Service and be appropriate to the Lot through which it was let.

6.5 The Contract Vehicle must display a destination indicator and route number identifying the Service when required to do so as part of the Call-Off Specification, or as per instruction by the Authority.

6.6 The Contract Vehicle must display, so as to be clearly visible from outside the Contract Vehicle, but otherwise in such positions as may be agreed, the sign or signs provided by the Authority and indicating that the Service is supported by the Authority.

6.7 The Contract Vehicle must display an EU approved child logo when operating as a School Contract and be operating as a PSV or vehicle of less than 9 seats. If a Contract Vehicle with 7 seats or less operates on a School Contract, then it must display a "School Transport" sign.

6.8 The Contract Vehicle must display "no smoking" signs as required under the Smoke-Free (Signs) Regulations 2007.

6.9 If operating as a School Contract, the Contract Vehicle must have seating so arranged that all Passengers may be seated facing forwards unless restrained in

appropriate harnesses or if the seating has been installed and tested to the M2 or M3 standard. No Passenger may travel in sideways facing seats or sideways in a wheelchair.

6.10 The Approved Supplier must ensure that no child of less than 135 cm in height is conveyed in the front seats of a Contract Vehicle used in the performance of the Service, unless the Contract Vehicle has been fitted with special safety equipment and has the prior written permission of the Authority's Authorised Representative to do so.

6.11 The Contract Vehicle should use hazard warning lights when it is stationary and when Passengers are boarding or alighting the Vehicle pursuant to the Road Vehicles Lighting (Amendment) Regulations 1994.

6.12 If operating as a School Contract or Social Care/Health Contract and the Contract Vehicle has:

- 6.12.1 more than 16 seats - it must be constructed or adapted to have seatbelts fitted to all seats;
- 6.12.2 8-16 seats – it must have lap and diagonal seatbelts fitted to all seats;
- 6.12.3 7 seats or less – it must have a lap or lap and diagonal seatbelt fitted to all seats.

6.13 Seatbelts in all Contract Vehicles must be maintained and used in accordance with current legislation. In Contract Vehicles with 16 seats or more an approved sign must be displayed indicating that seatbelts must be worn.

6.14 If the Contract Vehicle is constructed or adapted to carry more than 19 passengers it must be fitted with driver operated automatic doors.

6.15 If the Contract Vehicle is constructed or adapted to carry less than 19 passengers the Approved Supplier will ensure that only the Driver, Passenger Assistant or other Employee operates the doors. Passengers must not be allowed to open or close any door except in an emergency.

6.16 When operating any Call-Off Contract or Accelerated Call-Off Contract the Contract Vehicle must carry a fire extinguisher, first-aid kit, and list of contact numbers for use in an Emergency.

6.17 The Contract Vehicle must carry equipment or documents specified as part of the Call-Off Specification and accepted by the Authority and the Approved Supplier under the

terms of the Call-Off Contract or Accelerated Call-Off Contract. The Driver must be competent in the use and operation of all equipment.

6.18 If operating as a DRT/Slinky, School Contract, or Social Care/Health Contract, the Contract Vehicle must not display advertising material without the prior approval of the Authority.

6.19 If operating as a School Contract, the Contract Vehicle must be fitted with additional mirrors where there is a need to eliminate a blind spot in the vicinity of any near side passenger door. These will be additional to those already legally required to comply with construction and use regulations.

6.20 If operating as a School Contract, a vehicle with more than one deck may only be used in the performance of the Service if supplied with: a closed circuit television system ("CCTV") with coverage of every seat such that all the Passengers are readily identifiable; a TV monitor visible to the Driver from his driving position capable of showing all camera feeds in real time.

6.21 If operating as a School Contract, a vehicle with more than 20 passenger seats may only be provided if supplied with a CCTV system with coverage of every seat such that all the Passengers are readily identifiable.

6.22 Where CCTV equipment is fitted to any Contract Vehicle and is used in the performance of the Service, the Approved Supplier shall ensure that such equipment is operated and images are used, stored for a minimum of 7 Working Days and processed in accordance with all relevant legislation including the DPA and the Information Commissioner's CCTV Code of Practice published from time to time. The Approved Supplier shall co-operate and provide all assistance as may be required by the Authority in the investigation of any incident occurring during the performance of the Service.

6.23 During the performance of the Call-Off Contract or Accelerated Call-Off Contract the Authority has sole use of the Contract Vehicle. Any attempt to combine operation of the Service with other work without the prior written approval of the Authority will enable the Authority to Suspend the Approved Supplier without notice.

6.24 Approved Suppliers tendering for regular registered local bus services, under this Agreement, must operate an electronic ticketing system which complies with ITSO specification requirements for recording the English National Concessionary bus pass scheme and the Authority's County Ticket scheme.

7. Payments to the Approved Supplier

7.1 In consideration of the provision of the Service the Authority shall make periodical Payments to the Approved Supplier as per the Offer Price. The Authority shall make such Payments in respect of each calendar month within 30 days of receipt of a properly completed invoice from the Approved Supplier. The invoice may be a paper based manual invoice or will be processed via the System (at such time that the Authority informs the Approved Supplier that this functionality is available) and must state the reference of the Call-Off Contract(s) or Accelerated Call-Off Contract(s), the month or months to which the invoice relates, the precise sum claimed to be due and payable, and any other relevant information requested by the Authority to which the Payment pertains. No invoice shall be so submitted before the end of the month (or of the latest month) to which it relates.

7.1.1 For Health and Social Care Contracts waiting time may be claimed, but only if it has first been agreed by the Authority. It is expected that the Approved Supplier will wait 5 minutes after scheduled pick up time before, during office hours contacting the relevant transport officer and for out of hours Social Care Transport only contacting the Emergency Duty Team. Advice will then be given on whether the Approved Supplier needs to continue to wait. Waiting time that has not been agreed will not be reimbursed. It is the duty of the Approved Supplier to know the contact details of the Emergency Duty Team.

7.1.2 Where agreed in advance by the Authority's Authorised Representative, a Payment for waiting time may only be claimed by the Approved Supplier after the first 15 minutes and will be paid at the Authority's agreed rate.

7.2 Cancellation of Journeys

7.2.1 Save for the provisions of clause 32 of volume 0, if a coach, bus or minibus in the event of unscheduled school closures; severe weather; or other unforeseen events, is unable to perform the Service and thus prevents the running of School/Public/DRT or Slinky Contracts, the Authority may pay 50% of the Offer Price directly attributable to that Route. Any such Payment will be at the discretion of the Authority, but in any event will not be more than 50%.

7.2.2 For regularly scheduled Services, if a private hire car, taxi, or a Hackney vehicle is cancelled, the following percentages of the Offer Price directly attributable to that Route will be payable by the Authority based on the circumstances set out below:

- 7.2.2.1 Cancellation by prior to the start of a Journey: 0%
- 7.2.2.2 Cancellation by at the pick-up point: 50%
- 7.2.2.3 Cancelled due to Passenger's absence at the pick-up point: 50%

7.2.3 For ad-hoc or one off Services, all cancellations need to be phoned through to the Authority to enable the transport officers to follow these up with the social worker, hospital or school to allow the Payment to be amended. Failure to do so may result in late Payment. Cancellations can be Charged as follows:

- 7.2.3.1 Cancel in advance of Journey – no claim can be made by the Approved Supplier as the trip was cancelled with the Approved Supplier before it happened.
- 7.2.3.2 Cancel at pick up point - £5.00 Charge
- 7.2.3.3 Passenger no show at pick up point - £5.00 Charge

7.2.4 All cancellations at the pick-up point, including Passenger absence should be notified to the Authority's Authorised Representative, or nominated delegate within one Working Day. Failure of the Approved Supplier to do so within one Working Day will result in no Payment to the Approved Supplier for the cancelled Journey.

7.3 Annual Price Review

7.3.1 The Offer Price for appropriate Call-Off Contracts may be subject to an annual price review. Call-Off Contracts for which this clause applies will be clearly identified within the Call-Off Specification.

7.3.2 The Authority shall not be liable to make any Payment to the Approved Supplier in respect of any days on which the Service is not operated by reason of the incidence of a Bank or Public Holiday or any other known or foreseeable cause. For School Contracts this shall include days when schools are closed, outside of term dates including inset days for which it is the Approved Supplier's responsibility to ensure he is aware of such dates.

8. Fares (where appropriate)

8.1 During the 12 calendar months following the commencement of a Call-Off Contract or Accelerated Call-Off Contract for which Fares are detailed as part of the Call-Off Specification, the Fares shall be as per those included in the fare table submitted by the Approved Supplier within the Offer.

8.2 At any time after the expiry of the period described in paragraph 8.1 the Approved Supplier may submit proposals, including detailed costings as part of the justification for the proposal, to the Authority for such increases in the Fares as he may consider appropriate. Any increase so proposed may, if approved by the Authority, take effect at any time after the expiry of 28 calendar days from the receipt by the Approved Supplier of the Authority's acceptance of the proposal. If the Authority's approval of such increases is refused the Approved Supplier may:

8.2.1 give notice in writing to the Authority to terminate the Call-Off Contract or Accelerated Call-Off Contract as per clause 31 of volume 0; or

8.2.2 continue to operate the Call-Off Contract or Accelerated Call-Off Contract at the existing fares, or

8.2.3 submit further proposals, provided that on every occasion when the Authority's approval of such proposals is refused the Approved Supplier shall become entitled to proceed under clause 8.2.1 or 8.2.2 of this paragraph or to submit further revised proposals.

8.3 The Approved Supplier shall not submit proposals to the Authority for any increase in the Fares for at least 12 calendar months following the last increase.

8.4 For Public Transport Contracts let on a "cost basis" where the revenue is paid over to the Authority, a 12 monthly review of Fares will be carried out and where Fares are increased the Authority will provide details of the new Fares to be charged at least 28 days before they are required to be implemented.

8.5 In relation to Passengers using the Local Service for Journeys starting or finishing within Somerset the Approved Supplier shall participate in any Concessionary Fare scheme operated by the Authority and, unless the Authority's Authorised Representative shall agree otherwise in writing, in any such scheme operated by any other Local Authority.

8.6 Child fares will be charged at the following rates, unless agreed otherwise in writing:

- i. Children under the age of 5 - No Charge;
- ii. Children aged over 5 and under 16 - Two Thirds Adult Fare (rounded down);
- iii. Young Adults aged 16 and over - Adult Fare.

8.7 The fares set out in paragraph 8.6 may be amended by the Passenger's appropriate possession and use of any valid discounted travel pass issued and accepted under Condition 8.5.

9. Contract Monitoring

9.1 The operation and performance of the Approved Supplier's awarded Call-Off Contract and/or Accelerated Call-Off Contract shall be monitored by the Authority's Authorised Representative or appropriate delegate. Such operation and performance may also be monitored by staff from other Local Authorities as may from time to time be notified in writing to the Approved Supplier.

9.2 For the purposes of monitoring the Service and the Agreement the Approved Supplier shall at all reasonable times afford to the Authority's Authorised Representative and to any person authorised by him access without charge to any Contract Vehicle and to all information or records which he may reasonably be expected to have.

9.3 The Approved Supplier shall provide the Authority's Authorised Representative with regular reports regarding Passengers conveyed under the Call-Off Contract or Accelerated Call-Off Contract, in respect of such periods and in such detail as may be required by the Authority's Authorised Representative and shall retain all records from which these returns were completed for a period of not less than 12 months from the date of return.

9.4 If a Journey or Contract Vehicle is, or will likely be, delayed for 15 minutes or more for any reason, the Approved Supplier must inform the Authority as soon as possible, and in any event within thirty minutes of the scheduled Journey start time, by telephone and will provide information as to the revised estimated time of arrival at picking up/dropping off points for the Journey as listed in the Call-Off Specification (As well as any future Journeys which will be, or are likely to be, impacted by the delay. .

9.5 The Approved Supplier shall within 1 Working Day notify the Authority's Authorised Representative in writing of any Journey which has not been operated and shall explain the reasons for its failure to operate.

9.6 If the Authority's Authorised Representative shall become aware, without having received the notification and explanation referred to in paragraph 9.5, that any Journey has not been operated he shall require the Approved Supplier to provide him with such notification and explanation within 24 hours. .

10. Sustainability

10.1 The Authority is committed to using the resources entrusted to it to ensure best Value For Money at the least possible impact to the environment. As part of this commitment to the environment, the Authority's policies will, wherever practicable, focus

on specifying less environmentally damaging products, promoting greater use of renewable sources and encouraging suppliers to use environmentally friendly practices throughout the delivery of the Services.

10.2 Approved Suppliers shall provide on request evidence of practices and procedures as they relate to the protection and preservation of the environment.

11. Consistent Failure & Service Failure

11.1 Subject to this Minimum Level of Service as per this Agreement and the additional terms as stated in the Call-Off Specification, if the Approved Supplier commits 6 or more Defaults and/or Service Failures within a continuous six month period, the Authority may Suspend the Approved Supplier and terminate the Call-Off Contract or Accelerated Call-Off Contract by serving on the Approved Supplier not less than 7 calendar days' Notice to that effect.

11.2 In addition to any provision for the application of Service Credits stated within the Call-Off Specification, if the Approved Supplier shall fail on three or more occasions in any period of six consecutive months to operate any Journey or Journeys the Authority may Suspend the Approved Supplier and terminate the Call-Off Contract or Accelerated Call-Off Contract by serving on the Approved Supplier not less than 7 calendar days' Notice in writing to that effect.

11.2.3 If the Approved Supplier commits a breach of an obligation under this Agreement, the Authority's Authorised Representative shall issue Notice to the Approved Supplier specifying the breach and requesting it to be remedied within the period specified in the Notice. If the breach is not rectified within the time period specified in the Notice the Authority may terminate the Call-Off Contract or Accelerated Call-Off Contract by serving on the Approved Supplier not less than 7 calendar days' Notice in writing to that effect.

11.2.4 If the Authority terminates a Call-Off Contract or Accelerated Call-Off Contract under Conditions 11.2.1, 11.2.2 or 11.2.3, the Approved Supplier shall be responsible for funding the cost variation between the agreed Offer Price and any replacement service obtained by the Authority for 2 calendar months from the date of the Notice. The Authority will obtain the replacement Service by issuing a new Call-Off Contract or Accelerated Call-Off Contract through the System.

16. TERMINATION

16.1 Further to the provisions of this Agreement, notably clause 6 and clause 31 of volume 0, the Authority shall be entitled to terminate the Agreement, or any Call-Off Contracts or Accelerated Call-Off Contracts let under this Agreement, forthwith and recover from the Approved Supplier any resulting losses if the Approved Supplier or his Employees acting with or without his knowledge:

16.1.1 Shall be found to have calculated the amount of the Offer(s) by agreement or arrangement with any third party or to have communicated the amount of the Offer(s) to any third party prior to the closing date for the submission of Offers;

16.1.2 Commits any offence under the Prevention of Corruption Acts 1889 - 1916, Section 117(2) of the Local Government Act 1972 or under legislation creating offences in respect of fraudulent acts;

16.1.3 Shall have offered, or given, or agreed to give to any person any gift, or consideration of any kind as an inducement or reward for doing, or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Agreement or for showing or not showing favour or disfavour, to any person in relation to the Agreement, or if the like acts shall have been done by any Employee (whether with or without the knowledge of the Approved Supplier), or shall have given any fee or reward to any member or officer of the Authority, which shall have been exacted or accepted by such officer by virtue of office or employment and is otherwise than such officer's proper remuneration.

16.2 The Authority may terminate the Agreement in whole or in part forthwith if: -

16.2.1 The Approved Supplier fails to comply fully with his obligations under clause 5; or

16.2.2 The Authority's Authorised Representative in his absolute discretion determines that there is a serious risk to Passengers or any other individual arising from the continued operation of the Service where:

16.2.2.1 The Approved Supplier informs the Authority about a police investigation or action in relation to the Approved Supplier, the Employees or any aspect of the performance of the Service; or

16.2.2.2 The Authority receives information from the police or Social Care or Health professionals, which indicates that the Approved Supplier or one or more of his Employees is an Unsuitable Person; or

16.2.2.3 There has been any incident or incidents of serious misconduct by the Approved Supplier or his Employees.

16.3 The Authority shall not be liable to the Approved Supplier or any Employee for any liability, loss or damage suffered as a result of the Authority terminating the Agreement, in whole or in part, under this clause 16, or any other applicable clause under this Agreement.

16.4 The Authority may terminate the Agreement, in whole or in part, by notice in writing with immediate effect where:

16.4.1 The Approved Supplier undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which is not approved by the authority as per clause 21 of volume 0; or

16.4.2 The Approved Supplier is an individual or a firm and a petition is presented for the Approved Supplier's bankruptcy, or a criminal bankruptcy order is made against the Approved Supplier or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or if an administrator is appointed to manage the Approved Supplier's or firm's affairs;

16.4.3 The Approved Supplier is a company, if the company passes a resolution for winding up or dissolution (other than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court made a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

16.4.4 The Approved Supplier fails without cause to commence, or continue, providing the Service.

16.5 Further to the provisions of this clause 16 (and clause 31 of volume 0), should the Call-Off Contract or Accelerated Call-Off Contract relate, from the outset or through the further Call-Off Specification Change Control, to the conveyance of a single Passenger, such provisions may be terminated through Notice from the Authority to the Approved Supplier of not less than 48 hours in the event that the Service is no longer required.

17. Consequences of Termination

17.1 The termination of the Agreement, in whole or in part, shall not affect any rights of the Parties accrued up to the date of termination.

17.2 Upon the expiry or termination of this Agreement the Approved Supplier shall comply with the provisions of Schedule 1 (Exit Plan).

17.3 If requested in writing by the Authority at any point during the Call-Off Contract or Accelerated Call-Off Contract, and within the timescales required by the Authority, the Approved Supplier shall, with a minimum of one month's notice, prepare and submit to the Authority a draft Exit Plan in accordance with Schedule 1 for the Authority's approval.. When the draft Exit Plan is approved it shall be the Exit Plan for the purposes of this Agreement.

17.4 The Approved Supplier may prepare amendments to the Exit Plan at any time during the Call-Off Contract or Accelerated Call-Off Contract term where they are necessary to reflect any material changes to the Services or their manner of provision. Any amendments must be made in accordance with the Call-Off Specification Change Control Procedure.

17.5 In addition to amendments that may be prepared under clause 17.4, the Approved Supplier shall prepare amendments to the Exit Plan annually to reflect any changes in the Services or their manner of provision. Any amendments must be made in accordance with Schedule 2 (Call-Off Specification Change Control Procedure).

17.6 On the Termination Date (or on a date prior to the Termination Date agreed between the parties) the Approved Supplier shall procure that all data, Personal Data, Sensitive Personal Data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall at the Authority's request be:

- (h) delivered to the Authority (or to a Replacement Contractor) forthwith in the format requested by the Authority; or
- (i) retained by the Approved Supplier (or any Sub-Contractor) for a period of 7 years following the Termination Date.

17.7 Where information is retained by the Contractor the Contractor shall, on the Termination Date, issue to the Authority a document which describes the data sets maintained including record types,

17.8 At any time during the retention period set out in clause 17.6 the Approved Supplier shall comply with any request from the Authority for the transfer (in an approved format and with appropriate encryption) or deletion of any of the data held by the Approved Supplier relating to the Services

18. Variations

18.1 No variation of this Agreement will be valid or effective unless agreed in writing by the Parties, as per schedule 2.

18.2 If any proposals submitted by the Approved Supplier to the Authority for the variation or amendment of the Timetable or of any other provision of the Service would, in the opinion of the Authority's Authorised Representative, amount to a material modification of the Service he shall notify the Approved Supplier in writing to that effect. The Approved Supplier shall within 14 calendar days of such notification withdraw or confirm his proposals. If the proposals are not withdrawn the Authority's Authorised Representative may at his entire discretion:

18.2.1 Accept the proposals, or

18.2.2 Invite new Offers for the Service by issuing a new Call-Off Contract or Accelerated Call-Off Contract through the System, or

18.2.3 Invite Offers for the Service as amended or modified in accordance with the proposals by issuing a new Call-Off Contract or Accelerated Call-Off Contract through the System

18.3 For the avoidance of doubt, no proposed change should be put into effect without the agreement of the Authority

18.4 Upon acceptance by the Authority of any such Offer as is mentioned in subparagraph 19.2.2 or 19.2.3 above the current Approved Supplier's Call-Off Contract will forthwith terminate and be of no further effect.

19. Notices

19.1 Except as otherwise expressly provided under this Agreement, no Notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party concerned.

19.2 Any Notice or other communication, not through the System, which is to be given by either Party to the other shall be addressed, as the case may be, to the Authority's Authorised Representative or to the Approved Supplier at the address given in the Tender.

Either Party may change its address for Service by updating the System and serving a Notice in accordance with this clause.

19.2.1 Any Notice or other communication which is to be given by either Party to the other shall be given, in the first instance, via the System. If deemed necessary by either Party, including where an original signature from an Authorised Representative is required, this will be followed by letter (sent by hand, recorded delivery or special delivery all of which require a signature on receipt). 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 (if received at least four hours before the end of the Working Day), in the case of Notices through the System. In the event that a Notice through the System is required to be confirmed by letter the Notice shall be deemed to be delivered 2 Working Days after the day on which the letter was posted and not 4 hours after the System Notification.

20. Relationship Between the Parties

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

21. Governing Law and Enforcement

21.1 The Agreement shall be governed and construed in accordance with English Law and the Parties submit to the exclusive jurisdiction of the English Courts.

Schedule 1 EXIT PLAN

1. OBJECTIVES

- 1.1 Where required by the Authority, the Approved Supplier shall produce and deliver the Exit Plan in accordance with this Agreement, including this Schedule 1.
- 1.2 The objectives of the Exit Plan are to:
 - (a) achieve the orderly transfer of responsibilities for the provision of any replacement, or equivalent of the Services or part thereof, from the Approved Supplier to a Replacement Supplier or the Authority; and
 - (b) minimise any disruption to the Service (or failure to achieve the Minimum Level of Service) during, and as a result of, the transfer;

2. THE EXIT PLAN

- 2.1 The parties shall implement and comply with the Exit Plan during the Termination Period.
- 2.2 Without prejudice to the Authority's obligations under this Agreement, the Approved Supplier and its Authorised Representatives shall provide such access as the Authority may reasonably require in furtherance of the Transfer Objectives.

3. IMPLEMENTATION OF THE EXIT PLAN

- 3.1 The Exit Plan and any subsequent revisions thereof shall set out the activities required to be undertaken by the Approved Supplier, the Authority, and any Replacement Supplier in order to facilitate the smooth handover of the Services, to the Authority or a Replacement Supplier and the timetable and manner in which the Services are to be transferred. Without prejudice to the generality of the foregoing, the Exit Plan shall contain as a minimum:
 - (a) provision for the identification of and a timetable for the transfer to the Authority of copies of the documents reasonably necessary to accomplish the transfer objectives;

- (b) provision for the identification of the Approved Supplier's staff and other resources that will be used to provide Termination Services;
- (c) provision for the identification of the Exit Data and the transfer to the Authority (and, subject to compliance by the Authority with paragraph 4, if so requested by the Authority, to a Replacement Supplier) of:
 - (i) the Exit Data not less than 30 days prior to the termination of this Agreement (or, where termination of this Agreement is on less than 30 days' notice as soon as reasonably practicable after receipt of the notice of termination); and
 - (ii) updated version of the Exit Data as at termination and at such other times as the Exit Plan shall specify;
- (d) a timetable setting out the processes for the phased transfer of the Services during the Termination Period from the Approved Supplier to the Authority or Replacement Supplier including a detailed description of the activities to be undertaken by the Approved Supplier, the Authority and any Replacement Supplier, in order to effect the orderly transfer of responsibility of the Services from the Approved Supplier to the Authority or any Replacement Supplier;
- (e) provision for the performance by the Approved Supplier of the Exit Obligations referred to in paragraph 5;
- (f) appropriate measures to minimise disruption to the supply of Services until the Termination Date;
- (g) appropriate measures to minimise the costs payable to third parties by the Authority, as a result of termination.

3.2 Versions of the Exit Plan (and updates) produced during the Termination Period shall be as detailed as possible, assigning precise dates and individuals to particular activities.

3.3 If the terms of the Exit Plan are incomplete, unclear or ambiguous, they shall be interpreted and construed by reference to this Schedule 1.

4. CONFIDENTIALITY

Prior to providing assistance to any Replacement Supplier or any other party (except the Authority) in connection with the implementation of the Exit Plan or the Termination Services, the Approved Supplier will first seek the prior written approval of the Authority (to ensure, inter alia, that appropriate confidentiality provisions are in place).

5. EXIT DATA

- 5.1 The Exit Data, which the Approved Supplier will provide to the Authority (and if so requested by the Authority, to a Replacement Supplier) shall comprise the following:
- (a) a list of all existing Sub-Contracts entered into by the Approved Supplier (and other arrangements of the Approved Supplier) relating to the provision of the Services;
 - (b) a list of data sets (containing all Personal Data, Sensitive Personal Data and all other data relating to the Services) held (whether by the Approved Supplier or a Sub-Contractor) and details of the data system and format used;
 - (c) a list detailing the assets and all other resources (including software manuals, operating manuals, instruction codes, and documents), licences, equipment and intellectual property rights (together with details of ownership thereto) used to provide the Services;
 - (d) information relating to those Employees of the Approved Supplier (if any) who are expected to transfer to the Authority or Replacement Supplier as required by Schedule 3 and clause 16 to volume 0; and
 - (e) details of all Services being provided by the Approved Supplier at the Termination Date.
- 5.2 The Approved Supplier shall ensure that the information provided in accordance with paragraph 4.1 is accurate at the time that it is provided.
- 5.3 The Authority expressly agrees and accepts that such Exit Data may constitute Commercially Sensitive Information of the Approved Supplier and, as such, may be confidential information and shall not be disclosed to any person unless paragraph 3 has been complied with.
- 5.4 During the Termination Period, the Approved Supplier shall:
- (a) continue to provide the Services in accordance with the Minimum Levels of Service as set out in this Agreement and the applicable Call-Off Specifications;
 - (b) co-operate with the Authority, and where applicable any Replacement Supplier to ensure the orderly transfer of responsibility for the Services;

- (c) provide all reasonable assistance and appropriate resources to the Authority, Passengers and any Replacement Supplier to facilitate the orderly transfer of Services to the Authority or a Replacement Supplier;
- (d) promptly and diligently answer any questions about the Services which may be asked by the Authority or by any Replacement Supplier with a view to:
 - (i) explaining the manner in which the Services have been provided;
 - (ii) supporting the development by the Authority for a renewed or re-let provision of services and in certain cases for inclusion in a new agreement; or
 - (iii) allowing Authority or the Replacement Supplier to conduct due diligence; and
 - (iv) carry out such security tasks as are appropriate to identify security and operator risks inherent in the transfer of the Services and inform the Authority of such risks and possible preventative and curative measures necessary to deal with such risks.

5.5 The Approved Supplier will provide information (and, subject to payment of the Approved Supplier's reasonable charges therefore, training) to the Authority's personnel as directed by the Authority to enable it (to the extent possible) to provide services similar to the terminated Services with minimum disruption and in accordance with Minimum Levels of Service similar to the this Agreement. This training includes the Authority assigning its personnel to work with the Approved Supplier's personnel to facilitate knowledge transfer from the Approved Supplier to the Authority.

5.6 The Approved Supplier shall carry out its obligations under this Schedule 1 and the Exit Plan in such a manner so as to cause as little disruption as possible to the business of the Authority.

5.7 If, for any reason, there is no Exit Plan at the start of the Termination Period, then the Approved Supplier shall provide, at the request of the Authority, all reasonable assistance to the Authority, including by performing its obligations under this Schedule 1, to accomplish the Exit Obligations during the Termination Period and shall nevertheless provide the Exit Data to the Authority within the timescales required by the Authority.

6. BUSINESS CONTINUITY DURING TRANSFER

- 6.1 The Approved Supplier will provide assistance to support the Authority and any other Service User requirements for business continuity during the Termination Period. This includes, to the extent not already documented in this Schedule:
- (a) updating and supplying documentation used by the Approved Supplier to provide business continuity services, testing procedures and frequencies, redundancy diagrams and plans;
 - (b) training and informing the Authority of then-current policies and procedures with regard to backup and business continuity;
 - (c) arranging for additional overlapping coverage or support through the Termination Period to minimise disruption in the event of an outage during that period; and
 - (d) as requested by the Authority, participating in business continuity testing after the Termination Period until a successful test has been accomplished.

Schedule 2 Call-Off Specification Change Control

1. General principles

- 1.1 Where the Authority or the Approved Supplier sees a need to change this Agreement, the Authority may at any time request, and the Approved Supplier may at any time recommend, such change only in accordance with the Call-Off Specification Change Control Procedure set out in paragraph 2 of this 0.
- 1.2 Until such time as a Call-Off Specification Change is made in accordance with the Call-Off Specification Change Control Procedure, the Authority and the Approved Supplier shall, unless otherwise agreed in writing, continue to perform the Service in compliance with its terms before such change.
- 1.3 Any discussions which may take place between the Authority and the Approved Supplier in connection with a request or recommendation before the authorisation of a resultant Call-Off Specification Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Approved Supplier and the Approved Supplier's Authorised Representatives which has not been authorised in advance by a Call-Off Specification Change, and which has not been otherwise agreed in accordance with the provisions of this 0, shall be undertaken entirely at the expense and liability of the Approved Supplier.

2. Call-Off Specification Change Control Procedure

- 2.1 Discussion between the Authority and the Approved Supplier concerning a Call-Off Specification Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this Agreement by the Authority; or
 - (c) a recommendation to change this Agreement by the Approved Supplier.
- 2.2 Where a written request for an amendment is received from the Authority, the Approved Supplier shall, unless otherwise agreed, sign two copies of the Authority's Change Control Note and provide these to the Authority within three weeks of the date of the request.

- 2.3 A recommendation to amend this Agreement by the Approved Supplier shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Approved Supplier at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.
- 2.4 Each Change Control Note shall contain:
- (a) the title of the Call-Off Specification Change;
 - (b) the originator and date of the request or recommendation for the Call-Off Specification Change;
 - (c) the reason for the Call-Off Specification Change;
 - (d) full details of the Call-Off Specification Change;
 - (e) the price increase or decrease, if any, of the Call-Off Specification Change;
 - (f) a timetable for implementation, together with any proposals for acceptance of the Call-Off Specification Change;
 - (g) a schedule of amendments to the Payment if appropriate;
 - (h) details of the likely impact, if any, of the Call-Off Specification Change on other aspects of this Agreement including:
 - (i) the timetable for the provision of the Call-Off Specification Change;
 - (ii) the personnel to be provided;
 - (iii) the Offer Price;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
 - (i) the date of expiry of validity of the Change Control Note; and
 - (j) provision for signature by the Authority and the Approved Supplier.
- 2.5 For each Change Control Note submitted by the Approved Supplier the Authority shall, within the period of the validity of the Change Control Note:
- (a) allocate a sequential number to the Change Control Note; and
 - (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) accept the Change Control Note as per clause 2.3 of this schedule 2;

- (iii) notify the Approved Supplier of the rejection of the Change Control Note.

A Change Control Note signed by the Authority and by the Approved Supplier shall constitute an amendment to this Agreement.

Schedule 3 TUPE

TUPE Information Return Form

Service:

Provider (full name of individual or organisation currently providing the service)

--

Address:

--

I the undersigned warrant for and on behalf of the above named Supplier that the information provided on this form and any continuation sheets is true, accurate and complete and I undertake to inform Somerset County Council immediately if it comes to my attention that there are any errors or omissions contained in the information herein.

Signed:

--

Date:

--

Print Name:

--

Position:

--

Telephone:

--

E-Mail:

--

TUPE Information Return Form Continued

Base Data of Current Staff:

Please identify staff by number rather than name, e.g. No.1, No.2. Please group staff by job description/job title. Please photocopy continuation page as necessary.

No.	Staff Title / Grade	Employment Start Date (Service with your organisation)	Employment Start Date (Continuous service acquired through TUPE)	Date Birth	of Gender	Current Wage/Salar y	Hrs of Employment	
							Total	In this service

TUPE Information Return Form Continued

**Please provide details of your principal terms and conditions of employment:
(continue on a separate sheet if necessary)**

Probationary Period:

Retirement Age:

Notice Periods:

Current Scales: Pay

Any Agreements to come into effect: Pay yet into

Overtime Provisions

Annual Leave Entitlements:

Sick Leave Entitlements:

Maternity / Paternity Leave Entitlements:

Special Leave Arrangements:

TUPE Information Return Form Continued

Pension
Arrangements

Redundancy
Provisions

Collective
Agreements

Car Leasing
Scheme (if
provided):

Details of any outstanding or anticipated disciplinary or grievance proceedings, employment tribunal or other claims such as personal injury within the last two years:

(please indicate which staff member the details relate to (as listed on the Base Data list above)

Other Employment Terms / Benefits (not covered above):