

DATED

20[]

NORTH SOMERSET DISTRICT COUNCIL

And

[ADD PROVIDER'S NAME]

CONTRACT

For

**PUBLIC TRANSPORT SERVICES
AND/OR
COMMUNITY TRANSPORT SERVICES**

North Somerset council
Town Hall
Weston-super-Mare
BS23 1UJ

CONTENTS

DRAFT

This Contract is dated

PARTIES

(1) **NORTH SOMERSET DISTRICT COUNCIL** of Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23 1UJ (**Council**)

(2) [INSERT PROVIDER NAME] [registered number] whose [registered office/address] is at [INSERT ADDRESS] (**Contractor**)

BACKGROUND

(A) The Council carried out a procurement following an OJEU notice dated [INSERT DATE] for the provision of the Services.

(B) Following a competitive selection process pursuant to the terms of the Council's Dynamic Purchasing System for the Services, the Council has selected the Contractor to provide [the Public Transport Service / the Community Transport Service/ the Services] in accordance with the terms and conditions of this Contract.

(C) The Contractor is willing and able to provide [the Public Transport Service / the Community Transport Service / the Services]

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this contract unless the context otherwise requires the following words and expressions shall have the following meanings and apply to this Contract

“Bribery Act”

the Bribery Act 2010 and any subordinate legislation made under that Act for time to time together with any guidance or codes of practice issued by the

relevant government department concerning the legislation.

- “Change” any change to this Contract including to any of the Services
- “Change of Control” any change in the ownership/control of the Contractor, including a change in the control of the majority of the shares in, or voting rights amongst, its shareholders or members, any constitutional reorganisation, amalgamation or merger, or any transfer of the whole or part of the Contractor’s business
- “Commencement Date” []
- “Community Bus Permit” a permit granted under section 22 of the Transport Act 1985
- “Community Transport Service” a transport service operated with a Community Bus Permit provided on a not-for-profit basis in direct response to the identified needs of the community.
- “Confidential Information” information which has been designated as confidential by either party and notified in writing to the other party including commercially sensitive information, information which relates to the business, affairs, assets, trading practices, service, developments, trade secrets, know-how, personnel, customers and suppliers of either party and all personal data and sensitive personal data within the meaning of the DPA

“Contract”	this written contract made between the Council and the Contractor, including the schedules and appendices
”Contract Price”	the price (exclusive of any applicable VAT) payable to the Contractor by the Council under this Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under this
“Contractor Default”	<p>any one or more of the following events:</p> <p>(a) a breach by the Contractor of any of its obligations under this Contract which materially affects the performance of the Services;</p> <p>(b) a failure by the Contractor to comply with the Specification;</p> <p>(c) a breach by the Contractor of its obligations under clause [] (Sub-contracting);</p> <p>(d) a breach by the Contractor of its obligations under clause [] (Monitoring);</p> <p>(e) the abandonment of this Contract by the Contractor;</p> <p>(f) a breach by the Contractor of its obligations to take out and maintain any of the Required Insurances.</p>
“Contractor’s Personnel”	all employees, staff (including for the avoidance of doubt Drivers), other workers, agents and consultants of the Contractor and any Sub-contractors who are engaged in the provision of the Services from time to time

“Contractor’s Provisional Staff	has the same meaning given to it in Clause []
“Contractor’s Representative”	the person appointed by the Contractor in accordance with Clause 4.2 (Appointment of Representatives)
“Council Data”	any data (including metadata), record, document or information howsoever stored, which is communicated in writing, orally, electronically or by any other means by the Council, its staff and agents to the Contractor relating to a Passenger and to the Services provided, or is obtained, gleaned, compiled or processed by the Contractor during the course of the Contractor providing the Services to a Passenger and Services provided
“Council Representative”	the person or named officer nominated by the Council in accordance with Clause [4.1] (Appointment of Representatives)
“Data Processor”	has the same meaning as set out in the Data Protection Act 1998
“Data Protection Legislation”	the Data Protection Act 1998 (DPA), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, 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 or relevant government department

“DBS” the Disclosure and Barring Service established under the Protection of Freedoms Act 2012.

“Default Notice” a notice in writing setting out the Contractor’s Default

“Directive” the EC Acquired Rights Directive (Directive 2001/23/EC)

“Dispute” any difference or dispute between the Council and the Contractor arising out of or in connection with this Contract (including any dispute arising after termination of this Contract

“Dispute Resolution Procedure” the procedure set out in **Clause 27** (Dispute Resolution Procedure)

“Driver” any driver employed by or engaged by or contracted by the Contractor to drive any one of the Vehicles in the provision of the Services.

“Employee Liability Information” The information which a transferor is obliged to notify to a transferee pursuant to Regulation 111(2) of TUPE regarding any person employed by him who is assigned to the organised grouping of resources or employees which is the subject of a Relevant Transfer and also such employees as fall within Regulation 11(40) of TUPE

“Equalities Legislation”	means the Equalities Act 2010
“End Date”	[]
“Enhanced DBS & Barred List Check”	An Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child & adult) (as appropriate)
“Enhanced DBS & Barred List Check (child)”	A disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children’s barred list
“Enhanced DBS & Barred List Check (adult)”	A disclosure of information comprised in an Enhanced DBS Check together with information from the DBS adult’s barred list
“Enhanced DBS & Barred List Check (child & adult)”	A disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children’s and adult’s barred list
“Enhanced DBS Check”	A disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post
“Environmental Information Regulations”	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

“Equalities Legislation”	the Equality Act 2010
“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 issue by the Information Commissioner or relevant government department in relation to such legislation
“Force Majeure”	any event or occurrence after the date of this Contract affecting the performance of either party’s obligations arising from acts, events, omissions or non-events beyond the reasonable control of the party concerned and which is not attributable to any act or failure to take preventative action by that party, including acts of God, riots, war, civil war, acts of terrorism, fire, explosion, flood, violent storm and severe adverse weather conditions, malicious damage, or any other disaster, but excluding any industrial dispute relating to the Contractor, the Contractor’s Personnel or any other failure in the Contractor’s supply chain
“Future Contractor”	a third party supplier of Replacement Services who is listed on the Dynamic Purchasing System and appointed by the Council from time to time
“Journey”	the part of the Route where any Passenger is carried
“Information”	has the meaning given under section 84 of the FOIA
“Laws”	the laws of England and Wales and the European Union (as relevant) and any other statutes, statutory

instruments, orders, regulations, directives, codes of practice, byelaws, or the like, to be observed and performed in connection with the Services

“Month” means a calendar month

“Payment Period” Each calendar month during the Term provided that:

(a) the first contract Month shall commence on the Commencement Date and end on the last day of the month in which the Commencement Date occurs; and

(b) the last contract Month shall begin on the first day of the month in which the End Date occurs and end of the last day of the month in which the End Date occurs

“Passenger” any person who is being provided with the Services under this Contract

“Passenger Assistant” a person (other than the Driver) who provides assistance for vulnerable or disabled Passengers whilst travelling on the Community Transport Service. Passenger Assistants may be one of the Contractor’s Personnel or provided by the Council

“Performance Indicators” the criteria to be used by the Council to measure the Contractor’s performance and delivery of the Services, the criteria to include, but not exclusively:

- Route checks
- School / Centre visits
- Analysing of non-compliance issues and complaints

- Sampling of invoices
- Any electronic data information available e.g. Real Time Information

“Persistent Breach”

The occurrence of any of the following events:

(a) a breach of the Contractor’s obligations under this Contract where on the date it occurs:

- (i) more than 2 Default Notices have been given within the last 12 Months ending on that date;
- (ii) more than 3 Default Notices have been given at any time between the Commencement Date and the date that the last Default Notice has been given ending on that date.

“Personal Data”

has the same meaning as in Section 1 of the DPA

“Prescribed Rate”

Four per cent (4%) above the base interest rate of Barclays Bank Plc from time to time in force

“Pricing Schedule”

the schedule containing details of the Contract Price, as set out in **Schedule B**

“Prohibited Act”

the following constitute Prohibited Acts:

- (a) offering, giving or agreeing to give to any servant of the Council or any other public body or person employed by or on behalf of the Council or any other public body any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in

relation to the obtaining or performance of this Contract or any other contract with the Council; or

- (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Council;
- (b) entering into this Contract or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council's Representative; or
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under Laws creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council;
- (d) defrauding or attempting to defraud or conspiring to defraud the Council

“PSV”

a public service vehicle as defined in the Public Passenger Vehicles Act 1981

“PSV Operator’s Licence	a licence to operate PSVs issued by the Vehicle and Operator Services Agency (VOSA), on behalf of the Traffic Commissioner
“Public Transport Service”	a transport service operated with a PSV Contractor’s Licence, which is available to all members of the general public
“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.
“Regulated Activity Provider”	Has the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006
“Relevant Employee”	Those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Future Contractor
“Relevant Transfer”	a relevant transfer for the purpose of TUPE
“Replacement Services”	any Service that is identical or Substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination of, or the expiry of, this Contract, whether those services are provided by the Council internally or by any Future Contractor
“Request for Information”	A request for information or an apparent request under the Code of Practice on Access to

Government Information, FOIA or the Environmental Information Regulations

“Route” [Route Schedule to be added when contract signed]

“Route Schedule” the schedule describing and delineating the Route attached to this Contract at [Schedule C]

“Service Transfer Date” the date on which the Services transfer from the Contractor or Sub-contractor to a Future Contractor

“Services” The Public Transport Service and/or the Community Transport Service

“Specification” the specification set out in Schedule A and any modifications or additions thereto as may from time to time be made in accordance with this Contract

“Supported Bus Service” local bus services which are not commercially viable but which the Council considers to be socially necessary

“Staffing Information” In relation to all persons detailed on the Contractor’s Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information, including job title, age, gender, length of service, grade, material terms and conditions of employment and the amount of time spent on the provision of the Services

Standard DBS Check” a disclosure of information which contains certain details of an individual’s convictions, cautions, reprimands or warnings recorded on police central

records and includes both 'spent' and 'unspent' convictions

“Sub-contract” any contract between the Contractor and a third party under which the Contractor agrees to source the provision of any of the Services from that third party

“Sub-contractor” any contractor that enters into a Sub-contract with the Contractor

“Term” the period from and including the Commencement Date to and including the End Date as may be varied by:

- (a) the earlier termination of this Contract in accordance with its terms; and
- (b) without prejudice to (a) above and (c) and (d) below, the voluntary termination of this Contract by the Council in accordance with **Clause []** ;
- (c) without prejudice to (a) and (b) above and (d) below, the voluntary termination of this Contract by the Contractor in accordance with clause [] ; and
- (d) without prejudice to (a), (b) and (c) above, the voluntary termination of this Contract by the Contractor in accordance with **Clause []**

“Termination Date” the date or expiry of this Contract

“Traffic Commissioner” the individual responsible for the control and licensing of any Vehicle for the traffic area in which the Service will operate and any person carrying out duties on the Traffic Commissioner’s behalf with regard to these duties.

“TUPE”	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), and any other regulations enacted for the purpose of implanting the Directive in English Law
“Unauthorised Passenger”	any person who has not been sanctioned by the Council to travel on a Route
“Variation”	any variation to the Contract, including to any of the Services
“VAT”	Value added taxes
“Vehicle”	means: (a) a PSV; and (b) a vehicle granted a Community Bus Permit; <i>And used for the performance of the Services</i>
“Working Day”	Monday to Friday, excluding any public holidays in England and Wales and any other day that the Council is not open for normal business

- 1.2 A reference to one gender shall include a reference to other genders;
- 1.3 the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.4 a reference to **a person** includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.5 a reference to **a company** includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.6 a reference in this Contract to a clause, sub-clause, paragraph, schedule or annex is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph schedule or annex of this Contract;

- 1.7 a reference to this Contract or to any document shall include any permitted variation, amendment or supplemental to such document;
- 1.8 Laws of any enactment, order, regulation, code, guidance or other similar instrument shall be construed as a reference to the enactment, order, regulation, code, guidance or instrument (including EU instrument) as amended, replaced, consolidated or re-enacted;
- 1.9 references to any document being “**in the agreed form**” means such documents have been initialled by or on behalf of each of the parties for the purpose of identification;
- 1.10 Reference to ‘a party’ or ‘parties’ is a reference to a party to this Contract;
- 1.11 The words “**include**” and “**including**” are to be construed as if they were immediately followed by the words “**without limitation**”;
- 1.12 Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract;
- 1.13 All references to this Contract include (subject to all relevant approvals) a reference to this Contract as amended, supplemented, substituted, novated or assigned from time to time;
- 1.14 The Contract will be governed by and construed in accordance with English Law, and the English Courts will have jurisdiction over any dispute or difference, which arises between the Council or the Council Representative and the Contractor or the Contractor’s Representative out of or in connection with the Contract. The Contract is binding on the Council and its successors and assignees and on the Contractor and its successors and permitted assignee;
- 1.15 Any obligation in this Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.

2. **TERM**

- 2.1 This Contract shall take effect on the Commencement Date and shall terminate automatically on the End Date unless the Contract is otherwise terminated by notice under **clause []** or by notice under **clause []** or otherwise terminated in accordance with the provisions of this Contract.

3. **FORM OF TENDER**

- 3.1 The Contractor shall be taken to have satisfied itself before submitting its tender for the Services or any one of the Services as to the accuracy and sufficiency of everything in its tender, which shall cover all the Contractor's obligations under this Contract (including the Route), and have obtained for itself all information as to risk, contingencies and anything else that might affect or be relevant to that tender and acknowledges and confirms that it has entered into this Contract in reliance on its own due diligence. The Council will not accept any liability or authorise any modification to the Contract made necessary by the Contractor's failure to inspect documents prior to submission of its tender.
- 3.2 The Contractor warrants and represents that, as at the Commencement Date, all information contained in its tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to the execution of this Contract.
- 3.3 This Contract constitutes the entire understanding and agreement between the parties relating to the subject matter of the Contract and, save as expressly referred to, or incorporated by reference, supersedes all prior submissions, representations or understandings, whether written or oral, except that this clause shall not exclude liability in respect of any fraud or fraudulent misrepresentation.
- 3.4 If there is any conflict or inconsistency between the provisions of this Contract such conflict or inconsistency must be resolved according to the following order of priority:
- 3.4.1 Clauses [] to []
 - 3.4.2 Schedule A (the Specification) and Schedule C (Route Schedule);
 - 3.4.3 Schedule B (Pricing Schedule)

4. **APPOINTMENT OF REPRESENTATIVES**

- 4.1 On the Commencement Date the Council will notify the Contractor in writing of the identity, telephone number and e-mail address of the Council's Representative.
- 4.2 On the Commencement Date the Contractor will notify the Council in writing of the identity, address, telephone number and e-mail address of the Contractor's Representative.

- 4.3 If there is any change to the Council's Representative or the Contractor's Representative at any time during the Term, the party who has made the change will notify the other party in writing within 1 Working Day of that change being made.
- 4.4 Any notice, information, instruction or other communication given or made to the Contractor's Representative shall be deemed as being given or made to the Contractor.

5. **SUPPLY OF THE SERVICES**

- 5.1 The Contractor will supply the Services during the Term in accordance with the Specification, the Route Schedule, and otherwise on the terms of this Contract.
- 5.2 The Contractor must not vary the Route (other than in an emergency or road closure), except with the prior written consent of the Council. Any change to the Route Schedule shall be made in accordance with **clause 26** (Variation and Continuous Improvement)
- 5.3 The Contractor accepts and acknowledges that it has the responsibility to provide and operate the Services and the Council will owe no duty to any Passenger who might have a claim against the Contractor for any reason arising out of the running of the Services, the condition of any Vehicle, the actions or omissions of the Contractor or the Contractor's Personnel or through any other cause whatsoever (as far as permitted by Laws).
- 5.4 The Contractor shall ensure that, during the hours of operation of the Public Transport Service, a member of the Contractor's Personnel is always available to make arrangements to restore the Public Transport Service in the event that it becomes disrupted. The Contractor shall arrange for public enquiries regarding such events to be answered at the time of occurrence of the disruption and shall publish a telephone number which may be used for this purpose in publicity material to be issued pursuant to **clause [] (RTI)**.

6. **REGISTRATION OF THE SERVICES**

- 6.1 It will be the Contractor's responsibility to register the Route of the Public Transport Service and the route of the Community Transport Service and any subsequent amendment with the Traffic Commissioner and pay the appropriate fees. Unless the Council has confirmed its support for short notice (being less

than 56 calendar days for the Public Transport Service and less than 28 calendar days for the Community Transport Service), the Traffic Commissioner must give full notice of any agreed changes to the registration. The Contractor shall, immediately following receipt of the registration document, including any subsequent amended document, send a copy of that registration document and any amended document (as relevant) to the Council's Representative.

- 6.2 The Contractor shall not make application to the Traffic Commissioner to cancel or amend the any of the Routes without first obtaining the written approval of the Council. The Contractor will be responsible for all costs incurred in the making of the application, the registration fee and all other costs associated with and/or ancillary to the cancellation or change.
- 6.3 Where any amendment or cancellation of the Route is proposed by the Council, the Council will pay the appropriate fee for cancellation or amending the registration of the new route.
- 6.4 The Contractor warrants that it will at all times operate the Public Transport Service in accordance with the registered details of the local bus service registration.

7. PSV OPERATOR'S LICENCE AND COMMUNITY BUS PERMIT

- 7.1 The Contractor shall have and keep in force at all times during the Term an unconditional PSV Operator's Licence for the operation of the Public Transport Services.
- 7.2 The Contractor shall have and keep in force at all times during the Term a Community Bus Permit for the operation of the Community Transport Service.
- 7.3 The Contractor shall on request supply copies (or if requested the originals) of the PSV Operator's Licence and/or the Community Bus Permit to the Council's Representative. If the Contractor does not have a valid PSV Operator's Licence and/or a Community Bus Permit and/or if any licence or permit has been suspended or withdrawn for any reason and/or any license or permit has conditions attached to it which prohibit the operation of the Public Transport Service and/or the Community Transport Service (as relevant) the Contractor shall immediately notify the Council's Representative in writing of this fact and the Council may, without prejudice to **Clause [] (Termination)** terminate the

Public Transport Service and/or the Community Transport Service (as relevant) with immediate effect by notice in writing to the Contractor.

8. SERVICE STANDARDS

- 8.1 The Contractor shall provide the Services, or procure that they are provided:
- 8.1.1 With all reasonable skill and care;
 - 8.1.2 In conformity with all Laws;
 - 8.1.3 Strictly in accordance with the Specification;
 - 8.1.4 Strictly in accordance with the Route Schedule;
 - 8.1.5 To meet and satisfy the Performance Indicators
- 8.2 Without prejudice to **clause 8.1** the Contractor shall at all times comply with section 19 of the Public Passenger Vehicles Act 1981.
- 8.3 Without limiting the general obligation set out in **clause 8.1** the Service Provider shall (and shall procure that the Contractor's Personnel shall) at all times all appropriate measures to maintain a Passengers privacy in accordance with the DPA and the Contractor's own confidentiality policy (when in receipt of Personal Data).

9. MANNER OF CARRYING OUT THE SERVICES

- 9.1 Community Transport Service:
- 9.1.1 The Contractor shall, if requested to do so, provide a Passenger Assistant for the Passenger, and procure that the Passenger Assistant complies at all times with the operating requirements for Passenger Assistants set out in the Specification;
 - 9.1.2 The Contractor shall at all times allow a Passenger Assistant provided by the Council to accompany the Passenger provided that the Passenger Assistant complies at all times with the requirements for Passenger Assistants set out in the Specification;
 - 9.1.3 The Contractor must not convey any Unauthorised Passengers or any person not connected with the Services.
- 9.2 Public Transport Service:
- 9.2.1 The Contractor shall at all times comply with the Codes of Practice for the use of Bristol Bus Station and the Broadmead Bus Link from time to time in force.

- 9.2.2 The Contractor must issue tickets to all fare paying Passengers using the Public Transport Service. The ticket issued must bear the usual business name of the Contractor.
- 9.2.3 At Journey terminal points the Driver and the PSV must be at the departure stand ready for Passengers to board and to commence collecting farers at least three minutes before the departure time specified in the Route Schedule.
- 9.2.4 Without prejudice to clause [] the Council shall have the right to suspend any part of, or the whole of, the Public Transport Service if there is any reference to the Traffic Commissioner or other licensing body regarding the supervision, suspension or revocation of any licence or permit relating to any PSV used in the provision of the Public Transport Services. The time period for any suspension shall be at the Council's discretion, acting reasonably, and taking into account the cause of the suspension or revocation. If any licence or permit is revoked the Council may, without prejudice to clause () (Termination) terminate this Contract with immediate effect by notice in writing to the Contractor.
- 9.2.5 The Contractor shall make arrangements to deal with lost property in accordance with the Public Service Vehicles (Lost Property) Regulations 1978 (as amended).
- 9.2.6 Any PSV used in the Public Transport Service Contracted Service shall at all times, as a minimum requirement, display the designated route number and the final destination of that Vehicle's journey so as to be clearly visible to members of the public. The route number and the destination should be displayed on a flat surface, whether rigid or taught, fixed to the Vehicle and set vertically or at an angle of no more than 15° from vertical. The display should be legible to members of the public from a reasonable distance and should preferably be in either white or yellow lettering on a black background. All PSV shall prominently display a current timetable and fare chart for the Route being travelled.
- 9.2.7 On any Route which is frequently used by Passengers interchanging with long distance land or air services, the Contractor shall ensure that

there is adequate storage space for luggage and travel bags on any PSV travelling along such Route and will not, at any time, allow any luggage or travel bag to be placed in the gangway or obstruct any door.

9.2.8 The Contractor shall designate those seats close to entrance and exit doors for the use of persons who are elderly or disabled and ensure that a notice is displayed in a prominent position close to those seats informing Passengers of this designation. The Contractor will ensure that grab rails are clearly marked to assist those Passengers who have a visual impairment.

9.3 Together the Community Transport Service and the Public Transport Service

9.3.1 The Contractor shall take all reasonable steps to ensure the safety of all persons being conveyed in the Vehicle, not only whilst aboard but also at the times of entering or leaving or boarding or alighting the Vehicle. Any Vehicle used for the Service must be capable of one person operation (unless a conductor is present) and the doors of the Vehicle shall be under the control of the Driver at all times.

9.3.2 At all times, the Driver is responsible for the safety of his Vehicle. Any person being conveyed in the Vehicle whose conduct is in breach of any Laws, may be removed from the Vehicle or prevented from boarding the Vehicle on the Driver's authority.

10. **VEHICLES**

10.1 The Contractor will, for each Route, provide the correct type, number and size of Vehicle as specified in the Contractor's tender and in accordance with the Specification for the performance of the Services, to allow for the conveyance of Passengers who would normally travel over the Route. Where the maximum size of Vehicle is stated in the Specification, the Contractor will not use any larger Vehicle.

10.2 The Contractor shall ensure that all PSV used in the performance of the Public Transport Service shall be of low floor type and accessible to wheelchair users.

10.3 The Contractor must ensure that each and every Vehicle used in the provision of the Services is suitable for the Route and the passenger to be carried [as set out in the Specification]. No vehicle shall be parked overnight on the public highway.

- 10.4 The Contractor shall not allow any Vehicle to carry more than the number of Passengers and people which it is legally permitted and safe to carry.
- 10.5 The Contractor must ensure that all Vehicles used to deliver the Community Transport Service are fitted with seatbelts and that all Passengers being conveyed in such Vehicle, the Driver and the Passenger Assistant wear their seatbelt at all times whilst the Vehicle's engine is on.
- 10.6 All Vehicles used in the performance of the Services shall display, in a position close to the entrance doors, a notice to the design of, or provided by the Council:
- 10.6.1 Acknowledging that the Service is operated on behalf of the Council;
 - 10.6.2 Informing Passengers on how to make comments about the Service; and
 - 10.6.3 Such other temporary notices relating to the Service as the Council may from time to time require.
- 10.7 The Contractor shall at all times ensure that all Vehicles used in the delivery of the Services are in a fit, serviceable and roadworthy condition and comply with every statutory requirement applying to them. If so required by the Council's Representative the Contractor shall allow the Council with or without prior notice to carry out safety and mechanical inspections on any Vehicle used by the Contractor in the provision of the Services and for this purpose the Contractor will present the Vehicle to be inspected at a place and time designed by the Council. The inspections may be carried out by an authorised officer or agent of the Council, either at the Contractor's operating centre(s) or at an address nominated by the Council's Representative. No fee will be chargeable for this inspection. The Council may refuse to allow a Vehicle to be operated if declared unfit by the Council. The Contractor must then provide a replacement Vehicle at no cost to the Council.
- 10.8 The Contractor shall at all times keep the Vehicles in a clean and tidy condition (both internally and externally) and during the operation of the Service adequately heated and ventilated. The Contractor shall also ensure that each Vehicle is equipped with suitable first aid and fire extinguishing equipment. The Contractor shall, for the Public Transport Service, comply with the Public Services Vehicles (Conditions of Fitness, Equipment and Certification) Regulations 1981 (as amended).

- 10.9 No Vehicle fitted with bull bars or similar shall be used in the performance of the Services.
- 10.10 The Contractor shall carry out routine safety checks of all PSV at appropriate intervals and in so doing will comply with the 'Guide to maintaining roadworthiness' for commercial goods and passenger carrying vehicles (**'the Guide'**) published by the Vehicle & Operator Services Agency and shall put into place monitoring procedures and systems to ensure that each Driver and PSV complies with the items listed in the table to Annex 7 of the Guide.
- 10.11 The Contractor will at all times maintain and keep proper and up-to-date maintenance records and records of safety inspections for each Vehicle used in the performance of the Services to include a list of all items inspected, when and by whom the inspections were carried out, the result of the inspection, details of all service repairs and works carried.
- 10.12 The Contractor shall, for any Vehicle used in the performance of the Services, supply copies (and where requested the originals) of the following documents to the Council's Representative on demand:
- 10.12.1 Current policies and certificates of motor insurance;
 - 10.12.2 Receipts of payments of insurance premiums;
 - 10.12.3 (if applicable) valid MOT test certificates;
 - 10.12.4 The maintenance records of any Vehicle; and
 - 10.12.5 Any licences or other requirements necessary for the operation of the Service.
- 10.13 The Council may photocopy any of the documents listed **clause 10.12 of these** General Conditions and thereafter retain such copies and the Contractor shall make no objection to the Council for doing so. Within 1 Working Day of any amendment to any policy of motor insurance pertaining to any Vehicle and/or upon the renewal of any policy and/or upon any amendment or renewal of any of the other documents referred to in **clause 10.12** of these General Conditions the Contractor will give to the Council's Representative copies of all documents affected by such amendment, or renewal, including renewal receipts.
- 10.14 Smoking is not permitted on any Vehicle used in the provision of the Services and the Contractor will ensure that at all times suitable "no smoking" signs are displayed in prominent position throughout the Vehicle.

- 10.15 The consumption of alcoholic liquor and the carriage of open containers of alcoholic liquor is not permitted on any Vehicle.
- 10.16 Radios or recorded music may not be used on any Vehicle whilst being used in the performance of the Services.

11. ELECTRONIC TICKETING MACHINES – PUBLIC TRANSPORT SERVICE

- 11.1 The Contractor shall, at its own cost and expense, install on any PSV used to provide the Services electronic ticketing machines which are capable of reading ITSO smart cards to record amongst other things the number and type of tickets issued for each Journey. The Contractor shall, and shall procure that its Drivers shall, ensure that the electronic ticketing machines are used and operated in accordance with the operating instructions and in accordance with the reasonable instructions of the Council's Representative, as notified to the Contractor in writing from time to time.
- 11.2 The Contractor shall maintain and keep in good repair and condition all electronic ticketing machines installed on PSV and used in accordance with **Clause 11.1**.

12. REAL TIME INFORMATION (RTI) EQUIPMENT FOR THE PUBLIC TRANSPORT SERVICE

- 12.1 The Contractor shall install, keep, maintain, repair, replace and up-grade real time information (RTI) equipment on each PSV used for the delivery of the Public Transport Service to allow arrival times of the PSV at bus stops to be predicted at the stops themselves, web-sites, via SMS and intelligent signal priority at road junctions to be accessed.
- 12.2 The position of the on-vehicle RTI equipment must at all times be secure to prevent unauthorised persons gaining access to the equipment. The position of the RTI equipment is to be agreed between the parties taking into account all the requirements and the recommendations of the RTI supplier.
- 12.3 The Contractor shall install the RTI equipment strictly in accordance with the method statement supplied to it by the RTI system supplier. The Contractor may, in consultation with the RTI supplier, identify appropriate amendments to the method statement where the Contractor considers that such amendments

are necessary (acting reasonably). The Contractor shall only implement those amendment previously approved by the RTI system supplier.

- 12.4 The Contractor will deliver or procure the delivery of training to the Drivers on how to use the RTI Equipment.
- 12.5 Without prejudice to the Contractor's obligations to maintain and repair the RTI equipment pursuant to clause 12.1 the Contractor will permit the RTI system supplier, or its designated sub-contractor, reasonable out of operational hours' access to the RTI equipment for routine inspection, maintenance and repair as and when necessary where such inspection, maintenance and repair is the responsibility of the RTI system supplier.
- 12.6 The Contractor will provide and install electronic ticket machines on PSV which are compatible with the simultaneous operation of the RTI equipment and smartcards.

13. TIMETABLES AND PUBLICITY

- 13.1 The Contractor shall promote the Services in accordance with the Council's Bus Information Strategy which includes roadside displays, timetable booklets and leaflets. In respect of Supported Services the Council will take responsibility for producing and distribution of printed timetable leaflets. This does not preclude the Contractor from issuing publicity material provided that an acknowledgement of the Council's support for the Supported Services is disclosed in the publicity material Provided That a copy of the draft publicity material is sent in advance of publication to the Council's Representative for approval.
- 13.2 Where the Service is comprised of both a Supported Service and a commercial bus service then the Contractor shall be responsible for producing and distributing timetable leaflets. The timetable leaflets must acknowledge all the Journey's subsidised by the Council. A copy of the draft timetable leaflet must be sent to the Council's Representative for approval in advance of publication.
- 13.3 The Council reserves the right to require the Contractor to withdraw any material or information deemed by it to be unsuitable.

14. PASSENGER TRANSPORT INFORMATION – PUBLIC TRANSPORT SERVICE

- 14.1 The Council is a member of South West Association of Public Transport Officers as part of PTI 2000 (Traveline project) to establish and operate regional call centres and maintain an internet site. The aim is to provide comprehensive public transport information from electronic databases. The Contractor shall agree to meet any allocated charges relating to the telephone call centres for calls requesting information on any local bus service provided by the Contractor including for the avoidance of doubt but not exclusively charges incurred by the Contractor in operating and managing the regional telephone call centres.
- 14.2 In the event of the Contractor failing to pay the costs of such enquiries the Council reserves the right to recover such costs by making deductions from monies otherwise due to the Contractor under the contract.

15. **ACCIDENTS**

- 15.1 The Contractor will notify the Council's Representative immediately by telephone of any accident or serious incident occurring during the operation of the Services. A full written report must then be submitted to the Council's Representative within five (5) Working Days of the occurrence of the accident or incident.

16. **DRIVERS AND CONTRACTOR'S PERSONNEL**

- 16.1 At all times the Contractor will ensure that:
- 16.1.1 Each of the Contractor's Personnel engaged in providing the Services, is adequately trained (including customer care training), qualified and possess the necessary skills and experience to provide the Services in which they are engaged;
 - 16.1.2 There is an adequate number of Contractor's Personnel to provide the Services in accordance with this Contract.
 - 16.1.3 Without prejudice to **sub-clause 16.1.2**, the Contractor must ensure that it has suitable cover in place for Drivers who are unable to attend work due to sickness, holiday or for personal reasons.
 - 16.1.4 All of the Contractor's Personnel comply with all of the Council's policies relevant to the performance of the Services.
- 16.2 The Contractor warrants that all of its Drivers have the relevant driving licence for the Vehicle s/he is driving and will ensure that at all times all Drivers comply

with the relevant Laws. If requested to do so by the Council's Representative, the Contractor shall supply copies (and where requested the originals) of driving licences of any Driver and records of a Driver's duty hours and rest hours.

- 16.3 The Contractor must ensure that all Drivers engaged in delivering the Services;
 - 16.3.1 hold a Driver Certificate of Professional Competence (CPC); and
 - 16.3.2 Carry their CPC card.
- 16.4 The Contractor must ensure that all Drivers engaged in the delivery of the Community Transport Service operate within HMRC Guidance on travel mileage for fuel rates and allowances.
- 16.5 The Contractor shall ensure that the Drivers when engaged in the performance of the Services are of clean and smart appearance.
- 16.6 The Contractor shall not allow, at any time, the Drivers to use mobile phones (including hands free) or two way radios whilst driving or otherwise in charge of the Vehicle.
- 16.7 Where at any time the Contractor's Personnel (in addition to the Driver) is aboard a Vehicle during the performance of the Services, the Contractor will, and will procure that its Drivers will, ensure that the Contractor's Personnel complies with this Contract at all times.
- 16.8 The Contractor will not allow any Driver who has six or more penalty points on their driving licence to drive any Vehicle in the provision of the Services.
- 16.9 The Contractor must notify the Council's Representative within 48 hours if it or any of its Drivers is convicted of a driving offence and is banned and/or have points placed on their driving licence.
- 16.10 The Contractor shall give all Drivers clear written instructions about the nature of their duties and responsibilities in providing the Services.
- 16.11 The Contractor shall introduce and/or keep in place training and development programmes for the Contractor's Personnel to ensure the proper provision of the Services, including any relevant change in the Laws relating to the Services.
- 16.12 The contractor shall maintain up-to-date personnel records of the Contractor's Personnel engaged in the provision of the Services and, on request, provide information to the Council as the Council reasonably requests on the Contractor's Personnel. The Contractor shall at all times ensure that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

- 16.13 Any of the Contractor's Personnel whose alleged conduct may place or has placed a Passenger of the Community Transport or member of the general public using the Public Transport Service at risk and/or brought or may bring the Council into disrepute shall be the subject of immediate investigation by the Contractor and dealt with appropriately in accordance with the Contractor's disciplinary procedure.
- 16.14 The Council will be entitled to exclude (at no cost to the Council) from the operation of the Services any Driver who, in the Council's view (acting reasonably), has been the subject to a serious complaint by a Passenger using the Public Transport Service or member of the general public using the Public Transport Service or who has caused breaches of this Contract.
- 16.15 The Contractor will be responsible for employment, conditions of Service, salaries, taxes, national insurance and all levies of any kind relating to the Contractor's Personnel
- 16.16 The Contractor shall replace any of the Contractor's Personnel who the Council reasonably decides has failed to carry out his duties with reasonable skill and care. Following the removal of any of the Contractor's Personnel for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 16.17 In respect of the Public Transport Services the Contractor shall comply with and procure that its Drivers comply with, the Public Service (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990.

17. DBS – THE COMMUNITY TRANSPORT SERVICE

- 17.1 The parties acknowledge that the Contractor is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 17.2 The Contractor shall:
- 17.2.1 Ensure that all of the Contractor's Personnel engaged in the provision of the Community Transport Services are subject to a valid Standard DBS Check, or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate); and

- 17.2.2 Monitor the level and validity of the checks under this clause 17 for each member of the Contractor's Personnel engaged in the provision of the Community Transport Services; and
- 17.2.3 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 a Regulated Activity or who may otherwise present a risk to any Passenger.
- 17.3 The Contractor warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Community Transport 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.
- 17.4 The Contractor shall ensure that no Contractor's Personnel will be permitted to provide the Community Transport Services until all the necessary checks have been made and the checks are satisfactory.
- 17.5 The Contractor shall immediately notify the Council's Representative of any information that it reasonably requests to enable it to be satisfied that the obligations of this **clause** 17 have been met.
- 17.6 The Contractor shall refer information about any person carrying out the Community Transport Services to the Disclosure and Barring Service where it removes permission for such person to carry out the Community transport Services (or would have, if such person had not otherwise ceased to carry out the Community Transport Services) because, in its opinion, such person has harmed or poses a risk of harm to any Passenger.
- 17.7 Without prejudice to this **clause 17** if in the Contractor's opinion it reasonably believes that any person of the Contractor's Personnel has harmed or poses a risk of harm to any Passenger the Contractor shall, immediately upon becoming aware of such harm or potential harm:
- 17.7.1 Inform in writing the Contractor's Representative;
- 17.7.2 Remove permission for such person to continue to carry out the Community Transport Services and shall not re-engage him/her until satisfied that s/he poses no risk of harm to the Passenger;

- 17.7.3 Take all necessary action to protect the Passenger from further harm;
- 17.7.4 If requested to do so by the Council's Representative, carry out an investigation into the action / alleged action of such person (acting expeditiously and diligently at all times) and prepare a report (proportionate to the inquiry) setting out its findings, keep the Council's Representative up-dated as to the progress of its investigation and deliver such report to the Council's Representative within 1 Working Day of completion of the report.
- 17.8 Without prejudice to the other provisions of this **clause 17 (DBS) and clause 16 (Driver's and Contractor's Personnel)** the Contractor shall:
- 17.8.1 Provide evidence to the Council, at its request, that the Contractor's Personnel have received appropriate training in relation to providing a Regulated Activity that is commensurate with their role and responsibilities;
- 17.8.2 Ensure that the Contractor's Personnel are fully aware of each party's respective policies and procedures regarding whistle-blowing and of raising safeguarding concerns and shall ensure that no person is victimised if they raise such concerns with the Contractor or any of the contractor's Personnel. Where the whistle-blowing and/or safeguarding concern relates to the Contractor or a member of the Contractor's Personnel, the Contractor will ensure that its own policies and procedures are followed. The Contractor shall send a responsible and relevant representative (not being connected in any way by the allegations made) to any safeguarding meeting if requested to attend such meeting by the Council..
- 17.8.3 Be responsible for ensuring that robust processes are in place to support the Contractor's Personnel in the accurate recording and keeping of information. The Contractor acknowledges that it could be called upon at any time to evidence what actions it has or has not taken in keeping any Passenger safe.

18. PAYMENTS OF THE CONTRACT PRICE

- 18.1 In consideration of the full and proper performance of the Services by the Contractor in accordance with this Contract, the Council will pay the Contract Price to the Contractor.
- 18.2 Within seven Working Days of the end of each Month the Contractor will invoice the Council for payment of one twelfth (1/12) of the Contract Price. All invoices shall be addressed to the Council but directed to the Council's Representative. The Contractor must ensure all invoices only relate to Services actually undertaken.
- 18.3 With each invoice the Contractor shall supply such financial and statistical information as required by the Council and supply such information as requested to the Council's Representative. The Council reserves the right to inspect all financial records and statistical information pertaining to the Services.
- 18.4 The parties acknowledge and agree that the Contractor shall retain all the fares collected by it from operating the Public Transport Service, with the exception of the fares collected under a gross cost contract, which shall be paid to the Council in accordance with **clause 19** (Fares – Public Transport Services). The Contractor shall submit to the Council with each invoice the number of tickets issued at a concessionary rate, the category of concession and the revenue taken.
- 18.5 Without prejudice to **clause** 18.2, for the Public Transport Service operated under a gross cost contract only, the Contractor shall submit the following financial and statistical information with each invoice for each Payment Period:
- 18.5.1 The total number of Passengers carried;
 - 18.5.2 The total weekly revenue collected from all fares;
 - 18.5.3 Details of the tickets issued including but not limited to:
 - 18.5.3.1 The number of tickets sold by class and the revenue taken by class;
 - 18.5.3.2 The number of tickets issued at the full ticket price and the revenue taken.
- 18.6 The Council shall pay one twelfth (1/12) of the Contract Price which has become properly payable within 30 calendar days of receipt of an undisputed invoice from the Contractor.

18.7 If the Council Disputes the Contractor's entitlement to any part of the Contract Sum:

18.7.1 The Council's Representative shall notify the Contractor's Representative in writing as soon as reasonably practicable following receipt by the Council of the invoice which the Council Disputes (**Disputed Amount**) and submit to the Contractor such evidence the Council has in support;

18.7.2 The Council may withhold payment of the Disputed Amount pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount in accordance with **clause []** (Dispute Resolution Procedure). Provided that the Disputed Amount has been disputed in good faith, interest due on the Disputed Amount shall not accrue until the earlier of 30 days after resolution of the Disputed Amount between the parties;

18.7.3 The Council's failure to pay the Disputed Amount shall not be deemed to be a breach of this Contract;

18.7.4 Subject to **sub-clause 18.7.2** interest shall be payable on the late payment of any undisputed Contract Sum and late payment of the Gross Contract Sum at the Prescribed Rate calculated on a daily basis;

18.7.5 The Contractor shall not suspend the delivery of the Services if any payment is overdue unless it is entitled to terminate this Contract under **clause []** (**Termination** on Council Default) for failure to pay undisputed Contract Sums

18.7.6 To the extent that either party is obliged to refund any sum to the other party interest shall be added to that sum at the Prescribed Rate calculated on a daily basis;

18.7.7 Once the Dispute has been resolved, where either party is required to make a balancing payment it shall do so within 30 days and, where the Contractor is required to issue a credit note, it shall do so within 14 days.

18.8 All sums payable under this Contract shall be paid in Stirling and shall be made by BACS transfer.

19. **FARES – PUBLIC TRANSPORT SERVICE**

- 19.1 The Contractor shall pay to the Council the total sum of all fares paid to it under a gross cost contract.
- 19.2 Within 30 calendar days of the end of each Payment Period the Contractor shall submit the following financial and statistical information to the Council's Representative :
- 19.2.1 The gross amount;
 - 19.2.2 The total revenue;
 - 19.2.3 The National Concessionary Bus Pass revenue;
 - 19.2.4 The net amount due.
- 19.3 If the Council agrees the net amount due it shall submit an invoice to the Contractor for that sum and the Contractor shall pay the sum stated in the invoice within 30 calendar days of the date of the invoice.
- 19.4 If the Council Disputes the net amount due then the Council shall notify the Contractor in writing within seven (7) Working Days of receipt by the Council of the information provided to it pursuant to **clause 19.2** giving reasons why it believes that the net sum is incorrect and requesting such further supporting documentation and/or information as the Council considers necessary to substantiate the net sum claimed. The Contractor shall supply the requested documentation and/or information to the Council's Representative within seven (7) Working Days of the date of the request. Following receipt of such information, if the Council, acting reasonably, requires further information from the Contractor then the Council may make a further written request to the Contractor for further supporting documentation and/or information and the Contractor shall provide that further requested documentation and/or information within [two (2) Working Days of the date of the request.
- 19.5 If following receipt of the further information pursuant to **clause 19.4** the Council agrees the net sum to be paid it shall submit an invoice to the Contractor and the Contractor shall pay the sum stated in the invoice within 30 Working Days of the date of the invoice.
- 19.6 If the parties cannot agree the net sum, then the net sum shall be determined under **clause []** (Dispute Resolution Procedure).

20. VAT

20.1 The Contract Price is exclusive of VAT which shall be added at the prevailing rate applicable and paid by the Council following delivery of a valid VAT invoice. The Contractor shall indemnify the Council on a continuing basis against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Contractor's failure to account for, or to pay, any VAT relating to the payments made to the Contractor under this Contract.

21. **SET OFF**

21.1 The Council may retain or set off any sums owed to it by the Contractor which have fallen due and payable against any sums due to the Contractor under this Contract or under any other agreement pursuant to which the Contractor provides services to the Council.

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

22. **MONITORING**

22.1 Without prejudice to **clause 18.3 and clause 19.2** the Contractor shall keep records and accounts of all Journeys made, tickets issued, mileage travelled and such other information required by the Council from time to time and supply such information to the Council's Representative once in every three Month period during the Term. The Council reserves the right to inspect all records and accounts

22.2 The Council reserves the right to inspect all records and accounts kept by the Contractor and the Contractor shall at all reasonable times permit the Council to inspect them.

22.3 The Council will monitor the performance of the Contractor against the Performance Indicators, such monitoring to be carried out at any time during the Term.

22.4 An authorised officer or agent of the Council may at any time travel on any Vehicle free of charge for the purpose of carrying out passenger surveys and transportation studies.

- 22.5 The Contractor will inform the Council's Representative of any complaints or observations from any source concerning the Services and shall investigate that complaint in accordance with its complaints procedure and respond to the complainant within a specified timescale agreed with the complainant, which timescale must not exceed the timescale for dealing with complaints as set out in the Contractor's complaint procedure. Copies of any written correspondence (including e-mail correspondence) must be forwarded to the Council within seven (7) Working Days of receipt and a copy of any written reply to a complainant must be forwarded to the Council's Representative within 21 Working Days of the original complaint.
- 22.6 Where the Council requires written comments from the Contractor following a complaint made to it concerning the Services, the Contractor will send a reply to the Council within seven (7) Working Days of the date of the Council's request.

23. HEALTH AND SAFETY

- 23.1 The Contractor shall at all times comply with the requirements of all Laws relating to Health and Safety in the performance of the Services.
- 23.2 The Contractor shall ensure that its health and safety policy statement is made available to the Council's representative on request.
- 23.3 The Contractor shall indemnify the Council against any breach of this clause.

24. ASSIGNMENT AND SUB-LETTING

- 24.1 The Contractor shall not transfer or assign this Contract or any part of it or in any other way dispose of this Contract without the prior written consent of the Council, which consent shall be at the discretion of the Council.
- 24.2 The Contractor shall not sub-contract this Contract or any part of it to any person without the prior written consent of the Council, which consent shall be at the discretion of the Council. Notwithstanding such consent, the Contractor will not be relieved from any liabilities or obligations under the Contract. The Contractor will be responsible for all acts, omissions, breaches and neglect of any sub-contractor, his employees or agents in all respects as if they were the acts, omissions, breaches and neglect of the Contractor.

- 24.3 Where consent to sub-contracting is granted, copies of each sub-contract shall, at the request of the Council, be sent by the Contractor to the Council's Representative as soon as reasonably practicable.
- 24.4 In the case of emergency, only the Contractor may, subject always to full compliance with this Contract, permit a Vehicle not owned by the Contractor to be used in the performance of the Contracted Service. The Contractor shall within one Working Day after such occurrence give written details to the Council's Representative.
- 24.5 The Council shall be entitled to novate this Contract to any body which substantially performs any of the functions that previously had been performed by the Council.
- 24.6 In the event of Change of Control, the Contractor shall give immediate notification to the Council's Representative and seek consent to assignment of the benefit of this Contract.
- 24.7 It may be a condition of any approval to any assignment of the benefit of this Contract, or any substantive sub-contracting of obligations under this Contract, or any Change of Control, that the relevant third party shall enter into a direct and/or novation agreement with the Council including such terms and conditions as the Council may reasonably require, at the cost of the Contractor.

25. **EQUALITY AND DIVERSITY**

- 25.1 Without limiting the general obligation to comply with all Laws, the Contractor shall (and shall procure that the Contractor's Personnel shall):
- 25.1.1 perform the Services in accordance with:
 - 25.1.1.1 Equalities Legislation;
 - 25.1.1.2 The Council's equality and diversity policy as provided to the Contractor from time to time; and
 - 25.1.1.3 Any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable Equalities Legislation.
 - 25.1.2 Take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination as such by any court or tribunal, or the

Equality and Human Rights Commission or any successor organisation.

26. VARIATION AND CONTINUOUS IMPROVEMENT

- 26.1 Either party may request a Variation to this Contract provided that such Variation does not amount to a material change. The party requesting the Variation shall notify the other party in writing of the proposed Variation and give the other party sufficient information to assess the extent of the Variation and whether any change to the Contract Price is required in order to implement the Variation and a time limit within which the other party is to respond. Such time limit shall be reasonable having regard to the nature of the Variation. If the proposed Variation is acceptable to the other party that party will accept the Variation in writing. Any acceptance of any Variation is subject always to the requirements of the Transport Act 1985 and the Transport Act 2000, the Laws and the Council's constitution. The Council reserves the right to reject any Variation proposed by the Contractor if in the opinion of the Council it is unreasonable or impracticable.
- 26.2 The Contractor shall have an ongoing obligation throughout the Term, but only to the extent of its obligations in this Contract, to make arrangements to secure continuous improvement in the way that the Services are provided, having regard to a combination of economy, efficiency and effectiveness.
- 26.3 Without prejudice to the generality of **clause 26.2** the Contractor shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services, taking account of all Laws including but not limited to the Public Services (Social Value) Act 2012. As part of this obligation the Contractor shall identify and report to the Council's Representative at regular intervals of not less than [twelve (12) Months] of:
- 26.3.1 The emergence of new and evolving relevant assistive technologies which could improve the Services;
 - 26.3.2 Potential improvements to the Services;
 - 26.3.3 Changes in ways of working that would enable the Services to be delivered at lower costs and/or greater benefits to the Council.

26.4 Any potential changes highlighted as a result of the Contractor's reporting in accordance with **clause 26.3** shall be addressed by the parties using the procedure set out in clause 26.1.

27. **DISPUTE RESOLUTION**

27.1 The Council and the Contractor shall attempt in good faith to negotiate a settlement to any Dispute between them arising out of or in connection with this Contract.

27.2 In order to resolve a Dispute either party may call a meeting of the parties by service of not less than 5 Working Days' written notice and each party agrees to procure that the Contractor's Representative and the Council's Representative shall attend all extraordinary meetings called in accordance with this clause.

27.3 All the members of the meeting shall use their reasonable endeavours to resolve any Dispute between the parties.

27.4 If the Dispute is not resolved at the meeting then either party, by notice in writing to the other, may refer the Dispute to senior officers of the two parties who shall co-operate in good faith to resolve the Dispute as amicably as possible within 14 Working Days of service of such notice.

27.5 If the senior officers fail to resolve the Dispute in the allotted time, then the parties shall, before resorting to arbitration proceedings, attempt to resolve the Dispute by mediation in accordance with the alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement, a mediator appointed by the Centre for Dispute Resolution.

27.6 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution or similar body for the exchange of relevant information and for setting the date for negotiations to begin.

27.7 All negotiations connected with the mediation shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until 21 Working Days after the parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).

- 27.8 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced in writing and, once signed by the parties shall remain binding on them.
- 27.9 If the parties fail to resolve their Dispute by mediation, then either party may serve notice on the other to require the Dispute to be referred to an independent arbitrator who is agreed between both parties, or in default of agreement, nominated by the President of the Institute of Arbitrators. The arbitrator shall be entitled to make such decision or award as he/she thinks just and equitable having regard to the circumstances then existing.
- 27.10 The decision of the arbitrator (including as to costs) shall be final and binding upon both parties except in the case of manifest error.

28. **INDEMNITY**

- 28.1 The Contractor shall indemnify and keep indemnified the Council, its employees, contractors and agents on demand from and against:
- 28.1.1 Loss of or damage to property (including property belonging to the Council);
 - 28.1.2 Breach of Laws relevant to the Services; and
 - 28.1.3 all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence), default or breach of this Contract
- which may at any time arise out of, or in consequence of, the operation or performance or non-performance by the Contractor, or the Contractor's Personnel, of its obligations under this Contract.

29. **LIMITATION OF LIABILITY**

- 29.1 Neither party excludes or limits its liability for:
- 29.1.1 Death or personal injury caused by its negligence;
 - 29.1.2 Fraud or fraudulent misrepresentation; or
 - 29.1.3 Any other act or omission, liability for which may not be limited under any applicable Laws.
- 29.2 Subject to **clause 29.1 and 29.4** neither party shall be liable to the other party (as far as permitted by Laws) for indirect, special or consequential loss or

damage, or any loss of profits, turnover, anticipated savings, goodwill or business opportunities whether direct or indirect.

- 29.3 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 under this Contract.
- 29.4 Any clause limiting the Contractor's liability does not apply in relation to breach of clause [] (Data Protection) and clause [] (Prevention of Corruption and Bribery)
- 29.5 The Contractor shall not be responsible for or obliged to indemnify the Council for any injury, loss, damage, cost and expenses which is directly caused by or directly arises from the negligence or breach of this Contract by the Council or its employees, agents or contractors.

30. **INSURANCE**

- 30.1 The Contractor shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance to remain in place for a six-year period following the termination of this Contract and pay any resulting premiums, providing as a minimum the following levels of cover:
- 30.1.1 Public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim;
- 30.1.2 Employer's liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim;

(the **Required Insurances**) in respect of all of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of this Contract, including death or personal injury, loss of or damage to property or any other loss.

- 30.2 The Contractor acknowledges that in respect of the Required Insurances any excess or deductibles shall be the sole responsibility of the Contractor.
- 30.3 The onus is on the Contractor to ensure that the Required Insurances are adequate at all times to cover eventualities pertaining to its business.
- 30.4 The Contractor shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to

- demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 30.5 The Contractor will deal speedily and efficiently with all insurance claims submitted to it by a third party, which claim shall be dealt with either by the Contractor's Personnel or by referring the claim to its insurers.
- 30.6 No party to this Contract shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person
- 30.7 All money paid under any of the Required Insurances shall:
- 30.7.1 On or before the Termination Date be paid to the Contractor and applied towards the liabilities in respect of which the money was received; or
- 30.7.2 Following the Termination Date be paid to the Council and applied towards satisfying any claim by a third party in respect of which the money was received.
- 30.8 If, for whatever reason, the Contractor fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 30.9 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Contract.
- 30.10 The Contractor shall hold and maintain the Required Insurances for a minimum of six years following the Termination Date.

31. PREVENTION OF CORRUPTION AND BRIBERY

- 31.1 The Contractor:
- 31.1.1 Shall not, and shall procure that all Contractor's Personnel shall not, in connection with this Contract commit a Prohibited Act;
- 31.1.2 Warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding

any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract; and/or

31.1.3 Do or suffer anything to be done which would cause the Council or any of the Council's employees, contractors, consultants or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

31.2 The Contractor shall:

31.2.1 If requested, provide the Council with any reasonable assistance to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

31.2.2 Within five (5) Working Days of the Commencement Date, and annually thereafter, certify to the Council's Representative in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 31 **Error! Reference source not found.** by the Contractor and all persons associated with it or other persons who are supplying Services in connection with this Contract. The Contractor shall provide such supporting evidence of compliance as the Council may reasonably request.

31.3 The Contractor shall:

31.3.1 Establish, maintain and enforce anti-bribery policy (which shall be disclosed to the Council's Representative) to prevent the Contractor or the Contractor's Personnel from committing a Prohibited Act and prevent the occurrence of a Prohibited Act;

31.3.2 Keep appropriate records of its compliance with its obligations under **clause 31.3.1** and make such records available to the Council on request;

31.3.3 Without prejudice to this **clause 31.3** comply with the Council's Anti-bribery Policy 2015 (as amended from time to time).

31.4 The Contractor shall immediately notify the Council in writing if it becomes aware of any breach of clause 31.1 or has reason to believe that it has or any of the Contractor's Personnel have:

31.4.1 Been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

- 31.4.2 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
- 31.4.3 Received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 31.5 If the Contractor makes a notification to the Council pursuant to **clause 31.4** the Contractor shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, **clause** [] (Audit). This obligation shall continue for six (6) years following the expiry or termination of this Contract.
- 31.6 The Council may terminate this Contract by written notice with immediate effect if the Contractor or the Contractor's Personnel (in all cases whether or not acting with the Contractor's knowledge) breaches this **clause** 31 In determining whether to exercise the right of termination under this **clause 31.6** the Council shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by any Contractor Personnel not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-contractor) means and shall be construed as acting:
- 31.6.1 With the authority; or
- 31.6.2 With the actual authority
- of any one or more of the directors of the Contractor or the Sub-contractor (as the case may be); or
- 31.6.3 In circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge.
- 31.7 Any notice of termination under **clause 31.6** must specify:
- 31.7.1 The nature of the Prohibited Act;

- 31.7.2 The identity of the party whom the Council believes has committed the Prohibited Act; and
 - 31.7.3 The action that the Council has elected to take (including, where relevant, the date upon which this Contract will terminate).
 - 31.8 Despite clause [] (Dispute Resolution) any Dispute relating to:
 - 31.8.1 The interpretation of this **clause** 31; or
 - 31.8.2 The amount or value of any gift, consideration or commission
- shall be determined by the Council and its decision shall be final and conclusive.
- 31.9 Any termination under **clause 31.6** will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

32. **FREEDOM OF INFORMATION**

- 32.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council (at the Contractor's expense) to enable the Council to comply with these information disclosure requirements.
- 32.2 The Contractor shall and shall procure that any Sub-contractor shall:
 - 32.2.1 Transfer the Request for Information to the Council's Representative as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - 32.2.2 Provide the Council's Representative with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - 32.2.3 Provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 32.3 The Council shall be responsible for determining at its absolute discretion whether the Confidential Information and/or any other Information:
 - 32.3.1 Is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or

- 32.3.2 Is to be disclosed in response to a Request for Information.
- 32.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 32.5 The Contractor acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- 32.5.1 Without consulting with the Contractor; or
- 32.5.2 Following consultation with the Contractor and having taken its view into account

Provided always that the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

- 32.6 The Contractor shall ensure that all Information produced in the course of this Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 32.7 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with this clause.

33. DATA PROTECTION

- 33.1 The Contractor shall (and shall procure that all of the Contractor's Personnel involved in the provision of this Contract shall) comply with any notification requirements under the DPA and the parties shall duly observe all their obligations under the DPA which arise in connection with this Contract.
- 33.2 Notwithstanding the general obligation in **clause 33.1** where the Contractor is processing Personal Data as a Data Processor for the Council the Contractor 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

33.2.1 Provide the Council with such information as the Council may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;

33.2.2 Promptly notify the Council of any breach of the security measures requires to be put in place pursuant to **clause 33.2**; and

33.2.3 Ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of its obligations under the DPA.

33.3 The provisions of this clause shall apply during the continuance of this Contract and indefinitely after the Termination Date.

33.4 The Council may audit the Contractor's compliance with the requirements of this clause on reasonable notice and/or require the Contractor to provide the Council's Representative with due evidence of its compliance with the obligations set out in this clause to include security of data storage, (physically or electronically).

34. **CONFIDENTIALITY**

34.1 Subject **clause 34.2** the parties shall keep confidential all matters relating to this Contract and shall use all reasonable endeavours to prevent their authorised representatives from making any disclosure to any person of any matters relating thereto thereto.

34.2 Subject to **clause 34.1** shall not apply to any disclosure of information:

34.2.1 Required by any applicable Laws, provided that **Clause 32.5** shall apply to any disclosures required under the FOIA or the Environment Information Regulations;

34.2.2 That is reasonably required by persons engaged by a party in the performance of such party's obligations under this Contract;

34.2.3 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 34.1;

- 34.2.4 by the Council of any document to which it is a party and which the parties to this Contract have agreed contains no commercially sensitive information;
 - 34.2.5 to enable a determination to be made under **Clause** [] (Dispute Resolution);
 - 34.2.6 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - 34.2.7 by the Council to any other department, office or agency of the Government; and
 - 34.2.8 by the Council relating to this Agreement and in respect of which the Service Provider has given its prior written consent to disclosure.
- 34.3 On or before the Termination Date the Contractor shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of Passengers are delivered up to the Council.

35. **AUDIT**

- 35.1 During the Term and for a period of 12 years after the Termination Date, the Council may conduct or be subject to an audit for the following purposes:
- 35.1.1 To verify the accuracy of the Contract Price;
 - 35.1.2 To review the integrity, confidentiality and security of any data relating to the Council or any Passenger;
 - 35.1.3 To review the Contractor's compliance with the DPA, FOIA, the Environmental Information Regulations and any other Laws applicable to the Services;
 - 35.1.4 To review any records created during the provision of the Services;
 - 35.1.5 To review any books of account kept by the Contractor in connection with the provision of the Services;
 - 35.1.6 To carry out the audit and certification of the Council's accounts;
 - 35.1.7 To carry out an examination pursuant to section 6(1) of the National Audit Act 1983 **OR** sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources.

- 35.2 Except where an audit is imposed on the Council by a regulatory body, the Council may not conduct an audit under this clause 34 more than twice in any calendar year.
- 35.3 The Contractor shall use their reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.
- 35.4 Subject to the Council's obligations of confidentiality, the Contractor shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 35.4.1 All information requested by the above persons within the permitted scope of the audit;
- 35.4.2 Reasonable access to any sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
- 35.4.3 Access to the Contractor's Personnel.
- 35.5 The Council shall endeavour to (but is not obliged to) provide at least 14 Working Days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 35.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their respective obligations under this clause, unless the audit identifies a material failure by the Contractor to perform its obligations under this Contract in which case the Contractor shall reimburse the Council for all their reasonable costs incurred in the course of the audit.

36. **DEFAULT CAPABLE OF REMEDY AND DEFAULT NOTICES**

- 36.1 Without prejudice to **clause 38 (Termination)** in the event that the Council is of the reasonable opinion that at any time the Contractor commits a Contractor Default which is capable of remedy and which is not a Contractor Default of such seriousness that justifies immediate termination of this Contract under **clause 38 (termination)**, the Council may serve the Contractor with a Default Notice setting out the details of the Contractor's Default. A Default Notice may relate to more than one Contractor Default.
- 36.2 Each Default Notice shall contain the following information:

- 36.2.1 The type and nature of the Contractor's Default that has occurred, giving reasonable details;
 - 36.2.2 A description of the action required to remedy the Contractor Default;
 - 36.2.3 The period of time within which the Contractor shall remedy the Contractual Default.
- 36.3 On receipt of a Default Notice the Contractor shall comply with its terms and shall take all steps as may be appropriate to ensure that the same or any similar breach does not recur.
- 36.4 If the Contractor fails to remedy the Contractor Default in accordance with and within the period specified in the Default Notice and to the reasonable satisfaction of the Council then the Council (at its sole discretion) may terminate this Contract immediately by giving written notice of termination stating that the Council is terminating this Contract for Contractor Default under this clause 36 and this Contract shall terminate on the day falling 20 Working Days after the date the Contractor receives the notice of termination from the Council.
- 36.5 The Council's right to terminate this Contract **under clause 36.4** shall not limit its right to recover liquidated or unliquidated damages for any loss suffered by it as a consequence of the termination of the Contract.
- 36.6 Without prejudice to **clause 36.5 or** to any other remedy that the Council may have, the Council reserves the right in relation to the performance of the Services under this Contract, excluding a Force Majeure Event, to remedy any defect in the provision of the Services, including appointing another party on the Council's Dynamic Purchasing System for passenger transport services to do so.

37. DEFAULT INCAPABLE OF REMEDY OR PERSISTENT BEACH

- 37.1 If the Contractor commits a Contractor Default which is incapable of remedy or has committed a Persistent Breach the Council shall be entitled to terminate this Contract by giving notice in writing to the Contractor.
- 37.2 The notice of termination shall contain the following information:
- 37.2.1 The Council is terminating this Contract for Persistent Default or a Contractor Default incapable of remedy;
 - 37.2.2 The type and nature of the Persistent Breach or Contractor's Default incapable of remedy that has occurred, giving reasonable details;

37.2.3 That this Contract will terminate on the day falling 20 Working Days after the date the Contractor receives the notice of termination from the Council.

38. TERMINATION

38.1 In addition to and without prejudice to **clause 36** (Default Capable of Remedy and Default Notices) **and clause 37** (Default Incapable of Remedy or Persistent Breach) the Council shall be entitled to terminate this Contract immediately by giving written notice of termination to the Contractor if any of the following events occurs:

38.1.1 Where the Contractor has committed a Prohibited Act;

38.1.2 An Insolvency Event affecting the Contractor occurs;

38.1.3 The Contractor Default is not, in the opinion of the Council capable of remedy;

38.1.4 The Contractor Default is of such seriousness that in the option of the Council justifies immediate termination;

38.1.5 The Contractor fails to keep in force a PSV Operator's Licence and/or Community Bus Permit;

38.1.6 The Contractor fails to operate the Public Transport Service in accordance with the registered details of the local bus service registration;

38.1.7 Where the Contractor fails to notify the Council if they are made aware that any of the Contractor's Personnel engaged in providing the Community Transport Service, or whose conduct or records indicate that they would not be suitable to carry out a Regulated Activity, or who may otherwise present a risk to a Passenger;

38.1.8 Where the Contractor fails to notify the Council if they are made aware that any of the Contractor's Personnel engaged in providing the Services has any allegations made against them of a serious nature, resulting in a child protection investigation being carried out;

38.1.9 If there is any Change of Control of the Contractor to which the Council reasonably objects;

38.1.10 A breach by the Contractor of its obligations under **clause 31** Prevention of Corruption and Bribery);

38.1.11 A Force Majeure Event under **clause []** (Force Majeure).

38.2 The following are Insolvency Events:

38.2.1 Where the Contractor becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal in respect of its company for voluntary arrangement for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986;

38.2.2 Where the Contractor has an application made under the Insolvency Act 1986 to the court for the appointment of an administrative receiver, or the appointment of such an administrative receiver;

38.2.3 Where the Contractor has a winding up order made, or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding up passed;

38.2.4 Where the Contractor has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;

38.2.5 Where the Contractor has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, or any property comprised in, or subject to, the floating charge;

38.2.6 Where the Contractor is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver, or which entitle the Court to make a winding up order.

38.3 A notice of termination issued by the Council pursuant to clause 38 must state:

38.3.1 That the Council is terminating this Contract under clause 38;

38.3.2 The type and nature of the breach that has occurred, giving reasonable details;

38.3.3 That this Contract shall terminate on the day falling 20 Working Days after the date the Contractor receives the notice of termination from the Council.

39. **TERMINATION ON COUNCIL DEFAULT**

39.1 If the Council fails to fulfil any of its obligations under this Contract which is incapable of remedy the Contractor may terminate this Contract and shall service notice of termination on the Council within 30 Working Days of the Contractor becoming aware of the Council's breach.

39.2 A notice of termination issued by the Contractor to the Council pursuant to **clause 39.1** must state:

39.2.1 That the Contractor is terminating this Contract under **clause 39.2**;

39.2.2 The type and nature of the breach and if the breach concerns non-payment by the Council of the Contract Price which is undisputed, the Contract Price not paid and details of when the Contract Price payment fall due;

39.2.3 That this Contract shall terminate on the day falling 20 Working Days after the date the Council receives the notice of termination from the Contractor, unless the Council pays in full the Contract Price not in dispute or remedies the defect within 20 Working Days of receipt of the termination notice in which event the Contractor's notice to terminate this Contract shall be deemed to have been withdrawn.

40. TERMINATION ON NOTICE BY THE COUNCIL

40.1 Without affecting any other right or remedy available to it the Council may terminate this Contract at any time by giving not less than three Months' written notice to the Contractor.

41. TERMINATION ON NOTICE BY THE CONTRACTOR

41.1 Without affecting any other right or remedy available to the parties, the Contractor may terminate this Contract at any time by giving not less than three months' written notice to the Council.

42. FORCE MAJEURE

42.1 The Contractor and the Council will be released from their respective obligations in the event of Force Majeure.

42.2 In the event that either party is delayed or prevented from performing their respective obligations by Force Majeure, such party shall:

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

42.2.2 Use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations; and

- 42.2.3 Resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 42.3 A party cannot claim relief if the Force Majeure is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure.
- 42.4 The Contractor cannot claim relief if the Force Majeure is one where a reasonable contractor should have foreseen and provided for the cause in question.
- 42.5 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 and to facilitate the continued performance of the Services. Where the Contractor 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.
- 42.6 The affected party shall notify the other party as soon as practicable after the Force Majeure ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. Following such notification, the Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure unless otherwise agreed by the parties in writing.
- 42.7 The Council may, during the continuance of any Force Majeure terminate this Contract by written notice to the Contractor if a Force Majeure occurs that affects all or a substantial part of the Services and which continues for more than 6 calendar Months.

43. **CONSEQUENCES OF TERMINATION**

- 43.1 Termination of this Contract howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued prior to termination.
- 43.2 On the Termination Date (or where reasonably so required by the Council before such date) the Contractor shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council's Representative forthwith and the Contractor's Representative shall certify full compliance with this clause.

43.3 If this Contract is terminated for cause such termination shall be at no loss or cost to the Council and the Contractor hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.

43.4 The provisions of clause 18 (Payment of the Contract Price), clause 19 (Fares), clause 22 (Monitoring), clause 24 (Assignment and Sub-letting), clause 28 (Indemnity), clause 29 (Limitation of Liability), clause 30 (Insurance), clause 31 (Prevention of Corruption and Bribery), clause 32 (Freedom of Information), clause 33 (Data Protection Legislation), clause 34 (Confidentiality) clause 34 (Audit), clause 38 (Termination), clause 42 (Force Majeure) clause 43 (Consequences of Termination) and clause 44 (TUPE) shall survive termination or expiry of this Contract.

44. TUPE

44.1 The Contractor acknowledges that TUPE may apply in connection with this Contract and if it does apply the Contractor shall comply with its obligations under this Contract.

44.2 The Contractor shall (and shall procure that any Sub-contractor shall) within the period of [twelve (12) Months] immediately preceding the date of expiry of this Contract, or following the Service of a notice under clauses 36 (Default Capable of Remedy and Default Notices), 37 (Default Incapable of Remedy or Persistent Breach) and clause 38 (Termination) or as a consequence of the Council notifying the Contractor of its intention to retender this Contract using the Dynamic Purchasing System for the public transport service:

44.2.1 On receiving a written request from the Council's Representative pursuant to **clause 44.2** provide to the Council the Staffing Information and the Employee Liability Information ("**Retendering Information**") in respect of any person engaged or employed by the Contractor or any Sub-contractor in, or wholly or mainly assigned to, the provision of the Services, or any part of the Services (the '**Assigned Employees**') at the date of preparation of the Retendering Information ("**Contractor's Provisional Staff List**");

44.2.2 Provide the Re-tendering Information promptly and at no cost to the Council;

- 44.2.3 Notify the Council's Representative forthwith in writing of any material changes to the Re-tendering Information promptly as and when such changes arise;
 - 44.2.4 Not make any material increase or decrease in the number of Assigned Employees without the Council's prior written consent;
 - 44.2.5 Not make any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Council's prior written consent (such consent not to be unreasonably withheld);
 - 44.2.6 Not transfer any of the Assigned Employees to another part of its business or move other employees from elsewhere in its business who have not previously been employed or engaged in providing the Services to provide the Services without the Council's prior written consent (such consent not to be unreasonably withheld);
 - 44.2.7 And shall warrant at the time of providing the Retendering Information that it is accurate and complete at the point that it is given.
- 44.3 At least 28 days' prior to the Service Transfer Date (or as the Council shall request), the Contractor shall, and shall procure that any Sub-contractor shall, prepare and provide to the Council, and/or at the Council's request, to any Future Contractor, the list of all the Contractor's and Sub-contractor's Assigned Employees, engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date ("**Contractor's Final Staff List**") and identify which of the Contractor's and Sub-contractor's Assigned Employees are Relevant Employees. The Council shall be permitted to use and disclose the Retendering Information and the Contractor's Final Staff List for informing any tenderer or other prospective Future Contractor for any Services that are substantially the same type of services as the Services and shall warrant that the Contractor's Retendering Information and the Contractor's Final Staff List ("**TUPE Information**") will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Contractor's Final Staff List.

- 44.4 The Contractor shall and shall procure that any Sub-contractor shall, ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 44.5 The Contractor shall indemnify and shall keep indemnified in full the Council and at the Council's request any Future Contractor against all damages, loss, liability, claims, actions, costs and expenses, whether arising under statute, contract or at common law arising from any claim by any party as a result of the Contractor' or any Sub-contractor failing to provide, or failing promptly to provide, the Council with any Retendering Information or to provide full Retendering Information or as a result of any material inaccuracy in or omission from the Retendering Information.
- 44.6 Upon expiry or termination of this Contract for whatever reason the Contractor shall or shall procure that all wages, salaries and other benefits of those employees who will transfer to a Future Contractor pursuant to TUPE (the '**Transferring Employees**') and other employees or former employees of the Contractor or a Sub-contractor (who had been engaged in the provision of the Services) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the Transferring Employees and such other employees or former employees of the Contractor or Sub-contractor up to the date of expiry or termination of this Contract are satisfied.
- 44.7 Without prejudice to **clause 44.6**
- 44.8 the Contractor shall:
- 44.8.1 Remain (and procure that any Sub-contractor remains) (as relevant) responsible for the Contractor's or Sub-contractor's employees (other than the Transferring Employees) on or after the time of expiry or termination of this Contract and shall indemnify the Council and any Future Contractor against all damages, loss, liability, claims, actions, costs and expenses, whether arising under statute, contract or at common law incurred by the Council or any Future Contractor resulting from any claim whatsoever whether arising before, on or after the expiry or termination of this Contract by or on behalf of any of the Contractor's or Sub-contractor's employees who do not constitute the Transferring Employees;

44.8.2 In respect of those employees who constitute the Transferring Employees the Contractor shall indemnify the Council and any Future Contractor against all damages, loss, liability, claims, actions, costs and expenses, whether arising under statute, contract or at common law incurred by the Council or any Future Contractor resulting from any claim whatsoever by or on behalf of any of the Transferring Employees in respect of the period on or before the expiry or termination of this Contract (whether any such claim, attributable to the period on or before the expiry or termination of this Contract, arises before, on or after the expiry or termination of this Contract) including but not limited to any failure by the Contractor or any Sub-contractor to comply with its or their obligations under regulations 13 and 14 of TUPE and any award of compensation under regulation 15 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of any act or omission of the Council or any Future Contractor.

44.8.3 The Council shall be entitled to assign the benefit of this indemnity to any Future Contractor.

44.8.4 In the event that the Contractor enters into any Sub-contract in connection with this Contract it shall impose obligations on its Sub-contractors in the same terms as those imposed on it pursuant to this **clause 44** and shall procure that the Sub-contractor complies with such terms. The Contractor shall indemnify and keep indemnified in full the Council and on behalf of any Future Contractor against all damages, loss, liability, claims, actions, costs and expenses, whether arising under statute, contract or at common law incurred by the Council or any Future Contractor as a result of or in connection with any failure on the part of the Contractor to comply with this **clause 44** and/or the Sub-contractor's failure to comply with such terms.

45. EQUALITIES

45.1 The Contractor shall assist the Council in meeting its duties to advance equality or opportunity (as set out in Part 11 of the Equality Act 2010) including by:

- 45.1.1 Taking all reasonable steps to identify, rectify and eliminate all and any unlawful discrimination, harassment, victimisation and treatment that unfairly disadvantages any groups or individuals identified in the Equality Act 2010;
 - 45.1.2 Comply itself with all relevant anti-discrimination legislation, so far as applicable to the Services;
 - 45.1.3 Complying with the Council's Equality and Diversity Policy;
 - 45.1.4 Co-operating fully and promptly with the Council in monitoring the Contractor's compliance with its obligations under this clause such monitoring to be conducted on an annual basis or as reasonably required by the Council;
 - 45.1.5 Demonstrate effective implementation of its policies in relation to recruitment practices including evidence of open recruitment methods such as use of the Job Centre or press advertisements regularly review the full range of its equality policies and procedures and take specific action to make any necessary changes;
 - 45.1.6 Regularly monitor the ethnic composition of its workforce with regard to ethnicity, gender and disability; and
 - 45.1.7 Observe as far as possible the Commission for Racial Equality's Code of Practice in Employment as approved by parliament in 1983.
- 45.2 In the event that the Contractor enters into any Sub-contract it shall impose obligations on its Sub-contractors in terms substantially similar to those imposed on it pursuant to this clause.

46. **WAIVER**

- 46.1 No forbearance or delay by a party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Council to the Contractor in respect of the Services or any omission on the part of the Council to communicate such prior acceptance or approval shall not relieve the Contractor of its obligations to deliver the Services in accordance with the provisions of this Contract.

47. CUMULATION OF REMEDIES

47.1 Subject to the specific limitations set out in this Contract, no remedy conferred by any provision of this Contract is intended to be exclusive of any other remedy except as expressly provided for in this Contract and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

48. SEVERABILITY

48.1 If any of the provisions of this Contract is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

49. PARTERSHIP OR AGENCY

49.1 Nothing in this Contract shall be construed as constituting a partnership between the parties or as constituting any party as the agent of the other for any purpose whatsoever except as specified by the terms of this Contract.

50. THIRD PARTY RIGHTS

50.1 The parties agree and declare that no term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract. For the avoidance of doubt the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Contract.

51. PUBLICITY

51.1 The Contractor shall not:

51.1.1 Make any press announcement or publicise the Contract or its content in any way; or

51.1.2 Use the Council's name or brand in any promotion or marketing or announcement of orders or on its website, brochures or documentation.

Without the prior written consent of the Council, which shall not be unreasonably withheld or delayed.

52. CONFLICTS OF INTEREST

- 52.1 The Contractor shall take appropriate steps to ensure that it is not placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the personal and pecuniary interests of the Contractor and the duties owed to the Council under this Contract. The Contractor will disclose to the Council full particulars of any such conflict of interest which may arise.
- 52.2 The Council reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the personal or pecuniary interests of the Contractor and duties owed to the Council under this Contract. The actions of the Council under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

53. NOTICES

- 53.1 Any notice to be given by either party under this Contract must be in writing.
- 53.2 Any notice to be given or delivered under this Contract must be given by delivering it personally or sending it by pre-paid first class post, or recorded delivery to the address and for the attention of the relevant party as follows:
- 53.2.1 To the Council at:
Town Hall, Waliscote Grove Road, Weston-super-Mare, BS23 1UJ
And where indicated pursuant to the terms of the Contract, marked for the attention of the Council's Representative, otherwise marked for the attention of the Head of Legal and Democratic Services.
- 53.2.2 To the Contractor at []
And where indicated pursuant to the terms of this Contract, marked for the attention of the Contractor's Representative, otherwise marked for the attention of the []
- 53.3 Any such notice shall be deemed to have been received:
- 53.3.1.1 If delivered personally, at the time of delivery provided that:
- (a) If delivery occurs before 9.00 a.m. on a Working Day, the notice will be deemed to have been received at 9.00 a.m. on that day; and

- (b) If delivery occurs after 5.00 p.m. on a Working Day, or at any time on a date that is not a Working Day, the notice will be deemed to have been received at 9.00 a.m. on the next Working Day.

53.4 In proving service it will be sufficient to prove that delivery was made or that the envelope containing the notice was properly addressed and posted as a pre-paid first class or recorded delivery letter, as the case may be.

53.5 A notice given or delivered under this Contract will not be validly given or delivered if sent by e-mail or fax.

54. **COUNCIL'S POWERS AS A LOCAL AUTHORITY**

54.1 Nothing contained or implied in this Contract will prejudice or affect the rights, powers, duties and obligations of the Council in exercise of its functions as a local authority.

54.2 Such rights, powers, duties and obligations under all public and private statutes, byelaws, regulations and statutory instruments may be as fully and effectually exercised as if the Council were not a party to this Contract.

54.3 Nothing in this Contract will operate as an obligation upon or in any way fetter or constrain the Council in any capacity other than as a contracting party and the exercise by the Council of its duties, powers and functions in any other capacity will not lead to any liability under this Contract on the part of the Council to the other party.

55. **ENTIRE AGREEMENT**

55.1 This Contract, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

56. **COUNTERPARTS**

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

57. GOVERNING LAW AND JURISDICTION

57.1 This Contract shall be governed by and construed in accordance with the laws of England and Wales.

ATTESTION CLAUSES TO BE ADDED

DRAFT

SCHEDULE A

SPECIFICATION

DRAFT

SCHEDULE B

PRICING SCHEUDLE

DRAFT

SCHEDULE C

ROUTE SCHEDULE

DRAFT