**DPS AGREEMENT FOR THE PROVISION OF SERVICES**

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| --- | --- |
| **The Council** | **South Gloucestershire Council, Badminton Road, Bristol, BS37 5AF** |
| **The Supplier** | **[*Insert name, address and, where applicable, the company number of the Supplier*]** |

|  |  |
| --- | --- |
| **Date** | **[*Insert date when signed by both parties*]** |
| **Type of Services** | **[ Passenger Transport Service Provision**       **]** |

This DPS Agreement is made on the date set out above subject to the terms set out in the schedules and appendix listed below (“**Schedules**”). The Council and the Supplier undertake to comply with the provisions of the Schedules in the performance of this DPS Agreement.

The Definitions in Schedule 4 apply to the use of all capitalised terms in this DPS Agreement.

**Schedules**

|  |  |
| --- | --- |
| **Schedule 1** | Key Provisions  |
| **Schedule 2** | General DPS Terms and Conditions |
| **Schedule 3** | Information and Data Provisions |
| **Schedule 4** | Definitions and Interpretations |
| **Schedule 5** | Specification and Tender Response Document (Standard Selection Questionnaire) |
| **Schedule 6** | ~~Commercial Schedule~~ - Not required |
| **Schedule 7** | Ordering Procedure, Award Criteria and Order Form |
| **Schedule 8** | Code of Practice and Working Procedures |
| **Appendix A** | Call-off Terms and Conditions for the Provision of Services |

**Signed by the authorised representative of THE COUNCIL**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |   | Signature: |   |
| Position: |   |  |  |

**Signed by the authorised representative of THE SUPPLIER**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |   | Signature | ……………………………………. |
| Position: | …………………………………. |  |  |

1.

**Key Provisions**

**Standard Key Provisions**

1. **Application of the Key Provisions**
	1. The standard Key Provisions at Clauses 1 to 7 of this Schedule 1 shall apply to this DPS Agreement.
	2. The optional Key Provisions at Clauses 8 to 10 of this Schedule 1 shall only apply to this DPS Agreement where they have been checked and information completed as applicable.
	3. Extra Key Provisions shall only apply to this DPS Agreement where such provisions are set out at the end of this Schedule 1.
2. **Term**
	1. The Term of this DPS Agreement shall be for a minimum of four years from the Commencement Date and may be extended in accordance with Clause 15.2 of Schedule 2..
3. **Contract Managers**
	1. The Contract Managers at the commencement of this DPS Agreement are:
		1. for the Council:
		2. Martin Harris, Service Manager - Transport and Procurement for the Supplier:

**[*insert name and role*].**

1. **Names and addresses for notices**
	1. Notices served under this DPS Agreement are to be delivered to:
		1. for the Council:
		2. Paul Kelly, Client Transport Manager Operations, PO Box 1954, Bristol, BS37 0DD.for the Supplier:

**[*complete name and/or role and address*]**.

1. **Management levels for escalation and dispute resolution**
	1. The management levels at which a Dispute will be dealt with are as follows:

|  |  |  |
| --- | --- | --- |
| **Level** | **Council representative** | **Supplier representative** |
| 1 | Paul Kelly, Client Transport Manager Operations | **[*Contract Manager*]** |
| **[*2*]** | Martin Harris, Service Manager - Transport and Procurement  | **[*insert role*]** |
| **[*3*]** | Mark King, Service Director - Place Operations (Streetcare**)** | **[*insert role*]** |

1. **Order of precedence**
	1. Subject always to Clause 1.10 of Schedule 4, should there be a conflict between any other parts of this DPS Agreement the order of priority for construction purposes shall be:
		1. the provisions on the front page of this DPS Agreement for the Provision of Services;
		2. Schedule 1: Key Provisions;
		3. Schedule 5: Specification and Tender Response Document (but only in respect of the Council’s requirements);
		4. Schedule 2: General Terms and Conditions;
		5. Schedule 6: Commercial Schedule; NOT USED
		6. Schedule 3: Information Governance Provisions;
		7. Schedule 4: Definitions and Interpretations;
		8. the order in which all subsequent schedules, if any, appear; and
		9. any other documentation forming part of the DPS Agreement in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.
	2. For the avoidance of doubt, the Specification and Tender Response Document shall include, without limitation, the Council’s requirements in the form of its specification and other statements and requirements, the Supplier’s responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier’s responses, proposals and/or method statements as included as part of Schedule 5. Should there be a conflict between these parts of the Specification and Tender Response Document, the order of priority for construction purposes shall be (1) the Council’s requirements; (2) any clarification to the Supplier’s responses, proposals and/or method statements, and (3) the Supplier’s responses, proposals and/or method statements.
2. **Participating Authorities**
	1. The following Contracting Authorities are entitled to place Orders:
		1. [South Gloucestershire Council]]

For the avoidance of doubt, any successor bodies of any of the above entities shall be entitled to place Orders and shall be deemed Participating Authorities for the purposes of this DPS Agreement.

**Optional Key Provisions**

1. **Quality assurance standards** **[ ]  (only applicable to the DPS Agreement if this box is checked and the standards are listed)**
	1. The following quality assurance standards shall apply, as appropriate, to the provision of the Services: **[*insert standards*]**.
2. **Different levels and/or types of insurance [x]  (only applicable to the DPS Agreement if this box is checked and the table sets out the requirements)**
	1. The Supplier shall put in place and maintain in force the following insurances with the following minimum cover per claim:

|  |  |
| --- | --- |
| **Type of insurance required** | **Minimum cover** |
| **[**Employer’s liability insurance**]** | **£5 million**  |
| **[**Public liability insurance**]** | **£10 million**  |
| **[**Professional indemnity insurance**]** | **Not applicable ~~[~~****~~]~~** |
| **[**Insert other types of insurance as appropriate**]** | **[** **]** |

1. **Guarantee [ ]  (only applicable to the DPS Agreement if this box is checked)**
	1. Promptly following the execution of this DPS Agreement, the Supplier shall, if it has not already delivered an executed deed of guarantee to the Council, deliver the executed deed of guarantee to the Council as required by the procurement process followed by the Council. Failure to comply with this Key Provision shall be an irremediable breach of this DPS Agreement.
2.

**General DPS Terms and Conditions**

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| **Contents** |
| 1. Supplier’s appointment |
| 2. Council commitments |
| 3. Ordering procedures |
| 4. Reasonable assistance |
| 5. Supplier Performance  |
| 6. Business continuity |
| 7. The Council’s obligations |
| 8. Contract management |
| 9. Price and payment |
| 10. Warranties |
| 11. Statutory compliance  |
| 12. Independence of Participating Authorities |
| 13. Limitation of liability  |
| 14. Insurance |
| 15. Term and termination |
| 16. Consequences of expiry or early termination of this DPS Agreement  |
| 17. Suspension of Supplier’s appointment |
| 18. Complaints |
| 19. Sustainable development |
| 20. Electronic services information |
| 21. Change management |
| 22. Dispute resolution |
| 23. Force majeure |
| 24. Records retention and right of audit |
| 25. Conflicts of interest and the prevention of fraud |
| 26. Equality and human rights |
| 27. Notice |
| 28. Assignment, novation and subcontracting |
| 29. Prohibited Acts |
| 30. General |

1. **Supplier’s appointment**
	1. The Council appoints the Supplier as a potential provider of the Services and the Supplier shall be eligible to be considered for the award of Orders during the Term.
	2. In consideration of the Council agreeing to appoint the Supplier to this DPS Agreement in accordance with Clause 1.1 of this Schedule 2 and the mutual exchange of promises and obligations under this DPS Agreement, the Supplier undertakes to provide the Services under Orders placed with the Supplier:
		1. of the exact quality, type and as otherwise specified in the Specification and Tender Response Document;
		2. at the Contract Price tendered; and
		3. to such extent and at such times and at such locations as may be specified in an Order.
	3. The Supplier agrees that the Call-Off Terms and Conditions for the Provision of Services shall apply to all Services provided by the Supplier to a Participating Authority pursuant to this DPS Agreement. The Supplier agrees that it will not in its dealings with a Participating Authority seek to impose or rely on any other contractual terms which in any way vary or contradict the relevant Contract.
	4. The Supplier shall comply fully with its obligations set out in this DPS Agreement, the Specification and Tender Response Document, the Call-off Terms and Conditions for the Provision of Services and any other provisions of Contracts entered into under and in accordance with this DPS Agreement (to include, without limitation, the KPIs).
	5. NOT USED
2. Council commitments
	1. Unless otherwise set out in the Commercial Schedule, the Supplier acknowledges that:
		1. there is no obligation on the Council or on any other Participating Authority to purchase any Services from the Supplier during the Term;
		2. no undertaking or any form of statement, promise, representation or obligation has been made by the Council and/or any other Participating authority in respect of the total volumes or value of the Services to be ordered by them pursuant to this DPS Agreement and the Supplier acknowledges and agrees that it has not entered into this DPS Agreement on the basis of any such undertaking, statement, promise or representation;
		3. in entering this DPS Agreement, no form of exclusivity has been granted by the Council and/or other Participating authority; and
		4. the Council and/or other Participating Authorities are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all services which are the same as or similar to the Services.
3. Ordering procedure
	1. Any Participating authority may enter into Contracts by placing an Order in accordance with the Ordering Procedure.
4. Reasonable assistance
	1. Upon the written request of any Participating authority, the Supplier shall provide such Participating authority with any reasonable and proportionate information that it holds about the Services it supplies under this DPS Agreement including, without limitation, alongside other related services, to enable the Participating authority to complete any necessary due diligence before purchasing such Services, or any connected or replacement Services.
5. Supplier Performance
	1. The Supplier shall perform all Contracts entered into under this DPS Agreement by the Council or any other Participating authority in accordance with:
		1. the requirements of this DPS Agreement; and
		2. the provisions of the respective Contracts.
	2. NOT USED
6. Business continuity
	1. Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
		1. the criticality of this DPS Agreement to the Participating Authorities; and
		2. the size and scope of the Supplier’s business operations,

regarding continuity of the provision of the Services during and following a Business Continuity Event.

* 1. The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this DPS Agreement to Participating Authorities and the size and scope of the Supplier’s business operations. The Supplier shall promptly provide to the Council, at the Council’s written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.2 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Council a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.
	2. The Council may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Council to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Council in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Council into such Business Continuity Plan it will explain the reasons for not doing so to the Council.
	3. Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Council on such implementation.
	4. During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to fulfil its obligations in accordance with this DPS Agreement.
1. The Council’s obligations
	1. The Council shall provide reasonable cooperation to the Supplier and shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the Supplier complying with its obligations under this DPS Agreement.
	2. The Council shall comply with the Council’s Obligations, if any.
2. Contract management
	1. Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this DPS Agreement. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the DPS Agreement. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Council’s Contract Manager.
	2. Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this DPS Agreement and to discuss matters arising generally under this DPS Agreement. Each Party shall ensure that those attending such meetings have the council to make decisions regarding the day-to-day operation of the DPS Agreement. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at quarterly intervals or as may otherwise be agreed in writing between the Parties.
	3. Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Council regarding the provision of the Services and the operation of this DPS Agreement. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
		1. details of the performance of the Supplier under this DPS Agreement and any Contracts when assessed in accordance with the KPIs, as relevant to the DPS Agreement and any Contracts, since the last such performance report;
		2. details of any complaints by Participating Authorities in relation to the provision of the Services, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
		3. the information specified in the Specification and Tender Response Document as being relevant to the operation of this DPS Agreement;
		4. a status report in relation to the implementation of any current Remedial Proposals by either Party; and
		5. such other information as reasonably required by the Council.
	4. Unless specified otherwise in the Specification and Tender Response Document, the Council shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Council in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Council within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 2.
3. Price and payment
	1. The Contract Price for all Contracts shall be as set out in the Call-off Terms and Conditions for the Provision of Services.
	2. NOT USED.
	3. Where the Council is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this DPS Agreement, the Council may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.
	4. If a Party fails to pay any undisputed sum properly due to the other Party under this DPS Agreement, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
4. Warranties
	1. The Supplier warrants and undertakes that:
		1. it will comply with the terms of all Contracts entered into by Participating Authorities under this DPS Agreement;
		2. it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this DPS Agreement, any Contracts, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Council from time to time (acting reasonably);
		3. all information included within the Supplier’s responses to any documents issued by the Council as part of the procurement relating to the award of this DPS Agreement (to include, without limitation, as referred to in the Specification Document and Commercial Schedule) and all accompanying materials is accurate;
		4. it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to enter into and comply with its obligations under this DPS Agreement;
		5. it has the right and authority to enter into this DPS Agreement and that it has the capability and capacity to fulfil its obligations under this DPS Agreement;
		6. it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this DPS Agreement and the documents referred to in this DPS Agreement;
		7. all necessary actions to authorise the execution of and performance of its obligations under this DPS Agreement have been taken before such execution;
		8. there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
		9. there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this DPS Agreement;
		10. it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this DPS Agreement;
		11. it has satisfied itself as to the nature and extent of the risks assumed by it under this DPS Agreement and has gathered all information necessary to perform its obligations under this DPS Agreement and all other obligations assumed by it;
		12. it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Council immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
		13. it shall at all times conduct its business in a manner that is consistent with

any anti-slavery Policy of the Council and shall provide to the Council

any reports or other information that the Council may request as

evidence of the Supplier’s compliance with this Clause 10.1.13 and/or as

may be requested or otherwise required by the Council in accordance

* + 1. it shall ensure that its employees, agents and subcontractors are familiar with and have a good understanding of the ‘’Prevent’ strategy, are trained to recognise vulnerability to be drawn into terrorism and are aware of the available programmes to deal with this issue.
		2. The Supplier warrants that all information, data and other records and documents required by the Council as set out in the Specification and Tender Response Document shall be submitted to the Council in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
		3. NOT USED
	1. The Supplier warrants and undertakes to the Council that, as at the Commencement Date, it has notified the Council in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
		1. notify the Council in writing of such fact within five (5) Business Days of its occurrence; and
		2. promptly provide to the Council:
			1. details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
			2. such other information in relation to the Occasion of Tax Non-Compliance as the Council may reasonably require.
	2. The Supplier further warrants and undertakes to the Council that it will inform the Council in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.
	3. Any warranties provided under this DPS Agreement are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.
1. Statutory compliance
	1. The Supplier shall comply with all Law and Guidance relevant to its obligations under this DPS Agreement and any Contracts.
	2. Without limitation to Clause 11.1 of this Schedule 2, the Supplier shall be responsible for obtaining any statutory licences, authorisations, consents or permits required in connection with its performance of its obligations under this DPS Agreement and any Contracts.
2. Independence of Participating Authorities
	1. NOT USED.
3. Limitation of liability
	1. Nothing in this DPS Agreement shall exclude or restrict the liability of either Party:
		1. for death or personal injury resulting from its negligence;
		2. for fraud or fraudulent misrepresentation;
		3. in any other circumstances where liability may not be limited or excluded under any applicable law;
		4. to make any payments agreed in accordance with Clause 9.2 of this Schedule 2; or
		5. pursuant to 2.5 of Schedule 3.
	2. Subject to Clause 13.1, 13.3 and 13.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this DPS Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to one million GBP (£1,000,000).
	3. There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this DPS Agreement whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged.
	4. Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this DPS Agreement.
	5. The liability of the Supplier and any Participating Authorities under any Contracts entered into pursuant to this DPS Agreement shall be as set out in the Call-off Terms and Conditions for the Provision of Services forming part of such Contracts.
4. Insurance
	1. Subject to Clauses 14.2 and 14.3 of this Schedule 2 and unless otherwise confirmed in writing by the Council, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer’s liability, public liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Council in writing..
	2. Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Council, if specified in the Key Provisions.
	3. NOT USED
	4. The amount of any indemnity cover shall not relieve the Supplier of any liabilities under this DPS Agreement. It shall be the responsibility of the Supplier to determine the amount of indemnity cover that will be adequate to enable it to satisfy its potential liabilities under this DPS Agreement. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover is insufficient to cover the settlement of any claim.
	5. The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
	6. The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Council that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
	7. Upon the expiry or earlier termination of this DPS Agreement, the Supplier shall ensure that any ongoing liability it has or may have arising out of this DPS Agreement shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this DPS Agreement or until such earlier date as that liability may reasonably be considered to have ceased to exist.
5. Term and termination
	1. This DPS Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this DPS Agreement or the general law, shall continue until the end of the Term.
	2. The Council shall be entitled to extend the Term.
	3. In the case of a breach of any of the terms of this DPS Agreement by either Party that is capable of remedy (including any failure to pay sums due under this DPS Agreement), the non-breaching Party may, without prejudice to its other rights and remedies under this DPS Agreement, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach (“**Remedial Proposal**”) before exercising any right to terminate this DPS Agreement in accordance with Clause 15.4(ii) of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
		1. put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;
		2. comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or
		3. remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 15.4(ii) of this Schedule 2, a material breach of this DPS Agreement by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

* 1. Either Party may terminate this DPS Agreement by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this DPS Agreement which is:
		+ 1. not capable of remedy; or
			2. in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.
	2. The Council may terminate this DPS Agreement by issuing a Termination Notice to the Supplier if:
		1. the Supplier, or any third party guaranteeing the obligations of the Supplier under this DPS Agreement, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;
		2. the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Council and the Council shall be entitled to withhold such consent if, in the reasonable opinion of the Council, the proposed change of control will have a material impact on the performance of this DPS Agreement or the reputation of the Council;
		3. the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this DPS Agreement in breach of Clause 28.1 of this Schedule 2;
		4. pursuant to and in accordance with the Key Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2; or
		5. the warranty given by the Supplier pursuant to Clause 10.4 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify the Council of any Occasion of Tax Non-Compliance as required by Clause 10.4 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.4 of this Schedule 2 that in the reasonable opinion of the Council are acceptable.
	3. If the Council, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this DPS Agreement and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Council as part of any procurement process or other due diligence leading to the award of this DPS Agreement to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:
		1. the Council may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this DPS Agreement on such reasonable and proportionate terms as the Council may require within a reasonable time period as specified in such notice;
		2. a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by the Council shall be deemed a breach of this DPS Agreement by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
		3. a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 22.3 of this Schedule 2) shall entitle, but shall not compel, the Council to terminate this DPS Agreement in accordance with Clause 15.4(i) of this Schedule 2.

In order that the Council may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 2, the Supplier shall provide the Council with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.

* 1. The Council may terminate this DPS Agreement by issuing a Termination Notice to the Supplier where:
		1. the DPS Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
		2. the Council has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this DPS Agreement;
		3. NOT USED;
		4. there has been a failure by the Supplier and/or one of its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier’s Sub-contractors, the Council may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to the Council terminating this DPS Agreement under this Clause 15.7.4.
	2. If the Council novates this DPS Agreement to any body that is not a Contracting authority, from the effective date of such novation, the rights of the Council to terminate this DPS Agreement in accordance with Clause 15.5.1 to Clause 15.5.3 of this Schedule 2 shall be deemed mutual termination rights and the Supplier may terminate this DPS Agreement by issuing a Termination Notice to the entity assuming the position of the Council if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Council.
	3. The Council may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 3 month’s notice.
1. Consequences of expiry or early termination of this DPS Agreement
	1. Upon expiry or earlier termination of this DPS Agreement, the Council and the Supplier agree that all Contracts entered into under this DPS Agreement will continue in full force and effect unless otherwise terminated under the terms and conditions of such Contracts.
	2. The Supplier shall cooperate fully with the Council or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this DPS Agreement. This cooperation shall extend to providing access to all information relevant to the operation of this DPS Agreement, as reasonably required by the Council to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements. Any Personal Data Processed by the Supplier on behalf of the Council shall be returned to the Council or destroyed in accordance with the relevant provisions of the Data Protection Protocol.
	3. The expiry or earlier termination of this DPS Agreement for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
	4. The expiry or earlier termination of this DPS Agreement shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.
2. Suspension of Supplier’s appointment
	1. Without prejudice to the Council's rights to terminate this DPS Agreement, if a right for the Council to terminate this DPS Agreement arises (irrespective of whether the circumstances leading to such right are capable of remedy) in accordance with Clause 15 of this Schedule 2, the Council may suspend the Supplier's appointment to receive new Orders under this DPS Agreement by giving notice in writing to the Supplier and all Participating Authorities.
	2. If the Council provides notice to the Supplier in accordance with Clause 17.1 of this Schedule 2, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Council in writing from time to time provided that such suspension shall be lifted where:
		1. the circumstances leading to the Council’s right to terminate this DPS Agreement have been remedied;
		2. the Council has satisfied itself that the risk and/or impact of the circumstances giving rise to the Council’s right to terminate this DPS Agreement no longer requires such suspension; or
		3. the Council exercises its rights to terminate this DPS Agreement in accordance with Clause 15 of this Schedule 2.
3. Complaints
	1. The Supplier shall notify the Council of any formal written complaints made by other Participating Authorities relating to the Supplier’s noncompliance with any of its obligations under any Contract within two (2) Business Days of the Supplier becoming aware of such complaints.
	2. Without prejudice to any rights and remedies that the Participating authority may have under the relevant Contract and/or the Council may have under this DPS Agreement, the Supplier shall use its reasonable endeavours to resolve such complaint within ten (10) Business Days and in so doing, shall deal with the complaint fully, expeditiously and fairly.
	3. Within two (2) Business Days of a written request by the Council, the Supplier shall provide further reasonable details of the complaint to the Council, including details of the steps being taken to progress its resolution and, following its resolution, details of how and when the complaint was resolved.
4. Sustainable development
	1. The Supplier shall comply in all material respects with applicable environmental and social and labour Law requirements in force from time to time in relation to the Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:
		1. comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental, social and labour requirements, characteristics and impacts of the Services and the Supplier’s supply chain;
		2. maintain relevant policy statements documenting the Supplier’s significant labour, social, and environmental aspects as relevant to the Services being provided and as proportionate to the nature and scale of the Supplier’s business operations; and
		3. maintain plans and procedures that support the commitments made as part of the Supplier’s significant labour social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 2.
	2. The Supplier shall meet reasonable requests by the Council for information evidencing the Supplier’s compliance with the provisions of Clause 19 of this Schedule 2.
5. Electronic services information
	1. NOT USED
6. Change management
	1. The Supplier acknowledges to the Council that the requirements for the Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Council from time to time.
	2. Subject to Clause 21.3 of this Schedule 2, any change to the Services or other variation to this DPS Agreement shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.
	3. Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.
7. Dispute resolution
	1. During any Dispute, including a Dispute as to the validity of this DPS Agreement, it is agreed that the Supplier shall continue its performance of the provisions of the DPS Agreement (unless the Council requests in writing that the Supplier does not do so).
	2. In the case of a Dispute arising out of or in connection with this DPS Agreement the Supplier and the Council shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 this Schedule 2 as the first stage in the Dispute Resolution Procedure.
	3. If any Dispute arises out of the DPS Agreement either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels as set out in Clause 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.
	4. If the procedure set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
	5. The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other party (such notification may be verbal provided that it is followed up by written confirmation). The Council and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine, or in the absence of such determination such costs will be shared equally.
	6. Nothing in this DPS Agreement shall prevent:
		1. the Council taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or
		2. either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
	7. Clause 22 of this Schedule 2 shall survive the expiry of or earlier termination of this DPS Agreement for any reason.
8. Force majeure
	1. Subject to Clause 23.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this DPS Agreement nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
	2. The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this DPS Agreement if:
		1. the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;
		2. the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and
		3. the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2.
	3. Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this DPS Agreement and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
	4. Where the Force Majeure Event affects the Supplier’s ability to perform part of its obligations under the DPS Agreement the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
	5. If either Party is prevented or delayed in the performance of its obligations under this DPS Agreement by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
	6. Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
	7. The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
	8. If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Council may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this DPS Agreement by issuing a Termination Notice to the Supplier.
	9. Following such termination in accordance with Clause 23.8 of this Schedule 2 and subject to Clause 23.10 of this Schedule 2, neither Party shall have any liability to the other.
	10. Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this DPS Agreement.
9. Records retention and right of audit
	1. Subject to any statutory requirement and Clause 24.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this DPS Agreement.
	2. Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this DPS Agreement.
	3. The Council shall have the right to audit the Supplier’s compliance with this DPS Agreement. The Supplier shall permit or procure permission for the Council or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier’s compliance with its obligations under this DPS Agreement.
	4. Should the Supplier Sub-contract any of its obligations under this DPS Agreement, the Council shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Council or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier’s obligations under this DPS Agreement that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Council or its authorised representative if requested.
	5. The Supplier shall grant to the Council or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier’s compliance with this DPS Agreement for the purposes of:
		1. the examination and certification of the Council’s accounts; or
		2. any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Council has used its resources.
	6. The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 2 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.
	7. The Supplier shall provide reasonable cooperation to the Council, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this DPS Agreement.
	8. The Supplier shall provide all reasonable information as may be reasonably requested by the Council to evidence the Supplier’s compliance with the requirements of this DPS Agreement.
10. Conflicts of interest and the prevention of fraud
	1. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Council under the provisions of this DPS Agreement. The Supplier will disclose to the Council full particulars of any such conflict of interest which may arise.
	2. The Council reserves the right to terminate this DPS Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Council under the provisions of this DPS Agreement. The actions of the Council pursuant to this Clause 25.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Council.
	3. The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
	4. If the Supplier or its Staff commits Fraud the Council may terminate this DPS Agreement and recover from the Supplier the amount of any direct loss suffered by the Council resulting from the termination.
11. Equality and human rights
	1. The Supplier shall:
		1. ensure that (a) it does not, whether as employer or as a provider of Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or provider of the Services and any associated services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;
		2. in the management of its affairs and the development of its equality and diversity policies, cooperate with the Council in light of the Council’s obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Council considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and
		3. the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2.
	2. The Supplier shall meet reasonable requests by the Council for information evidencing the Supplier’s compliance with the provisions of Clause 26 of this Schedule 2.
12. Notice
	1. Subject to clause 22.5 of this Schedule 2, any notice required to be given by either Party under this DPS Agreement shall be in writing quoting the date of the DPS Agreement and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.
	2. A notice shall be treated as having been received:
		1. if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
		2. if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
		3. if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.
13. Assignment, novation and subcontracting
	1. The Supplier shall not assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this DPS Agreement without the prior consent in writing of the Council, such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this DPS Agreement, every act or omission of the Sub-contractor shall for the purposes of this DPS Agreement be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Council as if such act or omission had been committed or omitted by the Supplier itself.
	2. Any authority given by the Council for the Supplier to Sub-contract any of its obligations under this DPS Agreement shall not impose any duty on the Council to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this DPS Agreement.
	3. Where the Council considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
		1. if the Council finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
		2. if the Council finds there are non-compulsory grounds for exclusion, the Council may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement. The Council shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Council. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contract.
	4. The Council shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Council. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.
	5. The Council may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this DPS Agreement or any part of this DPS Agreement and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Council novates this DPS Agreement to any body that is not a Contracting authority, from the effective date of such novation, the party assuming the position of the Council shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this DPS Agreement or any part of this DPS Agreement without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.
14. Prohibited Acts
	1. The Supplier warrants and represents that:
		1. it has not committed any offence under the Bribery Act 2010 or done any of the following (“**Prohibited Acts**”):
			1. offered, given or agreed to give any officer or employee of the Council any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Council or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Council; or
			2. in connection with this DPS Agreement paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Council; and
		2. it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
	2. If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Council:
		1. the Council shall be entitled:
			1. to terminate this DPS Agreement and recover from the Supplier the amount of any loss resulting from the termination;
			2. to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
			3. to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;
		2. any termination under Clause 29.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Council; and
		3. notwithstanding Clause 22 of this Schedule 2, any Dispute relating to:
			1. the interpretation of Clause 29 of this Schedule 2; or
			2. the amount or value of any gift, consideration or commission,

shall be determined by the Council, acting reasonably, and the decision shall be final and conclusive.

1. General
	1. Each of the Parties is independent of the other and nothing contained in this DPS Agreement shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this DPS Agreement.
	2. Failure or delay by either Party to exercise an option or right conferred by this DPS Agreement shall not of itself constitute a waiver of such option or right.
	3. The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this DPS Agreement or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
	4. Any provision of this DPS Agreement which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this DPS Agreement and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
	5. Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this DPS Agreement and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this DPS Agreement or unless such representation, undertaking or warranty was made fraudulently.
	6. Each Party shall bear its own expenses in relation to the preparation and execution of this DPS Agreement including all costs, legal fees and other expenses so incurred.
	7. The rights and remedies provided in this DPS Agreement are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this DPS Agreement or by any other contract or document. In this Clause 30.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
	8. A person who is not a party to this DPS Agreement shall have no right to enforce any terms of it which confer a benefit on such person. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this DPS Agreement.
	9. This DPS Agreement, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this DPS Agreement or any variation to this DPS Agreement, contain the entire understanding between the Supplier and the Council relating to the operation of this DPS Agreement to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this DPS Agreement. Nothing in this DPS Agreement seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Council’s procurement documentation leading to the award of this DPS Agreement shall form part of this DPS Agreement.
	10. This DPS Agreement, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
	11. Subject to Clause 22 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this DPS Agreement or its subject matter.
	12. All written and oral communications and all written material referred to under this DPS Agreement shall be in English.
	13. The Supplier shall use all reasonable endeavours to adhere to the principles of the ‘Prevent’ strategy under the Counter-terrorism and Security Act 2015.
2.

Information and Data Provisions

1. **Confidentiality**
	1. In respect of any Confidential Information it may receive directly or indirectly from the other Party (“**Discloser**”) and subject always to the remainder of Clause 1 of this Schedule 3, each Party (“**Recipient**”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser’s prior written consent provided that:
		1. the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;
		2. the provisions of Clause 1 of this Schedule 3 shall not apply to any Confidential Information:
			1. which is in or enters the public domain other than by breach of this DPS Agreement or other act or omissions of the Recipient;
			2. which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
			3. which is authorised for disclosure by the prior written consent of the Discloser;
			4. which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
			5. which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
	2. Nothing in Clause 1 of this Schedule 3 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 (“**FOIA**”), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities’ Functions or on the Management of Records (“**Codes of Practice Regulations**”) or the Environmental Information Regulations 2004 (“**Environmental Regulations**”).
	3. The Council may disclose the Supplier’s Confidential Information:
		1. on a confidential basis, to any Contracting authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting authority);
		2. on a confidential basis, to any consultant, contractor or other person engaged by the Council and/or the Contracting authority receiving such information;
		3. to any relevant party for the purpose of the examination and certification of the Council’s accounts;
		4. to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;
		5. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
		6. on a confidential basis, to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this DPS Agreement;

and for the purposes of this DPS Agreement, references to disclosure "on a confidential basis" shall mean the Council making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this Schedule 3.

* 1. The Supplier may only disclose the Council’s Confidential Information, and any other information provided to the Supplier by the Council in relation to the operation of this DPS Agreement, to the Supplier’s Staff or professional advisors who are directly involved in the performance of or advising on the Supplier’s obligations under this DPS Agreement. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Council’s written discretion, destroyed securely or returned to the Council when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Council’s Confidential Information received otherwise than for the purposes of performing the Supplier’s obligations in this DPS Agreement.
	2. For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3, the Supplier shall not, without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed), announce that it has entered into this DPS Agreement and/or that it has been appointed as a Supplier to the Council and/or make any other announcements about this DPS Agreement.
	3. Clause 1 of this Schedule 3 shall remain in force:
		1. without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and
		2. for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this DPS Agreement unless otherwise agreed in writing by the Parties.
1. Data protection
	1. The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.
	2. Where the Supplier is Processing Personal Data under or in connection with this DPS Agreement, the Parties shall comply with the Data Protection Protocol within Annex 1 of this Schedule 3.
	3. The Supplier and the Council shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards and as otherwise required by those standards applicable to the Council under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
	4. Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this DPS Agreement, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3, as if such Sub-contractor were the Supplier.
	5. The Supplier shall indemnify and keep the Council indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier’s unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this DPS Agreement.
2. **Freedom of Information and Transparency**
	1. The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
	2. The Supplier shall assist and cooperate with the Council to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
		1. that this DPS Agreement and any recorded information held by the Supplier on the Council’s behalf for the purposes of this DPS Agreement are subject to the obligations and commitments of the Council under the FOIA, Codes of Practice and Environmental Regulations;
		2. that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Council;
		3. that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Council as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Council;
		4. that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Council) and will promptly (and in any event within two (2) Business Days) transfer the request to the Council;
		5. that the Council, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this DPS Agreement; and
		6. to assist the Council in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Council within five (5) Business Days of that request and without charge.
	3. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this DPS Agreement is not Confidential Information.
	4. Notwithstanding any other term of this DPS Agreement, the Supplier consents to the publication of this DPS Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
	5. In preparing a copy of this DPS Agreement for publication under Clause 3.4 of this Schedule 3, the Council may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Council’s absolute discretion.
	6. The Supplier shall assist and cooperate with the Council to enable the Council to publish this DPS Agreement.
	7. Where any information is held by any Sub-contractor of the Supplier in connection with this DPS Agreement, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such Sub-contractor were the Supplier.
3. **Information Security**
	1. Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:
		1. notify the Council forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Council’s information governance Policies; and
		2. fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Council and shall provide full information as may be reasonably requested by the Council in relation to such audits, investigations and assessments.
	2. Where required in accordance with the Specification and Tender Response Document, the Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Specification and Tender Response Document.
	3. **Annex 1 - DATA PROTECTION PROTOCOL**
		1. **Table A – Processing, Personal Data and Data Subjects**

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of theProcessing |  The Processor will be operating Passenger Transport Services in South Gloucestershire on behalf of the Council. This will include Home-to-School, Social Services and Ad hoc transport services. In order to deliver these services, the Processor will require the addresses and travel requirements of users of the services. Therefore the processing is essential for the Processor to be able to effectively deliver the contract. |
| Duration of theProcessing | For the duration of the DPS contract (Minimum duration October 2022 – October 2026) |
| Nature and purposes ofthe Processing | The Processor will be given specific data relating to their passengers in order to provide the service: collection point, disembarkment point, days of travel, destination, any additional needs. They will also hold the telephone contact number of the Council’s operating base for emergencies.As Controller, the Council would hold all the data identified above on a secure database for all passengers. In addition, the Council would also hold details of passenger contacts (e.g. parent, guardian, or third party representative) and any medical conditions. The database would have restricted accessed by the Passenger Transport Manager.Any passenger data will be transmitted to the Processor by secure email. |
| Type of Personal Data | Details of passenger: collection point, disembarkment point, days of travel, destination, any additional needs. |
| Categories of DataSubject | Passengers being transported under the Passenger Transport DPS Contract. The Council would hold details of passenger contacts (e.g. parent, guardian, or third party representative). |
| Plan for return anddestruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data | Data to be held by contractor until the end of each call-off contract from the DPS. After which, all data is to be returned to the Council and any copies they hold, both electronically and as paper records, are to be deleted/destroyed in a secure manner. |

Definitions and Interpretations

1. **Definitions**
	1. In this DPS Agreement the following words shall have the following meanings unless the context requires otherwise, other than in relation to the Call-off Terms and Conditions for the Provision of Services at Appendix A of this DPS Agreement. The definitions and Interpretations that apply to the Call-off Terms and Conditions for the Provision of Services are as set out at Appendix A of this DPS Agreement.

|  |  |
| --- | --- |
| **“Council”** | means the council named on the form of DPS Agreement on the first page; |
| **“Council’s Obligations”** | means the Council’s further obligations, if any, referred to in the Specification and Tender Response Document;  |
| “Breach Notice” | * 1. means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this DPS Agreement;
 |
| **“Business Continuity Event”** | means any event or issue that could impact on the operations of the Supplier and its ability to fulfil its obligations under this DPS Agreement including an influenza pandemic and any Force Majeure Event; |
| **“Business Continuity Plan”** | means the Supplier’s business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event; |
| **“Business Day”** | means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales; |
| **“Call-off Terms and Conditions for the Provision of Services”** | means the call-off terms and conditions for Contracts as set out at Appendix A of this DPS Agreement forming part of the Contracts placed under this DPS Agreement; |
| **“Codes of Practice Regulations”** | shall have the meaning given to the term in Clause 1.2 of Schedule 3;  |
| **“Commencement Date”** | means the date of this DPS Agreement; |
| “Confidential Information” | * 1. means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the DPS Agreement including any procurement process which is:
1. Personal Data including without limitation which relates to any member of the public or service user;
2. designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or
3. Policies and such other documents which the Supplier may obtain or have access to through the Council’s intranet;
 |
| **“Contract”** | means any contract entered into under this DPS Agreement with the Supplier by any Participating authority as further defined in the Call-off Terms and Conditions for the Provision of Services; |
| **“Contracting authority”** | means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Council; |
| **“Contract Manager”** | means for the Council and for the Supplier the individuals specified in the Key Provisions or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2;  |
| **“Contract Price”** | means the price exclusive of VAT that is payable to the Supplier by a Participating authority under any Contract for the full and proper performance by the Supplier of its obligations under such Contracts (as calculated in accordance with the provisions of the Commercial Schedule) and as confirmed in the relevant Order Form relating to the particular Contract; |
| “Controller” | * 1. shall have the same meaning as set out in the GDPR;
 |
| “Data Protection Legislation”  | * 1. means (i), the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;
 |
| “Data Protection Protocol” | * 1. means any document of that name as provided to the Supplier by the Council (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions) of this DPS Agreement;
 |
| “Dispute(s)” | * 1. means any dispute, difference or question of interpretation or construction arising out of or in connection with this DPS Agreement, any matters of contractual construction and interpretation relating to the DPS Agreement, or any matter where this DPS Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
 |
| “Dispute Notice” | * 1. means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
 |
| **“Dispute Resolution Procedure”** | means the process for resolving Disputes as set out in Clause 22 of Schedule 2; |
| “DOTAS” | * 1. means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
 |
| **“Electronic Trading System(s)”** | means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Council may specify from time to time;  |
| **“Environmental Regulations”** | shall have the meaning given to the term in Clause 1.2 of Schedule 3; |
| **“Equality Legislation”** | means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;  |
| **“FOIA”** | shall have the meaning given to the term in Clause 1.2 of Schedule 3;  |
| “Force Majeure Event” | * 1. means any event beyond the reasonable control of the Party in question to include, without limitation:
1. war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this DPS Agreement;
2. acts of terrorism;
3. flood, storm or other natural disasters;
4. fire;
5. unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning;
6. government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment;
7. compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen;
8. industrial action which affects the ability of the Supplier to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and
9. a failure in the Supplier’s and/or Council’s supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;

but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;  |
| **“DPS Agreement”** | means the form of DPS agreement at the front of this document and all schedules and appendices attached to the form of DPS agreement; |
| **“Fraud”** | means any offence under any law in respect of fraud in relation to this DPS Agreement or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting authority; |
| GDPR | means the General Data Protection Regulation (Regulation (EU) 2016/679);  |
| **“General Anti-Abuse Rule”** | means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;  |
| **“Good Industry Practice”** | means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this DPS Agreement, including in accordance with any codes of practice published by relevant trade associations;  |
| **“Guidance”** | means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by any regulator or competent body; |
| **“Halifax Abuse Principle”** | means the principle explained in the CJEU Case C-255/02 Halifax and others;  |
| **"HM Government Cyber Essentials Scheme"** | means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview |
| **“Intellectual Property Rights”** | means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs;  |
| **“Key Provisions”** | means the key provisions set out in Schedule 1; |
| **“KPI”** | means the key performance indicators as set out in Schedule 5; |
| “Law” | * 1. means any applicable legal requirements including, without limitation,:
1. any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales;
2. any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument);
3. any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
4. any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
5. requirements set by any regulatory body as applicable in England and Wales;
6. any relevant code of practice as applicable in England and Wales; and
7. any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);
 |
| **“Occasion of Tax Non-Compliance”** | means: (a) any tax return of the Supplier submitted to a Relevant tax authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:  (i) a Relevant tax authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;  (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant tax authority under the DOTAS or any equivalent or similar regime; and/or (b) any tax return of the Supplier submitted to a Relevant tax authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;  |
| **“Order Form”** | means the template order form on which Orders are to be placed, as set out in Schedule 7; |
| **“Ordering Procedure”** | means the procedure enabling Participating Authorities to call-off Services and enter into Contracts under this DPS Agreement, as set out in Schedule 7; |
| **“Orders”** | means orders for Services placed under this DPS Agreement by Participating Authorities; |
| **“Participating authority”** | means a Contracting authority entitled to place Orders under this DPS Agreement including the Council and any other Contracting authority as set out in the Key Provisions;  |
| **“Party”** | means the Council or the Supplier as appropriate and Parties means both the Council and the Supplier;  |
| “Personal Data” | shall have the same meaning as set out in the GDPR;  |
| **“Policies”** | means the policies, rules and procedures of the Council as notified to the Supplier from time to time;  |
| “Process” | shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;  |
| “Processor” | * 1. shall have the same meaning as set out in the GDPR;
 |
| **“Prohibited Acts”** | has the meaning given under 29.1.1 of Schedule 2; |
| **“Relevant Tax Authority”** | means HM Revenue and Customs, or, if applicable, a tax council in the jurisdiction in which the Supplier is established;  |
| **“Remedial Proposal”** | has the meaning given under Clause 15.3 of Schedule 2;  |
| **“Services”** | means the services that the Supplier is required to provide to Participating Authorities under Contracts placed under this DPS Agreement, details of such Services being set out in the Specification and Tender Response Document and any Order;  |
| **“Services Information”** | means information concerning the Services as may be reasonably requested by the Council and supplied by the Supplier to the Council in accordance with Clause 20 of Schedule 2 for inclusion in the Council's services catalogue from time to time; |
| **“Specification and Tender Response Document”** | means the document set out in Schedule 5 as amended and/or updated in accordance with this DPS Agreement;  |
| **“Staff”** | means all persons employed or engaged by the Supplier to perform its obligations under this DPS Agreement including any Sub-contractors and person employed or engaged by such Sub-contractors;  |
| **“Sub-contract”** | means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of the whole or any part of this DPS Agreement; |
| **“Sub-contractor”** | means a party to a Sub-contract other than the Supplier; |
| **“Supplier”** | means the supplier named on the form of DPS Agreement on the first page; |
| “Supplier Code of Conduct” | * 1. means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
 |
| **“Term”** | means the term as set out in the Key Provisions;  |
| “Termination Notice” | means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this DPS Agreement on a specified date and setting out the grounds for termination; |
| **“Third Party Body”** | has the meaning given under Clause 8.5 of Schedule 2; and |
| **“VAT”** | means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax. |

* 1. References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
	2. References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
	3. References in this DPS Agreement to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this DPS Agreement.
	4. References in this DPS Agreement to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
	5. Unless set out in the Commercial Schedule as a chargeable item and subject to Clause 30.6 of Schedule 2, the Supplier shall bear the cost of complying with its obligations under this DPS Agreement.
	6. The headings are for convenience only and shall not affect the interpretation of this DPS Agreement.
	7. Words denoting the singular shall include the plural and vice versa.
	8. Where a term of this DPS Agreement provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
	9. Where there is a conflict between the Supplier’s responses to the Council’s requirements (the Supplier’s responses being set out in Schedule 5) and any other part of this DPS Agreement, such other part of this DPS Agreement shall prevail.
	10. Where a document is required under this DPS Agreement, the Parties may agree in writing that this shall be in electronic format only.
	11. Any guidance notes in grey text do not form part of this DPS Agreement.
	12. Any Breach Notice issued by a Party in connection with this DPS Agreement shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice (“**Receiving Party**”) may ask the Party that issued the Breach Notice (“**Issuing Party**”) to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.
	13. Any terms defined as part of a Schedule or other document forming part of this DPS Agreement shall have the meaning as defined in such Schedule or document.
1.

**Specification and Tender Response Document**

Please refer to:

The Invitation to Tender and the associated appendices: -

Appendix C – Specification

Appendix H – Standard Selection Questionnaire

1.

Not Applicable

1.

## Ordering Procedure, Award Criteria and Order Form

1.
2.

Please refer to:

Appendix E - Code of Practice & Working Conditions

1.

## Call-off Terms and Conditions for the Provision of Services

Please refer to:

Appendix D2. Call-Off Terms and Conditions