

Passenger Transport - Dynamic Purchasing System

Reference DN245509

GENERAL TERMS AND CONDITIONS Version 3

The following terms and conditions will apply to all contracts awarded under this Dynamic Purchasing System (DPS) for Passenger Transport to Dorset Council. They will be wholly incorporated in all call off contracts awarded, unless specifically amended by Dorset Council with a call for competition. The Service Provider is required to accept these terms and conditions when bidding for a contract under the DPS.

These terms may not be qualified or amended with the submission of a bid for a specific contract.

Further conditions may be incorporated within specific contracts by Dorset Council as appropriate to the service. Such conditions will be included in the Route Conditions of Contract or Route Schedules/Manifests at the invitation to bid stage and will take precedence over these terms and conditions in the event of conflict.

It may be necessary for the Service Provider and Dorset Council to sign a written contract and for each party to retain a copy following the award of a contract under the DPS.

It is not a requirement for bidders to sign these terms and conditions with their request to participate in this Dynamic Purchasing System.

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1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract and the Schedules, the following expressions shall have the following meanings:

'Authorised Officer' means any person employed by or acting on behalf of the Council who has been advised to the Service Provider as a person authorised to issue an Order or book journeys under this Contract, and whose authority has not been revoked;

'Commencement Date' means the date the Services commence as agreed at Contract award;

'Commercially Sensitive Information' means any information so specified and provided by the Service Provider to the Council in confidence.

'Confidential Information' means any information which has been designated as confidential by either Party or that ought to be considered as confidential (however it is conveyed) which either Party may receive or obtain in connection with the operation of this Contract;

'Contract' means the agreement consisting of these clauses, the schedules, the annexes, the Specifications, the invitation to tender, the Service Provider's tender submission, the Council's acceptance letter and any documents accompanying it;

'Contract Period' means the period specified as agreed at the Contract award;

'Contract Price' means the price payable (exclusive of any applicable VAT) to the Service Provider by the Council as set out in the Tender submission for the full and proper performance by the Service Provider of its obligations under the Contract;

'Contracting Officer' means the representative of Dorset Travel appointed by the Council to act on its behalf as agent for the purpose of managing this Contract;

'Council' means Dorset Council;

'Default' means any breach of the obligations of the Service Provider (including but not limited to fundamental breach) or any other default, act, omission, negligence or negligent misstatement of the Service Provider or its Personnel in connection with or in relation to the subject matter of the Contract and in respect of which the Service Provider is liable to the Council;

'Default Notice' means a notice issued to the Service Provider by the Council under Clause 22;

'Delegated Officer' means the competent person appointed by the Service Provider to be its representative in relation to, and to exercise control over, its performance of the Services or, in the case of a sole trader, the Service Provider;

'Driver' means the person for the time being driving or in charge of any Vehicle engaged in providing the Services;

'Entitled Schoolchildren' means pupils for whom the Council provides transport under Sections 508B, 508C, 509 or 509AA of the Education Act 1996, as amended.

'Equipment' means equipment, plant and materials used in the performance of the Service Provider's obligations under the Contract;

'Intellectual Property Rights' means all intellectual property rights (including, without limitation, patents, trademarks, designs, design rights, copyright, inventions, trade secrets, know-how and confidential information) and all applications for protection of any of the same;

‘Motoring Penalty’ means a fixed penalty notice for any offence in connection with a motor vehicle other than contravention of parking or waiting restrictions;

‘Order’ means the official order or written instruction placed on behalf of the Council by a person authorised by the Council for the provision of the Services in a form to be provided by the Council;

‘Passenger Assistant’ means a person employed to accompany Service Users on specified Routes to ensure their safety and welfare;

PSV’ means Public Service Vehicle as defined by the Public Passenger Vehicles Act 1981;

‘Personnel’ means the Service Provider and/or all persons employed by the Service Provider together with the Service Provider’s volunteers, servants, agents and sub-contractors used in the performance of the Services under this Contract;

‘Premises’ means any location where the Services are performed;

‘Relevant Employees’ means those persons engaged by the Service Provider in the provision of the Services under any contract of employment, other employment relationship or collective agreement;

‘Relevant Liability’ means all damages, compensation, fines, penalties and other sums which the party concerned is obliged to pay to any person arising out of a claim together with interest and costs (including but not limited to reasonable legal fees incurred in defending or responding to that claim);

‘Route’ means a specified part of the Services to be provided;

‘Route Conditions of Contract’ and ‘Route Schedule’ mean the documents describing the Service Type, routing, timings and any other specific requirements of a particular Route;

‘Services’ means the Services, with necessary and appropriate ancillary activities, provided under this Contract in accordance with the Specifications;

‘Service Provider’ means the person, firm or company appointed by the Council to provide the Services under this Contract and shall include the Service Provider’s Personnel, personal representatives, successors and permitted assigns;

‘Service Specification’ means the document describing the standard and scope of the relevant Service Type to be provided pursuant to this Contract;

‘Service Type’ means the relevant classification of Services selected by the Council from the following list:

- Public transport
- Bus and Coach transport
- Specially Adapted Vehicle transport
- Taxi transport

‘Service User’ means any individual who makes use, or wishes to make use of, the Service Type covered by the Service Specification;

‘Special Equipment’ means restraint systems, specialist seating or passenger aids and any other equipment ancillary to the provision of the Services which is not permanently fitted to a Vehicle;

‘Specifications’ means the General Service Specifications and relevant Route Conditions of Contract and Route Schedules/Manifests, together describing the level, standard and scope of the Services to be provided pursuant to this Contract;

‘Taxibus’ means a Hackney Carriage or Private Hire Vehicle operating in accordance with Sections 10 or 11 of the Transport Act 1985 as amended.

'Transferring Employees' means those persons engaged by the Council in the provision of the Services under any contract of employment, other employment relationship or collective agreement immediately prior to the Commencement Date and who are listed at Schedule 2;

'TUPE' means The Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time;

'Vehicles' means vehicles used in the performance of the Service Provider's obligations under the Contract;

'Working Day' means Monday to Friday inclusive but not including any declared public holiday.

- 1.2 References to clauses and schedules are to clauses of and schedules to this Contract.
- 1.3 The provisions of the schedules and tender submissions made by the Service Provider (including any commitments or warranties contained in them or attached to them) are incorporated in this Contract.
- 1.4 In the event of any discrepancy between the terms of the Contract and the Specifications, the Specifications shall prevail. In the event of any discrepancy between the terms of the Contract and the Route Conditions of Contract and/or the Route Schedules/Manifests, the Route Conditions of Contract and/or Route Schedules/Manifests shall prevail.
- 1.5 Unless stated otherwise, reference to "Parties" in this Contract are references to the Council and the Service Provider and "Party" shall be construed accordingly.
- 1.6 Reference to the singular includes the plural and vice versa and reference to any gender includes all genders.
- 1.7 Reference to a person includes any individual, firm, unincorporated association or body corporate.
- 1.8 The headings in this Contract are included for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.9 Any periods of time referred to in this Contract and expressed in days shall refer to calendar days unless otherwise stated.
- 1.10 Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consolidation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.
- 1.11 Reference to a Party include references to any successor body or person to which shall fall the right to enforce the benefit of this Contract or any paragraph in it or to which shall be transferred any statutory function of any of the Parties whether by way of Act of Parliament, statutory instrument, express agreement or deed or otherwise.

2. CONTRACT PERIOD

- 2.1 Subject to earlier termination in accordance with this Contract, the Contract term shall begin on the Commencement Date and shall continue until the agreed end date, unless extended in accordance with Clause 2.2.
- 2.2 The Council may give notice to the Service Provider at any time before the expiry of this Contract in accordance with Clause 2.1 to extend the period of the Contract subject to agreement by the Service Provider.

3. RELATIONSHIP OF PARTIES

- 3.1 Nothing in this Contract shall be construed as creating a joint venture, partnership, contract of employment or a relationship of principal and agent between the Council and Service Provider.
- 3.2 The Service Provider will not, and will ensure that its Personnel do not, say or do anything that might lead another person to believe that the Service Provider is acting as an agent of the Council.

4. SERVICE PROVIDER'S OBLIGATIONS

- 4.1 The Service Provider will provide the Services during the Contract Period fully in accordance with the Specifications and the other terms of this Contract, to the reasonable satisfaction of the Contracting Officer.
- 4.2 Timely provision of the Services shall be of the essence and will be a condition of this Contract.
- 4.3 The Service Provider will perform the Services with all reasonable care and skill, to avoid injury to persons or damage to property and conform with all legislative requirements and all relevant standards and specifications, whether specified in the Contract or not.
- 4.4 The Service Provider will ensure that suitable contact arrangements are maintained for the Council, schools and Service Users, that are appropriate to the needs of the Contract.
- 4.5 The Service Provider will assist the Council in reviewing the planning, provision and operation of the Services, comply with the reasonable directions of the Council and use its best endeavours to carry out the Services, by mutual agreement, in accordance with any variations to the Specifications.
- 4.6 The Service Provider shall attend contract performance review meetings as reasonably required at the Service Provider's expense.
- 4.7 The Service Provider will perform the Services in such a way as to promote the safe, efficient and professional delivery of the Services, and so as not to cause damage to the public perception of the Services or the reputation of the Council. The Service Provider shall not be liable in the event of damage to the public perception of Services where such damage is caused by circumstances outside its control.
- 4.8 The Service Provider will properly manage and monitor the performance of the Services at all times, and immediately notify the Council of any actual or potential problems that affect or might affect the safe, punctual or efficient delivery of the Services. If the Service Provider considers that any act or omission by the Council jeopardises the full performance of the Services, the Contracting Officer must immediately be advised in writing.
- 4.9 The Service Provider will obtain and maintain throughout the Contract Period any licences, registrations or consents necessary for the provision of the Services including, but without limitation, vehicle and / or operator licences appropriate to and covering operation of all the Vehicles used to provide the Services, without any conditions which restrict or prohibit their use to provide the Services.
- 4.10 The Service Provider will provide all Personnel, Vehicles, Equipment, materials, premises, resources and other things required for the provision of the Services, except for information on Service Users and their needs supplied by the Council, unless otherwise specified in this

Contract. The Service Provider may only use any Premises, Vehicles or Equipment of the Council where available, subject to prior agreement between the Parties. The Service Provider shall maintain all Vehicles and Equipment owned by the Council in a safe, serviceable and clean condition.

- 4.11 If the Service Provider receives notice of prosecution for any relevant offence, becomes liable to pay a Motoring Penalty or is notified of any enforcement action against it by any regulatory body, it will inform the Contracting Officer of this fact and all relevant circumstances as soon as reasonably practicable.
- 4.12 If the Service Provider becomes aware of any incident involving its Drivers which could affect the safety or well-being of Service Users, it will inform the Contracting Officer of this fact and all relevant circumstances as soon as reasonably practicable.

5. SERVICE PROVIDER'S PERSONNEL

- 5.1 The Service Provider will comply with the provisions relating to Service Provider Personnel in the General Service Specifications and any additional requirements stated in the specific Route Conditions of Contract.

6. SERVICE PROVIDER'S VEHICLES AND EQUIPMENT

- 6.1 The Service Provider will comply with the provisions relating to Service Provider Vehicles and Equipment in the Specifications and any additional requirements stated in the specific Route Conditions of Contract.

7. USE OF COUNCIL'S RESOURCES

- 7.1 Where it is agreed that the Service Provider may use any of the Council's Vehicles, Premises or other resources, other than Special Equipment specifically provided to meet the needs of a particular Service User, then the additional provisions of Schedules 3 and 4 will apply.

8. BACK-UP AND BUSINESS CONTINUITY

- 8.1 The Service Provider will have contingency arrangements in place, in accordance with its tender or as otherwise approved by the Council, to ensure continuity of the Services at all times at no extra cost to the Council. These will include, but not be limited to, arrangements to deal with breakdowns and staff absences.
- 8.2 The Service Provider will demonstrate that it has adequate business continuity plans and associated contingency arrangements in place to ensure minimum disruption in the provision of any part of the Services in the event of a major incident affecting its ability to provide the Services, appropriate to the scale of the Service Provider's commitments under the Contract.
- 8.3 The Council reserves the right to request detailed evidence of contingency plans such as sight of the Service Provider's business continuity plan, and to require review and/or amendment of the plans and any other contingency arrangements to meet the Council's requirements.

9. CONTRACT MANAGEMENT

- 9.1 The Service Provider will take appropriate steps (which may include one or more contract implementation meetings) with the Council to confirm communication and other procedures at the outset of the Contract.
- 9.2 The Service Provider will promptly give notice to the Council of the identity of the Delegated Officer appointed to manage the Services and any replacement for him. Any Delegated Officer will be appropriately qualified and / or experienced for his responsibilities in relation to the Services.
- 9.3 The Service Provider and the Council will agree Key Performance Indicators (KPIs) to demonstrate acceptable performance of the Services. KPIs, when agreed, and management information will be addressed at regular contract review meetings and will incorporate such information as the Service Provider voluntarily offered to include as part of its tender submission. Failure to meet the KPIs will be a breach of the Contract, and may incur action in accordance with Clauses 22 and 23. The required performance information is listed in the General Service Specifications and/or specific Route Conditions of Contract.
- 9.4 The Service Provider will have effective management information systems in place to provide such information at the request of the Council. Additional management information may be required by the Council as agreed at contract review meetings.
- 9.5 Contract review meetings will be chaired by the Contracting Officer and held every 3 months from the Commencement Date or at a greater or lesser frequency as the Contracting Officer may determine, at the Council's offices. If necessary, the Council will attend meetings at the Service Provider's premises to view specific data or for other reasons.
- 9.6 Any costs incurred by the Service Provider in attending any meetings will be at the Service Provider's expense.
- 9.7 The Service Provider will allow the Council access to any documents, records and procedures (financial or otherwise) relevant to the performance of the Services on reasonable notice.

10. SUSTAINABILITY

- 10.1 The Parties are committed to the protection of the environment and to promote sustainable development, especially the elimination of waste and promotion of recycling and re-use.
- 10.2 The Service Provider will use reasonable endeavours to minimise the environmental impact of its activities and shall actively encourage sustainable practices in providing the Services.
- 10.3 The Service Provider will provide fuel/mileage data to assist the Council in achieving its carbon reduction targets if requested.

11. AUDIT AND MONITORING

- 11.1 The Council may inspect the performance of the Services at any time.
- 11.2 The Service Provider will keep and maintain until six years after the Contract has ended, or as long a period as may be agreed between the Parties, full and accurate records of:

- 11.2.1 the Contract and any Services provided, including records of each journey operated;
 - 11.2.2 the Equipment and Personnel used on the Services, including maintenance records;
 - 11.2.3 the Service Users carried.
 - 11.2.4 all expenditure reimbursed by the Council and all payments made by the Council;
 - 11.2.5 all licences, registrations or other statutory permissions or documents required in connection with operation of the Services.
- 11.3 The Service Provider will at any reasonable time afford the Council's officers or representatives such access to those records as may be required by the Council in connection with the Contract. The Council shall have the right to take electronic and / or paper copies of all such records.
- 11.4 The Service Provider will afford access to its Premises and Vehicles at any reasonable time by any person authorised by the Council (in this Clause 11, an "Authorised Officer") for the purposes of monitoring, inspection and survey, including travel without charge on any of the Services. Where appropriate, such Authorised Persons will have the powers of an inspector under the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990, as amended.
- 11.5 An Authorised Officer will have the power to detain any Vehicle or Personnel being used in the performance of the Services to enable him to inspect the Vehicle or to make enquiries relating to its use or to the Service Users or Personnel which it is carrying, has carried or is intended to carry. Such detention will be limited to the minimum length of time which is reasonable in the circumstances.
- 11.6 Where an Authorised Officer has reasonable grounds to believe that a Vehicle being used in performance of the Services is defective or non-compliant with the Specifications, they may direct that the Vehicle cease to be used on the Services, either forthwith or at a specified time, and not used on the Services until the defect or non-compliance has been rectified. They may further direct that such Vehicle is taken to a specified place for further inspection at a specified time and in such case, any costs involved shall be the responsibility of the Service Provider unless no defect or non-compliance is found, in which case the Council shall refund such costs as it considers reasonable.
- 11.7 Where an Authorised Officer has reasonable grounds to believe that the performance of the Services is not in accordance with the Contract, including (without limitation) where any Personnel are not appropriately licensed, approved, trained or competent, they may direct that the performance of that Service cease forthwith, and not resume until the non-compliance is rectified.
- 11.8 Any failure to comply with a direction given under this clause by an Authorised Officer will be a breach of this Contract separate from any actual or suspected breach which occasions the direction.

12. PAYMENT

- 12.1 All invoices will be submitted in a standard format, specified by the Council through email to apteam@dorsetcc.gov.uk or such other address as may subsequently be notified, containing the following information:
- Route Number
 - Daily Rate
 - Dates of Transport
 - Details of any adjustments
- 12.2 The Service Provider will submit one invoice per month after the last working day of the month containing all the above.
- 12.3 The Council will provide a consolidated bill template to facilitate Clause 12.1 above.
- 12.4 The Service Provider will work with the Council to the fullest reasonable extent to support any future “source to pay” system improvements.
- 12.5 The Contract Price for the Services supplied will be determined in accordance with the prices submitted with the tender and adjusted where applicable in accordance with Clause 13
- 12.6 The Contract Price will, unless otherwise stated, be deemed to be inclusive of all costs, expenses and overheads of any kind incurred by the Service Provider except VAT. For any Services which are subject to VAT, the amount of VAT will be added to the Contract Price by the Service Provider and paid by the Council.
- 12.7 All payments will be made in sterling, unless agreed otherwise by the Parties.
- 12.8 All payments will be made by BACS only
- 12.9 Payment shall be made within 30 days of receipt of a correct invoice for the Services performed to the satisfaction of the Council, unless otherwise detailed in the individual Route Conditions of Contract.
- 12.10 If the Council intends to withhold all, or any part, of a payment it must, not later than five Working Days before the final date for payment, give notice to the Service Provider to that effect, which notice must specify the amount proposed to be withheld and the ground for doing so.
- 12.11 The Council reserves the right to query an invoice payment at any time.
- 12.12 Any additional mileage costs must be agreed by the Council before an invoice is submitted. The Council will not pay for unauthorised mileage.
- 12.13 Where the Service Provider enters into a sub-contract for the Services, the Service Provider will include in its contract with the sub-contractor provision for any sum due under a correct invoice from the sub-contractor to be paid by the Contractor within thirty days of receipt of that invoice.

13. PRICE REVISION

- 13.1 For any Contract awarded for a period of 4 years or less, there will be no annual price revision.
- 13.2 For any Contract awarded for a longer period a price revision may apply in accordance with details set out in the specific Route Conditions of Contract.
- 13.3 In exceptional circumstances, prices may be varied with the agreement of both parties. 'Exceptional circumstances' will be determined at the discretion of the Council.

14. CHANGE IN LAW

- 14.1 The Service Provider will neither be relieved of its obligations to perform the Services under the Contract nor be entitled to an increase in the Contract Price as a result of a change in law, if the change and its effect are known at the Commencement Date.
- 14.2 If a change in law occurs or is shortly to occur which, in the reasonable opinion of the Service Provider, will significantly affect the provision of the Services or the cost of doing so, the Service Provider will notify the Council to express an opinion of the likely effects of the change including;
 - 14.2.1 whether any change is required to the Services, the Contract Price or the Contract; and
 - 14.2.2 whether the Service Provider requires any relief from compliance with its obligations.
- 14.3 If the parties to the Contract agree upon the effects of the change in law and any financial consequences, such agreement will be implemented through the variation provisions of Clause 20.
- 14.4 In the case of any dispute arising under this Clause, it will be resolved in accordance with the dispute resolution provisions set out in Clause 33.

15. RECOVERY OF SUMS DUE

- 15.1 Wherever any sum of money is recoverable from, or payable by, the Service Provider (including any sum which the Service Provider is liable to pay to the Council in respect of any breach of contract) the Council may unilaterally deduct that sum from any sum then due or which at any later time may become due to the Service Provider under any other agreement or contract with the Council.
- 15.2 The Service Provider will make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Service Provider.

16. HEALTH AND SAFETY

- 16.1 The Service Provider will comply with the requirements of the Health and Safety at Work etc Act 1974, and all other Acts, orders, regulations and codes of practice relating to health and safety which may apply to the performance of the Services.

- 16.2 The Service Provider will promptly notify the Council of any health and safety hazards or any incident which causes personal injury or damage which may arise in connection with the performance of the Services.
- 16.3 The Service Provider will make its health and safety policy statement available to the Council on request.
- 16.4 The Council will be empowered to suspend the provision of the Services in the event of non-compliance by the Service Provider with its legal duties in health and safety matters, in the opinion of any authorised officer of the Council. The Service Provider will not resume provision of the Services or such part until the Council is satisfied that the non-compliance has been rectified.
- 16.5 The Service Provider shall ensure that any Services supplied comply with all relevant safety legislation throughout the duration of the Contract.

17. INSURANCE

- 17.1 The Service Provider will hold, at its own expense, a valid policy or policies of public liability insurance with a minimum level of indemnity of £5 million for any one claim in respect of any obligations or potential liabilities arising out of the performance of the Services.
- 17.2 The Service Provider will hold a valid policy or policies of employer's liability insurance with a minimum level of indemnity of £10 million for any one claim in respect of all sums the Service Provider is found legally liable to pay for injury, illness or disease suffered by any Personnel of the Service Provider acting in the course of its duties.
- 17.3 The Service Provider will hold a valid policy or policies of motor vehicle insurance to cover all liabilities to third parties arising from the use of Vehicles in connection with the performance of the Services, or appropriate evidence of adequate self-insurance for such risks if agreed in writing with the Council.
- 17.4 Details of the above policies together with evidence that the policies are currently in force must be produced to the Council as requested.
- 17.5 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by this Contract, the Council may make alternative arrangements to protect its interests and may recover the reasonable costs of such arrangements from the Service Provider. Such failure shall be regarded as a serious breach of this Contract under Clause 24.3.
- 17.6 The terms of any insurance or the amount of cover will not relieve the Service Provider of any liabilities under this Contract.
- 17.7 For the avoidance of doubt, minimum insurance levels will not be a limit of liability under the Contract.

18. WARRANTIES

- 18.1 The Service Provider warrants, represents and undertakes that:
- 18.1.1 it has the full capacity and authority and all necessary consents, licences and permits to enter into and perform this Contract and that the Contract is executed by a duly authorised representative of the Service Provider;

- 18.1.2 as at the date of this Contract it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under **this** Contract.
 - 18.1.3 it will perform the Services using reasonable care, skill and diligence using suitably qualified Personnel and in accordance with generally accepted industry standards and practice;
 - 18.1.4 the Services will be performed in accordance with all applicable statutes, enactments, orders, regulations or other similar instruments as amended from time to time; and
 - 18.1.5 all Vehicles and Equipment used in the performance of the Services are of the nature, quantity, substance, make-up and quality required by the Specifications and will comply in all respects with the provisions of all existing legislation and other requirements relating to or controlling the nature, quantity, substance and quality of the Vehicles and Equipment to be provided.
- 18.2 Each of the Parties acknowledges that in entering into this Contract it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Contract and any conditions, warranties or other terms implied by statute or common law are excluded from this Contract to the fullest extent permitted by law.

19. LIABILITIES AND INDEMNITIES

- 19.1 Neither Party limits its liability for:
- 19.1.1 death or personal injury caused by its negligence or that of its Personnel, agents or sub-contractors (as applicable); or
 - 19.1.2 fraud by it or its Personnel; or
 - 19.1.3 breach of any obligation as to title implied by statute.
- 19.2 The Service Provider will indemnify the Council fully against all claims, proceedings, actions, damages, legal costs, expenses and other liabilities arising from tort (including negligence), breach of contract or otherwise, under or in connection with this Contract caused directly or indirectly by any act or omission of the Service Provider unless such injury, loss, damage, cost or expense is caused by the negligence or wilful misconduct of the Council or any Service User.
- 19.3 Subject to Clause 19.1, neither Party will be liable to the other for:
- 19.3.1 any indirect special or consequential loss or damage;
 - 19.3.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).
- 19.4 The Service Provider will be liable for the following types of loss, damage, cost or expense flowing from an act or Default of the Service Provider which will (without in any way limiting other categories of loss, damage, cost or expense) be recoverable by the Council;
- 19.4.1 any additional operational and/or administrative costs and expenses arising from any Default;
 - 19.4.2 the cost of procuring, implementing and operating any alternative or replacement services to the Service;

19.4.3 any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Service Provider's Default (to include any wasted staffing costs in the event of delayed delivery); and

19.4.4 any regulatory losses, fines, expenses or other losses arising from a breach by the Service Provider of any law.

19.5 Nothing in this Clause will act to reduce or affect a Party's general duty to mitigate its loss.

20. VARIATION OF THE SERVICES

20.1 The Council reserves the right to vary the Services in accordance with the provisions of the Specifications.

21. FORCE MAJEURE

21.1 Neither Party will be liable for any delay in, or non-performance of, any obligation under the Contract (other than the payment of money) caused by an event beyond the reasonable control of that Party including but not limited to acts of God, war, explosion, fire, strike, flood, riot or civil commotion or any act or omission of the other Party, or a force majeure event affecting a supplier, sub-contractor or a third party.

21.2 In the event such circumstances persist beyond a reasonable period given the nature of the event and its effect on the obligations under this Contract, then the other Party will have the right, for so long as the circumstances which prevent performance continue, to terminate this Contract by giving not less than 30 (thirty) Working Days' written notice to the other Party.

22. REMEDIES FOR INADEQUATE PERFORMANCE

22.1 In the event that the Council is of the reasonable opinion that there has been a material breach of this Contract by the Service Provider, then the Council may, without prejudice to its rights under Clause 24, do any of the following:

22.1.1 suspend the operation of the Contract and itself provide or procure the provision of all or part of the Services until such time as the Service Provider will have demonstrated to the reasonable satisfaction of the Council that the Service Provider will once more be able to provide all or such part of the Services in accordance with the terms of this Contract;

22.1.2 without terminating the whole of the Contract, suspend or terminate the operation of part of the Services only (whereupon a corresponding reduction in the Contract Price based on the mileage shall be made) and thereafter itself provide or procure a third party to provide such part of the Services;

22.1.3 terminate the whole of the Contract, in accordance with Clause 24; and / or

22.1.4 charge the Service Provider for, and the Service Provider will pay, any costs reasonably incurred by the Council (including any reasonable administration costs) in respect of the supply of any part of the Services by the Council or a third party and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

- 22.2 Where, in the Council's reasonable opinion, the Service Provider has failed to meet a requirement of this Contract or the Specifications, the Council shall be entitled to issue a Default Notice in writing to the Service Provider. The Default Notice shall state:
- 22.2.1 the nature and details (e.g. time and location) of the breach, with sufficient detail to enable the Service Provider to verify the facts;
 - 22.2.2 reference to the requirements of the Contract, or specify other action the Service Provider must take to remedy such breach;
 - 22.2.3 if applicable, any time period within which such breach must be remedied to the satisfaction of the Council; and
 - 22.2.4 the amount of any liquidated damages payable under Clause 23.
- 22.3 The Default Notice may also specify additional consequences of the Service Provider failing to comply with the requirements of Clauses 22.2.2 and 22.2.3, such consequences to be at the Council's absolute discretion subject to being reasonable.
- 22.4 Where the Service Provider:
- 22.4.1 receives three or more Default Notices relating to the same breach within a six month period; or
 - 22.4.2 receives six or more Default Notices within a six month period; or
 - 22.4.3 fails to comply with the remedial requirements of one or more Default Notices which specify termination as a consequence under Clause 22.3;
- then the Council shall be entitled to terminate the Contract under Clause 24.
- 22.5 Without limitation, examples of breaches which may attract a Default Notice are:
- 22.5.1 Failure to operate a scheduled journey without good reason;
 - 22.5.2 Late running of more than 15 minutes without good reason;
 - 22.5.3 Early running or failure to call at any scheduled pick up point;
 - 22.5.4 Failure to display any required sign or information on the Vehicle in the approved form;
 - 22.5.5 Submission of inaccurate invoices or claims for reimbursement;
 - 22.5.6 Operation of the service with Personnel who fail to display their identification badges;
 - 22.5.7 Operation of a Vehicle which does not meet the Specification;
 - 22.5.8 Operation of a Vehicle which is defective or has not been cleaned in accordance with requirements;

22.5.9 Failure to notify the Council or any accident, incident or failure to operate the Services as required.

22.5.10 Making unwarranted stops or diversions that are not part of the contracted Route.

22.6 The Council will be entitled to make a deduction from the Contract Price to cover any costs or liquidated damages (in accordance with Clause 23) attributable to the Council caused by the Service Provider's Default.

23. LIQUIDATED DAMAGES

23.1 If the Service Provider fails to provide the Services in full accordance with the Contract, which shall include withdrawal from the provision of a particular route without the consent of the Council, the Service Provider shall pay the Council a sum by way of liquidated damages.

23.2 A liquidated damages claim shall be in respect of the specific instance of failure, but may be in addition to other action taken by the Council in relation to its rights to ensure compliance with this Contract.

23.3 It is expected that the Service Provider will cooperate fully with the Council to minimise the occurrence of Defaults (and the associated costs) by ensuring the actions taken in response to Defaults are designed to prevent or minimise re-occurrence of the Default. In some cases this could involve additional training for the Driver (at the Service Provider's expense).

24. TERMINATION

24.1 This Contract shall terminate without the requirement for notice on the expiry of the Contract Period.

24.2 Either the Council or the Service Provider may at any time by notice in writing to the other Party terminate this Contract as from the date of service of such notice whenever any of the following events occurs:

24.2.1 the other Party commits a material breach of any of its obligations under or in relation to this Contract which is not capable of remedy or, if capable of remedy, is not remedied within 30 days after receipt of written notice from the non-breaching Party of its intention to terminate; or

24.2.2 the other Party is continually in breach or commits a series of breaches of this Contract which cannot be remedied with 30 days of written notice from the non-breaching Party of its intention to terminate.

24.3 The Council may terminate this Contract immediately if:

24.3.1 it reasonably considers that continuation would give rise to serious risk to the health or well-being of one or more Service Users; or

24.3.2 the Service Provider commits a serious breach of the terms and conditions of the Contract or Specifications, and the Council gives written notice and details of the breach.

Examples of serious breaches which the Council may require immediate termination include, but are not limited to, the following:

- Operation without a necessary operator's licence.
- Operation with Drivers who are not properly licensed.
- Operation of Vehicles which are not properly licensed taxed or insured.
- Operation of the Services with Personnel who have not, where necessary, been approved by the Council.
- Endangerment or reckless disregard for the safety of Service Users.
- Failing to report instances or concerns of improper behaviour by Drivers towards Service Users
- Use of a non-approved sub-contractor.
- Assault by any Personnel on a Service User or member of Council staff.
- Submission of a fraudulent claim or invoice (eg invoicing for routes that have not run).
- Withdrawal from the provision of a route without the prior consent of the Council.
- Driver behaviour or attitudes that clearly indicate they are unsuitable to work with children, young people or vulnerable adults.
- Failure to meet any agreed performance standards or KPIs

24.4 In any case where immediate termination is permitted, the Council may, at its discretion, initially suspend the Contract.

24.5 The Council may by notice in writing to the Service Provider terminate this Contract as from the date of service of such notice if:

24.5.1 the Service Provider passes a resolution or a court makes an order that the Service Provider be wound up otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation; or

24.5.2 circumstances exist which entitle a court or a creditor to appoint a receiver, manager or administrator or which entitle a court, otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation, to make a winding-up order regarding the Service Provider; or

24.5.3 the Service Provider undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Contract; or

24.5.4 the Service Provider has a receiver, manager, administrator, or administrative receiver appointed over all or any part of its undertakings, assets or income, or has passed a resolution for its winding up; or

24.5.5 the Service Provider has a petition presented to any court for its winding up or for an administration order; or

24.5.6 the Service Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

24.5.7 the Service Provider suffers any distress, execution or other process to be levied or enforced on any of its property by any third party and is not paid out, withdrawn or discharged within 7 days; or

24.5.8 the Service Provider becomes bankrupt or makes a composition or arrangement with its creditors, or has a proposal in respect of the business for voluntary arrangements for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986; or

- 24.5.9 the Service Provider has been convicted of a criminal offence or act of grave professional misconduct in the conduct of its business within the meaning of Regulation 57(8)(c) of the Public Contracts Regulations 2015; or
- 24.5.10 the Service Provider has failed to comply with any obligations relating to the payment of any taxes or social security contributions; or
- 24.5.11 the circumstances specified in Clause 22 arise.
- 24.6 The Council may only exercise its right under Clause 24.5.3 within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Service Provider shall notify the Contracting Officer immediately if any change of control occurs.
- 24.7 The Council shall be entitled to terminate this Contract immediately and recover from the Service Provider the amount of any loss resulting from such cancellation if, in relation to this Contract or any agreement with the Council, the Service Provider or any person employed by him or acting on his behalf shall have committed:
- 24.7.1 any fraud;
- 24.7.2 an offence under the Bribery Act 2010, or shall have given any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
- 24.8 The termination of this Contract howsoever arising is without prejudice to the rights, duties and liabilities of either Party at or prior to termination and subject to those neither Party shall have any further obligations to the other under this Contract. The Clauses of this Contract which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.
- 24.9 The Council's rights under this Clause shall be without prejudice to any other rights or remedies which it may possess.
- 24.10 Where the nature of the Services requires, additional conditions of termination will be detailed in the relevant Route Conditions of Contract at invitation to bid stage.

25. CONSEQUENCES OF SUSPENSION OR TERMINATION

- 25.1 Following termination by the Council of this Contract, the Service Provider will be entitled to such proportion of the Contract Price as represents a fair and reasonable value of that part of the Services carried out up to the date of termination provided always that the Council reserves the right to deduct from any such sum the amount of any claim the Council may have in respect of any breach and / or failure by the Service Provider to perform its obligations under the Contract.
- 25.2 The Council will not in any circumstances be liable to the Service Provider for any losses or expenses arising out of termination or suspension, and no payment will be due from the Council under this Contract during any period of suspension.
- 25.3 Where the Council terminates or suspends the Contract as a consequence of a breach by the Service Provider, the Council will be entitled to recover from the Service Provider:
- 25.3.1 any costs (including any administration costs) reasonably incurred by the Council in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider; and

25.3.2 the amount of any other loss incurred by the Council as a result of the termination.

The Council will take all reasonable steps to mitigate any additional expenditure.

25.4 The Service Provider will upon the termination of the Contract immediately deliver up to the Council all correspondence, documents, specification papers, Vehicles, Equipment, Premises and other property belonging to the Council which may be in his possession or under his control.

25.5 The provisions of this Clause shall survive the termination or expiry of this Contract.

26. INTELLECTUAL PROPERTY RIGHTS

26.1 The Service Provider will not cause or permit anything that may change or endanger the intellectual property of the Council or title to it or allow others to do so.

26.2 The Service Provider, at its own expense, will defend and indemnify the Council against all costs and expenses arising out of any claim that any part of the Services infringe the intellectual property rights of a third party provided that the Council notifies any allegation of such infringement to the Service Provider without delay, and makes no admission of liability in connection with the same.

26.3 The Service Provider will not use the logo of the Council or any representation of it, nor cause it to be used other than in accordance with this Contract or any protocol agreed with the Council or with the written consent of the Council.

26.4 Copyright in all documents provided by the Council under this Contract will remain vested in the Council, and the Council will be at liberty to reproduce in whole or in part, or to provide to any third party, any such documents without the prior written consent of the Service Provider.

27. CONFIDENTIALITY

27.1 Each Party, its Personnel or any other person associated with either Party shall keep confidential:

27.1.1 the terms of this Contract; and

27.1.2 any and all Confidential Information that it may acquire in relation to any other party including any Service User.

27.2 No party will use or disclose the other Party's Confidential Information, without prior written consent, except to persons necessary for the purpose of performing the Contract, or where disclosure is expressly permitted under this Contract.

27.3 The Service Provider will ensure its Personnel, professional advisors, sub-contractors and suppliers are aware of the Service Provider's confidentiality obligations under this Contract. The Service Provider's Personnel will refrain from discussing Confidential Information where it may be overheard by any unauthorised person.

27.4 The obligations on a Party set out in Clauses 27.1 to 27.3 will not apply to any Confidential Information which:

27.4.1 a party can demonstrate is or becomes public knowledge otherwise than by breach of this Contract;

- 27.4.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;
- 27.4.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 27.4.4 is independently developed without access to the Confidential Information;
- 27.4.5 is required to be disclosed pursuant to a statutory, legal, regulatory or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000.

27.5 Nothing in this Clause shall prevent the Council:

- 27.5.1 disclosing any Confidential Information for the purpose of:
 - 27.5.1.1 the examination and certification of the Council's accounts; or
 - 27.5.1.2 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; or
- 27.5.2 disclosing any Confidential Information obtained from the Service Provider:
 - 27.5.2.1 to any government department or any other contracting authority. All government departments or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other contracting authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any contracting authority; or
 - 27.5.2.2 to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the Contract;
provided that in disclosing information under sub-clause 27.5.2 the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

27.6 Nothing in this clause will prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not:

- 27.6.1 result in a disclosure of Confidential Information; or
- 27.6.2 infringe intellectual property rights.

27.7 This clause shall survive termination of this Contract for a period of 6 years.

28. DATA PROTECTION

28.1 Both Parties will observe their obligations under the Data Protection Act 1998 ('DPA') which arise in connection with this Contract.

28.2 Personal data as defined in the DPA supplied by and/or processed on behalf of the Council (electronic or manual) is owned by the Council.

28.3 The Service Provider will:

- 28.3.1 comply with the requirements under the DPA;
 - 28.3.2 ensure the security of personal data by taking appropriate technical, organisational and contractual measures to guard against unauthorised or unlawful processing and prevent, theft accidental loss, destruction, or damage to personal data as required under the DPA;
 - 28.3.3 comply with the Closed Circuit Television (CCTV) Code of Practice issued by the Information Commissioner and the Surveillance Camera Commissioner, in respect of any CCTV operated in the provision of the Services under this Contract.
 - 28.3.4 promptly notify the Council of any breach or suspected breach of the security measures required to be put in place pursuant to Clause 28.3.2;
 - 28.3.5 ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of its obligations under the DPA.
 - 28.3.6 indemnify the Council against any breach of this Clause which renders the Council liable for any costs, fines, claims or expenses (including reasonable legal fees and disbursements) howsoever arising.
- 28.4 If requested by the Council to do so, the Service Provider will:
- 28.4.1 provide such information as is necessary for the Council to satisfy itself that the Service Provider is complying with this Clause;
 - 28.4.2 return all personal data, belonging to the Council without undue delay and upon confirmation of receipt, promptly destroy all copies of the same and certify to the Council that it has done so.
- 28.5 The provisions of this Clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

29. FREEDOM OF INFORMATION

- 29.1 The Service Provider acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 ('FOIA') and shall assist and co-operate with the Council (at the Service Provider's expense) to enable it to comply with its information disclosure requirements.
- 29.2 The Service Provider will, and will procure that its sub-contractors will:
- 29.2.1 transfer all requests for information to the Council (where it is reasonably apparent that such are intended to be requests for information for the Council) as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
 - 29.2.2 provide the Council with a copy of any information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that information; and
 - 29.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a request for information within the time for compliance set out in Section 10 of the FOIA.
- 29.3 The Council will be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information:

- 29.3.1 is exempt from disclosure in accordance with the provisions of the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 FOIA; or
 - 29.3.2 is to be disclosed in response to a request for information, and
 - 29.3.3 in no event will the Service Provider respond directly to a request for information unless expressly authorised to do so by the Council.
- 29.4 The Service Provider acknowledges that the Council may, acting in accordance with the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 of the FOIA, be obliged to disclose information:
- 29.4.1 without consulting with the Service Provider; or
 - 29.4.2 following consultation with the Service Provider and having taken its views into account.
- 29.5 The Service Provider will ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 29.6 The Service Provider acknowledges that any lists or schedules provided by it outlining Commercially Sensitive Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with Clause 29.4.

30. ASSIGNMENT AND SUB-CONTRACTING

- 30.1 Subject to Clause 30.2, the Service Provider will not transfer, assign or sub-contract directly or indirectly to any person or organisation any portion of his Contract without informing the Council in writing.
- 30.2 This condition will not prohibit the Service Provider from arranging for the provision of the Services by Vehicles operated by a third party in an emergency, provided that:
- 30.2.1 the third party is an approved Service Provider for the Council on work of an equivalent nature and the Contracting Officer is notified of the circumstances with the data return for that period; or
 - 30.2.2 in any other case, the Service Provider has obtained the prior verbal agreement of the Council, and full details of the arrangement and circumstances are supplied to the Contracting Officer in writing within seven days.
- 30.3 For the purposes of this clause, an emergency comprises an unexpected event such as breakdown of a Vehicle, Personnel absence or severe traffic delay. Repeated application of Clause 31.2 occasioned by foreseeable events, including where this results from inadequate provision of contingency or back-up resources, will be treated as a breach of this Contract, and may give rise to action by the Council under Clauses 22 or 23.
- 30.4 As a condition of the Council giving its permission to any transfer, assignment or sub-contracting, the Service Provider will supply such details of its proposed sub-contractors as the Council may reasonably require, including but not limited to names, relevant qualifications, experience and intended work to be undertaken by the proposed sub-contractor and the terms of the proposed sub-contract.
- 30.5 Sub-contracting any part of this Contract will not relieve the Service Provider of any obligation or duty attributable to the Service Provider under this Contract.

- 30.6 The Service Provider will be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 30.7 Any permitted transfer, assignment or sub-contracting will be on the same terms as this Contract, unless otherwise agreed between the Parties.
- 30.8 The Council will be entitled to novate this Contract to any successor body which substantially performs any of the functions that the Council previously performed.

31. CONTRACTS (RIGHTS OF THIRD PARTIES ACT) 1999

- 31.1 A person who is not a Party to this Contract (including without limitation any Personnel, officer, agent, representative or sub-contractor) shall not have any right to enforce any term of the Contract, which expressly or by implication confers a benefit on them, without the prior written agreement of both Parties.

32. DISCRIMINATION

- 32.1 The Service Provider will not unlawfully discriminate in the provision of the Services either directly or indirectly on such grounds as race, colour, ethnic or national origin, culture and linguistic background, disability, gender or sexual orientation, pregnancy and maternity, gender reassignment, marriage and civil partnership, religion or belief or age and, without prejudice to the generality of the foregoing, will not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant legislation.
- 32.2 The Service Provider will at all times operate a policy of equal opportunity in both staffing and service delivery which accords with that of the Council. The Service Provider will forward a copy of this policy to the Council when required and demonstrate its operation in the performance of the Services.
- 32.3 The Service Provider will take all reasonable steps to secure the observance of this clause by all Personnel employed in the performance of the Contract.
- 32.4 In the event of a finding of discrimination being made by any court or employment tribunal against the Service Provider or any sub-contractor appointed by the Service Provider during the performance of this Contract, or of an adverse finding in any formal investigations by the Equality and Human Rights Commission during the performance of this Contract, the Service Provider will inform the Council of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 32.5 The Service Provider will indemnify the Council in respect of any claims against the Council which arise by reason of the Service Provider's breach of the legislation referred to in Clause 32.1 where such breach arises in the performance of its obligations under this Contract.
- 32.6 The Service Provider may be required to answer questions raised by the Council on matters referred to in this clause.

33. DISPUTE RESOLUTION

- 33.1 It is the intention of the Parties to settle amicably by negotiation all disagreements and differences on matters relating to this Contract or the provision of the Services.

- 33.2 In the event that any disagreement or difference of opinion arises out of this Contract, the matter shall be dealt with as follows:
- 33.2.1 The Contracting Officer and the Delegated Officer will meet to seek resolution.
 - 33.2.2 In the event that they do not meet within 10 Working Days of the date on which either Party convenes a meeting to resolve the matter, or should they not be able to resolve the matter within 10 Working Days of the first meeting, the matter will be promptly referred by either Party to the next level of management within the respective organisations for immediate resolution.
 - 33.2.3 If within 14 Working Days of the matter having been referred to the next level of management no agreement has been reached as to the matter in dispute, the Parties shall thereafter seek to determine the matter in dispute by adopting the procedure set out below.
- 33.3 An independent adjudicator will be appointed by agreement between the Parties. The Parties will promptly furnish to such adjudicator all information relating to the dispute to enable him to give a decision as to what course of action in his reasonable opinion ought to be followed to give an outcome equitable to the Parties taking into account the respective rights and obligations of the Parties.
- 33.4 The decision of the adjudicator will be final and binding on the Parties.
- 33.5 The Parties will share equally the fees and expenses of the adjudicator unless the adjudicator directs otherwise.
- 33.6 Alternatively, either Party may refer the matter for decision to arbitration whereupon the Parties will comply with the following provisions:
- 33.6.1 the arbitration will be governed by the provisions of the Arbitration Act 1996;
 - 33.6.2 the arbitration fees will be met by the Council and Service Provider in equal shares;
 - 33.6.3 the decision of the arbitrator will be binding on the Parties.
- 34. TUPE**
- 34.1 Where at the Commencement Date there exists a situation to which TUPE applies, the provisions in Schedule 2 will take effect.
- 34.2 At any time during the last six months of the Contract Period, the Service Provider will provide to the Council within 20 Working Days of a written request such information as the Council may reasonably require in respect of TUPE.
- 34.3 The Service Provider will comply with its obligations under Clause 27 (Confidentiality) in relation to any information supplied under Clause 34.2.
- 34.4 The Service Provider will permit the Council to use the information for the purposes of TUPE and re-tendering. The Service provider will obtain its employees' consent to the processing of the personal data for the purposes of re-tendering the Services. The personal data will be anonymised so that employees cannot be identified.
- 34.5 If TUPE applies on termination of this Contract then:
- 34.5.1 the Service Provider agrees to indemnify the Council fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards,

costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of the information under Clause 34.2;

34.5.2 the Service Provider agrees to indemnify the Council from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities in connection with or as a result of any claim or demand by any Personnel or other personnel or person claiming to be an employee on any date upon which the Contract is terminated and/or transferred to any third party ('Relevant Transfer Date') arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.

34.6 In the event that the information provided by the Service Provider in accordance with Clause 34.2 becomes inaccurate, whether due to changes to the employment and personnel details of the affected Personnel made subsequent to the original provision of such information or by reason of the Service Provider becoming aware that the information originally given was inaccurate, the Service Provider will notify the Council of the inaccuracies and provide the amended information within 10 Working Days.

34.7 The provisions of this Clause will apply during the continuance of this Contract and indefinitely after its termination.

35. VARIATION OF CONTRACT AND WAIVER

35.1 This Contract, or any part of it, may be amended or varied with the written agreement of both Parties.

35.2 Failure by the Council or the Service Provider to insist on strict performance of the Contract or to exercise any right or remedy upon breach of any provision of the Contract will not constitute a waiver of the Contract conditions or a waiver of any subsequent breach or default in the performance of the Contract. The rights and remedies provided in this Contract are cumulative and not exclusive of any rights and remedies provided by law.

36. DISRUPTION

36.1 The Service Provider will immediately inform the Council of any actual or potential industrial action, whether such action be by its own Personnel or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

36.2 In the event of such industrial action by the Personnel, the Service Provider will seek the Council's approval to its proposals for the continuation of the Services in accordance with its obligations under the Contract.

36.3 If the Service Provider's proposals are considered insufficient or unacceptable by the Council acting reasonably, the Council may terminate the Contract with immediate effect by notice in writing.

36.4 If the Service Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Council, the Council will reimburse any additional expense reasonably incurred by the Service Provider as a direct result of such disruption.

37. NOTICES

- 37.1 Any notice to be given under this Contract will be in writing and will be hand delivered or sent by first class mail to the address of the Service Provider and the Council at the head of this Contract; or to such other address as that Party may from time to time notify to the other Party in accordance with this Clause.
- 37.2 Provided the notice sent as above is not returned as undelivered it shall be deemed to have been received:
- 37.2.1 if delivered by hand before 1600 hours on a Working Day, at the time of delivery, otherwise receipt will be deemed to occur at 0900 hours on the next following Working Day; or
 - 37.2.2 if delivered by first class inland mail, two Working Days after the day of posting.
- 37.3 In proving the giving of a notice it will be sufficient to prove that the notice was left by hand or that the envelope containing the notice was properly addressed and posted.
- 37.4 Notice will not be given by electronic mail.

38. SEVERANCE

- 38.1 If any part or provision of this Contract is or becomes invalid, illegal or unenforceable, the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted which gives effect to their original intentions. In such a case, all other parts or provisions of this Contract will remain valid and enforceable.

39. ENTIRE AGREEMENT

- 39.1 This Contract represents the entire understanding between the Service Provider and the Council in relation to the subject matter of the Contract and supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause will not exclude liability in respect of any fraudulent misrepresentation.

40. LAW AND JURISDICTION

- 40.1 This Contract will be governed by and construed in accordance with English law and each Party agrees to submit to the exclusive jurisdiction of the English courts.
- 40.2 This Contract is binding on the Council and Service Provider, their successors and assignees.

TERMS AND CONDITIONS - SCHEDULE 1

SERVICE SPECIFICATION

This will include the General Service Specification.

TERMS AND CONDITIONS - SCHEDULE 2

TRANSFERRING EMPLOYEES

1.1 The Service Provider and the Council will co-operate with each other to affect a smooth transfer of the Transferring Employees so that their employment transfers at the Commencement Date to the Service Provider.

1.2 The Service Provider and the Council will give each other such assistance as either may reasonably require to comply with TUPE in relation to the Transferring Employees, specifically, the current contractor will be obliged to provide accurate employment information upon a re-tendering situation.

Regulation 11 of TUPE expressly requires the current employer to provide Employer Liability Information to a transferee (for example, a new contractor) and this must be done not less than 28 days before the TUPE transfer takes place.

Regulation 11 (7) of TUPE allows the obligation to provide Employer Liability Information to be discharged indirectly through a third party; or alternatively it can take place directly between the current contractor and the transferee.

1.3 The Council will discharge all contractual and statutory obligations (including salaries, benefits, holiday pay, bonuses, contributions and incentive payments) in respect of each Transferring Employee due or accrued at the Commencement Date.

1.4 The Council has supplied to the Service Provider the information contained in this Schedule including

i) The identity and age of the employee

ii) Those particulars of employment that an employee is obliged to give in section 1 of the Employment Rights Act 1996;

iii) Information about any

- disciplinary procedure taken against and employee; and
- Grievance procedure taken by an employee

In the last two years.

iv) Information of any court or tribunal case, claim or action:

- Brought by an employee within the previous 2 years or
- That the current employer has reasonable grounds to believe than an employee may bring

v) Information about any collective agreement which will have effect after the transfer

1.4.1 The Employee Liability Information is the only information that the law prescribes needs to be given to the transferee; it must be accurate and updated as necessary.

- 1.4.2 Employee Liability information is normally only given once it has been confirmed that the transfer is going ahead and the transferee has been specifically named – towards the end of the procurement process.
- 1.5 The Service Provider will indemnify the Council against all claims which may transfer to the Council under TUPE and against all Relevant Liabilities relating to or arising out of any act or omission by the Service Provider during the Contract Period in relation to any of the Relevant Employees (including any claims arising from a failure to inform and consult).
- 1.6 The Council will indemnify the Service Provider against all claims which may transfer to the Service Provider under TUPE and against all Relevant Liabilities relating to or arising out of any act or omission by the Council before the Commencement Date in relation to any Transferring Employees (including any claim arising from a failure to inform and consult).

Details of Transferring Employees:

TERMS AND CONDITIONS - SCHEDULE 3

USE OF COUNCIL PREMISES

- 1.1 If agreed in connection with the performance of the Services under this Contract, the Service Provider (including for the purposes of this Schedule its Personnel, agents and sub-contractors) will be entitled to access the Council's Premises at times agreed between the Council and the Service Provider.
- 1.2 Subject to Clause 1.1, the Service Provider will not do any act or thing at any Premises owned or occupied by the Council other than for the proper performance of the Services and as may be permitted by this Contract.
- 1.3 No signs or advertisements will be exhibited without prior Council written approval.
- 1.4 Subject to Clause 1.1 the Council may license or permit the Service Provider to use solely in connection with the provision of the Services at a charge to be agreed, the following resources:-
 - 1.4.1 such heating, lighting, general power and water services on condition that the Service Provider and its Personnel strictly observe the Council's conservation of energy policy which shall be provided to the Service Provider;
 - 1.4.2 such telephone, facsimile and other like facilities as agreed;
 - 1.4.3 such office equipment including computer equipment (which term should include computer hardware and software) as agreed;
 - 1.4.4 such furniture as agreed; and
 - 1.4.5 such facilities for vehicle storage, cleaning, maintenance and fuelling as agreed.
- 1.5 The licensing or permitting of the use of any resources is personal to the Service Provider and will cease at the end of the Contract or upon the termination of the Contract or at such earlier time as may be specified by the Council by notice in writing to the Service Provider, provided that no such notice shall be given except in circumstances where the Council can demonstrate a genuine need to terminate the use of the resources. Where a notice has been served after the Contract has been entered into, the Council will assist the Service Provider in the provision of suitable alternative resources. Where such alternative resources are not made available by the Council to the Service Provider, the Parties acknowledge that the Service Provider may incur additional charges in providing appropriate alternative resources and that such additional charges will be agreed in accordance with the provisions of Clause 22.
- 1.6 The Parties agree that there is no intention on the part of the Council to create a tenancy of whatsoever nature in favour of the Service Provider and that no tenancy has or will come into being.
- 1.7 The Service Provider will enter into a form of licence agreement regarding use of the Council's premises if so requested by the Council.
- 1.8 The Service Provider will promptly notify the Contracting Officer of any defects in or damage to the Council's Premises. The Council, upon receiving such notification, will unless the Council and the Service Provider otherwise agree, take reasonable measures to secure that such appropriate maintenance, repairs and replacements considered necessary by the Contracting Officer are carried out within a reasonable time. In the event that the defect or damage is, in the reasonable opinion of the Council, due to any neglect or default on the part of the Service Provider, the Service Provider will be responsible for fully reimbursing the Council in respect of any costs incurred. If any such defect or damage

arising by reason of the Service Provider's neglect or default results in the Service Provider not being able to use part or all of the resources, the Council will not be liable for any losses thereby incurred by the Service Provider which will use its best endeavours to continue the provision of the Services subject to any instruction to the contrary from the Contracting Officer.

- 1.9 On the completion of the Contract or upon earlier termination of the Contract or the Services, the Service Provider will leave the resources in a secure, safe, serviceable and clean condition.

Security

- 1.10 The Council will be responsible for maintaining the security of its Premises. The Service Provider will comply with all Council security regulations and other requirements of the Council of which it has been made aware while at the Council's Premises and will ensure that its Personnel and any visitors shall likewise comply with such requirements including:
- 1.10.1 providing identity details;
 - 1.10.2 submitting to security checks on request;
 - 1.10.3 complying with the Council's requirements relating to security passes, if relevant.
- 1.11 The Service Provider will use its best endeavours to ensure that access to the Council's Premises is restricted to its Personnel and essential visitors engaged upon or in connection with the provision of the Services.
- 1.12 The Service Provider will issue to any of its Personnel who shall at any time have access to any Premises, security passes in such form as the Council may from time to time determine and issue to the Service Provider and will use best endeavours to ensure that such Personnel carry such passes at all times.
- 1.13 The Service Provider will be responsible for the safekeeping of any keys, passes and other means of access provided to the Service Provider by the Council and will only permit such keys, passes and other means of access to be given to those of the Service Provider's Personnel and its sub-contractors whose names and addresses have been supplied to the Council and then only to the extent required for the purposes of providing the Services. In addition the Service Provider will ensure that the Contracting Officer is informed immediately of the loss of any keys, passes and other means of access and will reimburse to the Council any reasonable cost of replacement and/or any reasonable security measures implemented as a result of such loss.
- 1.14 The Service Provider will be responsible for theft, loss or damage to:
- 1.14.1 its own property, plant, equipment, data or personal possessions brought onto Council Premises; and
 - 1.14.2 any Council property, plant, equipment, or data used or within the care and control of the Service Provider.
- save where such theft, loss or damage is due to the wilful act or negligence of the Council.

TERMS AND CONDITIONS - SCHEDULE 4

USE OF COUNCIL VEHICLES

The following conditions will apply where the Council provides a Vehicle for a Service Provider to operate a Route under the Contract:

1. Ownership of the Vehicle will remain with the Council.
2. Servicing and maintenance of the Vehicle will be the responsibility of the Service Provider which will be arranged with an approved garaging facility known to the Council. Maintenance will be undertaken in accordance with the appropriate manufacturer's recommended maintenance schedules and specifications.
3. Regular safety checks on the Vehicle will be carried out by an approved garaging facility known to the Council.
4. The Vehicle will be securely stored when not attended and when not in operation.
5. At least two inspections per year will be undertaken at one of the Council's vehicle maintenance facilities on pre-arranged dates.
6. The Vehicle will be covered by the Service Provider's insurance.
7. For the period during which the Vehicle is operated by the Service Provider, the Vehicle will be covered by the Service Provider's Operator's Licence.
8. MOT and licences required for the Vehicle will be the responsibility of the Service Provider.
9. Breakdown costs and temporary vehicle cover will be the responsibility of the Service Provider.
10. The Vehicle will be maintained to the original specification and must not be modified without the approval of the Council. This applies to the Vehicle and any branding/livery applied.
11. Any damage sustained to the Vehicle will be reported to the Council's Dorset Travel unit within 5 days.
12. Where damage to bodywork is sustained the Service Provider will ensure that bodywork repairs are commenced within 30 days of the damage being sustained. An exception to the 30 day rule is where a third party insurance claim may be delaying vehicle repairs. In these circumstances the Service Provider will provide the Council with weekly update reports.