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Environment & Transport Department,
Leicestershire County Council,
County Hall, Glenfield, Leicester, LE3 8RJ*

Local Bus Services Schedule 2A Terms and Conditions

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LOCAL BUS SERVICES

SCHEDULE 2A - TERMS AND CONDITIONS

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GENERAL PROVISIONS

0. INTERPRETATION

References to numbered clauses will state which Annex they refer to as well as the relevant clause.

Any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done.

The headings in this Contract are for information only and do not affect the interpretation of the Contract.

References to "writing" include printing, display on a screen and electronic transmission and other modes representing or reproducing words in a visible form.

The singular includes the plural and vice versa.

Reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time and to any legislation or byelaw made under that Law; and

The word 'including', "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation".

The Supplier warrants and represents that its tender and all statements made, and documents submitted as part of the procurement of Services are and remain true and accurate.

The Supplier agrees and acknowledges that it has been retained to perform the Services on a non-exclusive basis.

1. DEFINITIONS

In the Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

Anticipated period of Operation means the total Contract Period (comprising initial contract period and any extension periods) as detailed in Schedule One at Annex 1: Service Specification.

Annexes means Annex 1: Service Specification, Annex 2: Clarification Log, Annex 3: Pricing Schedule; Annex 4: Supplier Response.

Approval means the prior written consent of the Authority and Approved shall be construed accordingly.

Assigned means assigned within the meaning given to that word by the TUPE Regulations.

Auditor means the National Audit Office, or an auditor appointed by the Authority as the context requires

Authority means Leicestershire County Council

Caldicott Principles means the eight revised principles detailed in the Department of Health's Information-to Share or not to Share 2020

Contract means this agreement made between (i) the Authority and (ii) the Supplier which includes the Form of Agreement, these terms and conditions, the terms contained in Schedule 2B Operational Specification and the Annexes.

Contract Period means the Initial Contract Period and any Extension Period referred to in Clauses 2 and 3 in these Terms and Conditions and the Anticipated Period of Operation in Schedule One at Annex 1: Service Specification.

Contract Price means the price (exclusive of any applicable VAT), payable to the Supplier by the Authority under the Contract, as set out in Schedule One at Annex 1 – Service Specification and the Pricing Schedule at Annex 2, for the full and proper performance by the Supplier of its obligations under the Contract.

Contracting Authority means any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015 (*SI 2015/102*) other than the Authority.

Data Protection Legislation means (i) the UK GDPR and any applicable national implementing Laws as amended from time to time, (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

Default means any breach of the obligations of the relevant party under the Contract (including fundamental breach or breach of a fundamental term) or any default or omission, negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

Dispute Resolution Procedure means the dispute resolution procedure in Clause 35.

Existing Service Contractor means service provider who is providing any service which is fundamentally the same as any of the Services prior to the Commencement date.

Employees means those employees whose contracts of employment transfer to the Supplier from the Existing Service Contractors as of the Service Commencement Date or during the total Contract Period.

Equipment means the Supplier's vehicles, equipment, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract; or such items as are provided by the Authority to the Supplier for the express purpose of enabling the Supplier

to meet its obligations under this Contract.

Extended Period means extending the Initial Contract Period for a period or periods not exceeding a maximum duration as set out in Clause 3 of these Terms and Conditions.

Law means the laws of England and Wales and any other laws or regulations regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Supplier is bound to comply.

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

- (a) any industrial action occurring within the Supplier's or any Sub-Contractor's organisation; or
- (b) the failure by any Sub-Contractor to perform its obligations under any Sub-Contract.

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

Information means has the meaning giving under section 84 of the FOIA.

Initial Contract Period means the period set out in clause 2 of these Terms and Conditions.

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

Key Personnel means to Directors and Transport Manager as listed on the Government Vehicle Operator Licensing website at <https://www.gov.uk/find-vehicle-operators>.

Order Form means Schedule One at Annex 1: Service Specification

Parent Company means any company which is the ultimate Holding company of the Supplier, and which is either responsible directly or indirectly for business activities of the Supplier or which is engaged in the same or similar business to the Supplier. Holding Company shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enacted or amendment thereto. A reference to Holding

Company or subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 (and a company shall be treated, for the purposes only of the membership requirement contained in section 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominees), whether by way of security or in connection with the taking of security, or (b) as a nominee).

Period means the period from the Service Commencement Date to the date set out in Schedule One at Annex 1: Service Specification unless terminated otherwise in accordance with the provisions of the Contract or the date of expiry of an extended period.

Premises means any premises in the possession or control of the supplier or any Sub-Contractor (which are not Authority's premises) from which the Services are delivered, in whole or in part which records relating to the Services are kept.

Pricing Schedule means the Pricing Schedule set out at Annex 3

Prohibited Act means the following constitute Prohibited Acts.

- (a) To directly or indirectly offer, promise, or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) Induce that person to perform improperly a relevant function or activity
 - or
 - (ii) Reward that person for improper performance of a relevant function or activity
- (b) To directly or indirectly request, agree to receive or accept any financial advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract.
- (c) Committing any offence:
 - (i) Under the Bribery Act 2010.
 - (ii) Under legislation creating offences concerning fraudulent acts
 - (iii) at common law concerning fraudulent acts relating to this Contract; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority

Quarter means 1 to 30 June; 1 July to 30 September; 1 October to 31 December; 1 January to 31 March

Quality Standards: the quality standards published by BSI British

Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form.

Replacement Supplier means any third party appointed by the Authority from time to time to provide any services which are substantially similar to any of the Services, or received in substitution or any of the Services, following the expiry, termination or partial termination of this Contract

Request for Information means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

Specification means Schedule One at Annex 1: Service Specification and Schedule 2B Operational Specification for the Services to be supplied by the Supplier (including as to quantity, description and quality) as specified in the Contract which includes the Authority's requirements, the Invitation to Tender and the Supplier's bid response.

Schedule One means the Order Form at Annex 1: Service Specification containing details of the contract type, vehicles, equipment and operation to be used on the contract, the route and timetable.

Services means the passenger transport services delivered by the Supplier to the Authority including without limitations works and obligations to be provided by the Supplier pursuant to the Contract including as specified in Schedule One at Annex 1: Service Specification and Schedule 2B Operational Specification.

Service Commencement Date means the commencement of contract as set out in Schedule One at Annex 1: Service Specification.

Staff means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Contract.

Staff Vetting Procedures means vetting procedures that accord with Good Industry Practice or where applicable, the Authority's procedures for the vetting of personnel as provided to the Supplier from time to time including in respect of:

- a) eligibility to work in the UK.
- b) the handling of information of a sensitive or confidential nature.
- c) the handling of information which is subject to any relevant security

measure.

- d) the carrying out of regulated activity within the meaning of the Safeguarding Vulnerable Groups Act 2006.
- e) DBS Checks; and
- f) all relevant legal requirements as applicable to the Services or Contract

Subcontractor means the contractors or service providers that enter into a Subcontract with the Supplier

Sub-Contract means any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any Services from the third party.

Supplier means an appropriately licensed individual, company, organisation, legally existing firm or sole trader that is engaged by the Authority to provide passenger transport services.

Supplier's Default means any breach of the obligations of the relevant party under the Contract (including fundamental breach or breach of a fundamental term) or any default, act, omission, negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

Supplier Response means information supplied to the Authority and requested in the ITT covering the selection questionnaire, contract details and declaration as set out at Annex 4.

Transferring Employees means those employees wholly or mainly engaged in the provision of the Services (or part of them) as the case may be as immediately before the expiry or termination of this Contract or of the provision of any of the Services whose employment transfers to the Council or a Replacement Supplier pursuant to the TUPE Regulations.

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246)

UK GDPR means Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as it forms part of the Law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union Withdrawal Act of 2018.

Working Days means a day (other than a Saturday or Sunday) between 9.00a.m and 5.00p.m inclusive but does not include any days which are bank holidays or public holidays.

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

2. INITIAL CONTRACT PERIOD

- 2.1. The Contract shall take effect on the Service Commencement Date as detailed in Schedule One at Annex 1: Service Specification and shall operate for the initial contract term stated in the Anticipated Period of Operation (unless terminated in accordance with the provisions of the Contract, or as agreed between the Parties). (Initial Contract Period)

3. EXTENSION OF INITIAL CONTRACT PERIOD

- 3.1. The Authority may, by giving written notice to the Supplier not less than one month before the last day of the Initial Contract Period, extend the Contract as set out in the Anticipated Period of Operation in Schedule One at Annex 1: Service Specification for such period up to the total Contract Period. The provisions of the Contract will apply throughout any such extended period.

4. SUPPLIER'S STATUS

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

5. AUTHORITY'S OBLIGATIONS

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

6. MISTAKES IN INFORMATION

- 6.1. The Supplier shall be responsible for the accuracy of all documents and information supplied to the Authority by the Supplier in connection with the supply of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

7. SERVICES

- 7.1. The Supplier shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Contract in consideration for the payment of the Contract Price. The Authority may inspect and examine the manner in which the Supplier supplies the Services during normal business hours on reasonable notice.
- 7.2. The Supplier acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority before submitting its Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.
- 7.3. The Supplier shall:
- a) at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body; and
 - b) at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 7.4. The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 7.5. Timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

8. PROVISION AND REMOVAL OF EQUIPMENT

- 8.1. Unless otherwise agreed between the Parties, the Supplier shall provide all the Equipment necessary for the supply of the Services.
- 8.2. All Equipment used by the Supplier, including Equipment provided to the Supplier by the Authority, shall be at the Supplier's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Authority.

- 8.3. The Supplier shall maintain all items of Equipment in a safe, serviceable and clean condition.
- 8.4. Notwithstanding its obligation under clause 8.3 the Supplier shall, as soon as it has notice, whether constructive or express, or at the Authority written request (which shall not be unreasonably made), at its own expense and as soon as reasonably practicable:
 - a) remove from service any Equipment that is either hazardous, unsafe or not in accordance with the Contract; and
 - b) where the item is owned by the Supplier replace such item with a suitable substitute item of Equipment.

STAFFING

9. KEY PERSONNEL

- 9.1. The Parties may agree to the appointment of Key Personnel as agreed from time to time between the Parties. The Supplier shall, and shall procure that any Sub-Contractor shall, obtain the prior written approval of the Authority before removing or replacing any Key Personnel during the Contract Period, and, where possible, at least one Months' written notice must be provided by the Supplier of its intention to replace Key Personnel.
- 9.2. The Authority shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-Contractor, but the Authority may interview or require details of the candidates for Key Personnel positions before they are appointed.
- 9.3. The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority. The Supplier shall ensure that the role of any Key Personnel is not left vacant for any period and that any replacement shall have suitable qualifications and experience and be fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 9.4. The Authority may also require the Supplier to remove any Key Personnel that the Authority considers in any respect unsatisfactory. The Authority shall not be liable for the cost of replacing any Key Personnel.
- 9.5. If for any reason the Key Personnel are either not active Directors of the applicant of the PCV operator's licence or the current Transport

Manager for the PCV operators' licence then the Supplier must inform the Authority immediately.

10. SUPPLIER'S STAFF

- 10.1. The Authority may, by written notice to the Supplier, inform the Supplier that:
 - a) any member of the Staff; or
 - b) any person employed or engaged by any member of the Staff, who is engaged in delivering the Services in such a way that he has direct contact with users of the Services or other members of the public, and whose continued contact would, in the reasonable opinion of the Authority, be undesirable is to no longer undertake those part of the Services that require direct contact with users of the Services or other members of the public.
- 10.2. At the Authority's written request, the Supplier shall provide a list of the names of all persons who may deliver Services, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- 10.3. If the Supplier fails to comply with clause 10.2 within three (3) Working Days of the date of the request, then the Authority may require the Supplier to exclude Supplier Staff from delivering the Services. Exercise of the Authority's rights under this clause shall not excuse the Supplier from any attributable failure to perform the Services.
- 10.4. The Supplier warrants that it has complied with the Staff Vetting Procedures in respect of all Staff employed or engaged by the Supplier at the Service Commencement Date and that it shall not employ or engage any person in the provision of the Services who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Services.
- 10.5. The Supplier shall ensure that its employees and others providing the Services on its behalf are properly and sufficiently qualified, competent, careful, skilled, honest, experienced, instructed and supervised to enable them to adequately carry out tasks and activities under the Services.

11. HEALTH AND SAFETY

- 11.1. The Supplier shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.
- 11.2. The Supplier shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 11.3. The Supplier shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.
- 11.4. The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

12. TUPE

- 12.1. In the event that the law determines whether at the Service Commencement date or at any point during the Contract that there are Employees then Clause 12 shall apply
- 12.2. The Contractor shall indemnify the Council in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Council including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
 - a) any claim made by any of the Employees.
 - b) any claim made at any time by any of the Existing Service Contractor's employees other than the Employees who claim to have become an employee of the Contractor or have rights against the Council by virtue of TUPE.
 - c) any claim made by any Employee, trade union or staff association or employee representative arising from or connected with any failure to comply with Regulation 13 of TUPE.
 - d) any failure by the Contractor to comply with its obligations pursuant to TUPE.

- e) anything done or omitted to be done by the Contractor in respect of any of the Employees whether before or after the Commencement Date.
- f) any Employee not transferring to the Contractor as a result of such Employee treating their contract of employment as having been terminated on the grounds that the transfer of their employment to the Contractor will involve a substantial change in his/her working conditions to his/her material detriment; and
- g) any Employee terminating his/her contract of employment in acceptance of a threatened repudiatory breach of such contract by the Contractor.

12.3. During the currency of this Contract the Contractor shall provide to the Council any information the Council may reasonably require relating to any individual employed, assigned or engaged by the Contractor or any Sub-Contractor in providing the Services under this Contract (subject to compliance with the Data Protection Legislation). Within 14 days of the Commencement Date the Contractor shall provide to the Council a list containing the names of Contractor Staff and the staff of any Sub-Contractor who are engaged in providing the Services ("the Staff List") confirming whether they are Assigned, and the Contractor shall provide an updated Staff List each Quarter.

12.4. Where following expiry or earlier determination of the Contract provision of the Services is to transfer to another provider (including to the Authority itself), the Supplier shall assist the Authority in all respects with such transfer including, but not limited to, providing (at no cost to the Authority) the Authority with any information required to enable the Authority and any prospective or Replacement Supplier to comply with its obligations under TUPE. This will include (but is not limited to):

- a) At any time during the Contract (or following notice by either Party), the Authority may request information relating to the staffing of the Contract. Such information shall be provided within 14 days of a request and shall include but is not limited to the allocation of work in respect of the Contract, details of the way that the Contract has been provided by the Supplier and any terms and conditions of employment (including rates of pay) for employees working on the Contract and any other such information the Authority may require.
- b) Where, following expiry or earlier determination of the Contract for whatever reason and by either Party, provision of the Services may transfer to another operator (including to the Authority itself), the Operator shall assist the Authority in all respects. In particular, the

Operator shall inform the Authority within 24 hours of notice of termination by either Party whether it believes that TUPE applies and provide information as requested under Clause 12.8(i) in order for the Authority to make its own assessment and to enable it to provide that information during any tender process to prospective providers (if deemed applicable).

- 12.5. If it is determined that TUPE does apply, the Supplier will be liable for all related costs of employment (for example (but not limited to) accrued annual/holiday pay) up to the last day of the Contract (this will usually be the day before the start of the new contract).
- 12.6. During the 3 months immediately preceding the expiry of this Contract or at any time following a notice of termination of this Contract or of any part of the Contract, the Operator must not, without the prior written consent of the Authority, in relation to any persons engaged in the provision of the Services or the relevant Service:
- a) terminate or give notice to terminate the employment of any person engaged in the provision of the Services or the relevant Service (other than for gross misconduct);
 - b) increase or reduce the total number of people employed or engaged in the provision of the Services or the relevant Service by the Supplier by more than 5% (except in the ordinary course of business);
 - c) propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of the individuals engaged in the provision of the Services or the relevant Service.
 - d) replace or relocate any persons engaged in the provision of the Services or the relevant Service or reassign any of them to duties unconnected with the Services or the relevant Service; and/or
 - e) assign or redeploy to the Services or the relevant Service any person who was not previously a member of staff engaged in the provision of the Services or the relevant Service.
- 12.7. The Supplier authorises the Authority to pass any information supplied to any Replacement Supplier or potential Replacement ~~ent-~~ Supplier and the Supplier will secure all necessary consents from relevant employees in order to do this.
- 12.8. The Supplier will keep the Authority and any Replacement Supplier ~~replacement supplier~~ indemnified in full against all liabilities arising

directly or indirectly in connection with any breach of clauses 12.2 - 12.7 or inaccuracies in or omissions from the information provided under clauses 12.2.

13. DISCRIMINATION

- 13.1. The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 13.2. The Supplier shall take all reasonable steps to secure the observance of clause 13.1 by all servants, employees or agents of the Supplier and all suppliers and Sub-contractors employed in the execution of the Contract.

CONTRACT PRICE AND RECOVERY OF SUMS DUE

14. CONTRACT PRICE

- 14.1. In consideration of the Supplier's performance of its obligations under the Contract, the Authority shall pay the Contract Price in accordance with the requirements and processes set out in the Operational Specification set out at Schedule 2B.
- 14.2. The Authority shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

15. RECOVERY OF SUMS DUE

- 15.1. Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Authority.
- 15.2. Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

- 15.3. The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.
- 15.4. All undisputed payments that are due shall be made within 30 days in clear funds, to such bank or building society account as the recipient Party may from time to time direct.

INFORMATION

16. CONFIDENTIALITY

- 16.1. On or before the expiry of the Contract, the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which contain Confidential Information or relate to personal information of the Authorities' employees, ratepayers or service users, are delivered up to the Authority or securely destroyed.

17. MONITORING OF CONTRACT PERFORMANCE

- 17.1. The Supplier shall comply with the monitoring arrangements set out in the Specification and/or Order Form or as otherwise required from time to time including, but not limited to, providing such data and information as the Supplier may be reasonably required to produce under the Contract.

18. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- 18.1. In the event that the Supplier is unable to provide the Services to an adequate standard (in the reasonable opinion of the Authority) then the Authority may, without prejudice to its rights under clause 18.2, take the steps set out in Schedule 2B-Operational Sepcification.
- 18.2. If the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Supplier, then the Authority may, without prejudice to its rights under clause 30, do any of the following:
 - a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Authority that the Supplier will once more be able to supply all or such part of the Services in accordance with the Contract.

- b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- c) charge the Supplier for and the Supplier shall pay any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Authority uses its reasonable endeavors to mitigate any additional expenditure in obtaining replacement Services.

18.3. If the Supplier fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within five Working Days of the Authority's instructions or such other period of time as the Authority may direct.

18.4. If the Supplier:

- a) fails to comply with clause 18.3 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
- b) persistently fails to comply with clause 18.3 above,

the Authority may terminate the Contract with immediate effect by giving the Supplier notice in writing.

19. RIGHTS AND REMEDIES

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

20. TRANSFER AND SUB-CONTRACTING

20.1. Except in an emergency as set out in paragraph 52 of 2B Operational Specification the Supplier shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior

Approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any of its obligations or duties under the Contract.

- 20.2. Provided that the Authority has given prior written consent, the Supplier shall be entitled to novate the Contract where:
- a) there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator.
- 20.3. The Supplier shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.
- 20.4. Where the Authority has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Authority, be sent by the Supplier to the Authority as soon as reasonably practicable.
- 20.5. The Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- a) any Contracting Authority.
 - b) any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Authority; or
 - c) any private sector body which substantially performs the functions of the Authority, provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.

21. WAIVER

- 21.1. A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 21.2. A failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

22. VARIATION

- 22.1. The Authority may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
- 22.2. If the Supplier is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Authority may:
 - a) agree that the Parties continue to perform their obligations under the Contract without the Variation; or
 - b) terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree on a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
- 22.3. If the Parties agree the Variation and any variation in the Contract Price, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

23. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 23.1. A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
- 23.2. No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract.

24. SEVERANCE

- 24.1. If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

- 24.2. If one party gives notice to the other of the possibility that any provision or part- provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

LIABILITIES

25. LIABILITY, INDEMNITY AND INSURANCE

- 25.1. Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
- a) death or personal injury caused by its negligence.
 - b) Fraud or fraudulent misrepresentation.
 - c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
 - d) any claim under clause 27.
- 25.2. Subject to clause 25.3 and 25.4, the Supplier shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier. The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.
- 25.3. Subject to clause 25, in no event shall either Party be liable to the other for any:
- a) loss of profits.
 - b) loss of business.
 - c) loss of revenue; or

d) loss of or damage to goodwill.

- 25.4. The Authority may, among other things, recover as a direct loss:
- a) any additional operational and/or administrative expenses arising from the Supplier's Default.
 - b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority arising from the Supplier's Default; and
 - c) the additional cost of any replacement services for the remainder of the Contract Period following termination of the Contract because of a Default by the Supplier.
- 25.5. Nothing in the Contract shall impose any liability on the Authority in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Authority to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Authority, or the Authority's employees, servants or agents.
- 25.6. Subject to clauses 25.1, TUPE clause 12; Data Protection clause 40 and Intellectual property right provision including clause 44, Clause 45 – Bribery Act and any express provisions stating otherwise in this Contract, the Supplier's total liability under this contract is capped at £10millions (Ten million pounds)

26. INSURANCES

- 26.1. The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- a) public liability insurance with a limit of indemnity of not less than £5 (five) million in relation to any one claim or series of claims and cover for injury to third parties (for both passengers and non-passengers) of not less than £10 (ten) million in relation to any one claim or series of claims, via a Motor Insurance Policy.
- 26.2. The Supplier shall at its own cost also effect and maintain with a reputable insurance company a policy or policies of employer's liability insurance with a limit of indemnity of not less than £10 (ten) million OR in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims: (the Required Insurances). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of

the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

- 26.3. The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 26.4. If, for whatever reason, the Supplier fails to give effect to and maintain the required insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 26.5. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 26.6. The Supplier shall hold and maintain the Required Insurances for a minimum of six years after the end of the Contract Period.

27. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

- 27.1. The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Supplier shall at all times indemnify the Authority and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Authority is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

28. WARRANTIES AND REPRESENTATIONS

- 28.1. The Supplier warrants and represents that:
 - a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under

the Contract.

- b) the Contract is executed by a duly authorised representative of the Supplier.
- c) in entering the Contract, it has not committed any Prohibited Act.
- d) as at the Service Commencement Date, all information, statements and representations contained in the Supplier's Tender Response for the Services are true, accurate and not misleading except as may have been specifically disclosed in writing to the Authority before execution of the Contract and it will advise the Authority of any fact, matter or circumstance of which it may become aware during the Contract Period which would render any such information, statement or representation to be false or misleading.
- e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract.
- f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract.
- g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator, or similar officer in relation to any of the Supplier's assets or revenue.
- h) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract.
- i) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence.

DEFAULT, DISRUPTION AND TERMINATION

29. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

- 29.1. Without affecting any other right or remedy available to it, the Authority may terminate this Contract with immediate effect by giving written notice to the Supplier if:

- a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
- b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or makes a proposal for or enters into any compromise or arrangement with its creditors.
- c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company).
- d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company).
- e) the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver.
- f) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier.
- g) the Supplier (being an individual) is the subject of a bankruptcy petition or order.
- h) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days.
- i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause a to clause h (inclusive); or
- j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

29.2. The Supplier shall notify the Authority immediately if the Supplier undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (Change of Control). The Authority may terminate the Contract by notice in writing with immediate effect within six Months of:

- a) being notified that a Change of Control has occurred; or
- b) where no notification has been made, the date that the Authority becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted before the Change of Control.

30. TERMINATION ON DEFAULT

30.1. The Authority may terminate the Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a material breach and if:

- a) the Supplier has not remedied the material breach to the satisfaction of the Authority within 10 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied: or
- b) the material breach is not, in the opinion of the Authority, capable of remedy.

30.2. For the purposes of clause 30.1, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from the Contract. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

30.3. The Authority may terminate the Contract by giving written notice to the Supplier with immediate effect if:

- a) the Supplier repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract.
- b) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;
- c) any warranty given by the Supplier in clause 28 of this Contract is

found to be untrue or misleading.

- 30.4. If the Authority fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Supplier may terminate the Contract in writing with immediate effect, except that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under this contract.

31. TERMINATION FOR CONVENIENCE

- 31.1. Either party may terminate this Contract at any time without reason by giving four months' written notice to the other party.

32. CONSEQUENCES OF TERMINATION OR EXPIRY

- 32.1. Where the Authority terminates the Contract under clause 30 and then makes other arrangements for the supply of Services, the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 30, no further payments shall be payable by the Authority to the Supplier until the Authority has established the final cost of making those other arrangements.
- 32.2. Except as otherwise expressly provided in the Contract:
- a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under clauses 14, 15, 16, 18, 22, 23, 24, 29, 31, and 36.

33. DISRUPTION

- 33.1. The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt

the operations of the Authority, its employees or any other Supplier employed by the Authority.

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

33.3. In the event of industrial action by the Staff, the Supplier shall seek the Authority's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.

33.4. If the Supplier's proposals referred to in clause 33.3 are considered insufficient or unacceptable by the Authority acting reasonably then the Authority may:

- a) require the Supplier to provide alternative proposals; or
- b) undertake the services itself and recover from the Supplier the additional costs incurred in the process.

Subject to clause 33.5, nothing in this clause shall release the Supplier from the proper performance of its obligations under the Contract.

33.5. If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be approved by the Authority. In addition, the Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

34. RECOVERY ON TERMINATION AND EXIT STRATEGY

34.1. On the termination of the Contract for any reason and up to six months before an expiry date or notified termination date, the Supplier shall:

- a) immediately return to the Authority all Confidential Information, Personal Data and Authority's Intellectual Property in its possession or in the possession or under the control of any permitted suppliers or Sub- Contractors, which was obtained or produced in the course of providing the Services.
- b) immediately deliver to the Authority all Equipment; (including materials, documents, information and access keys) provided to

the Supplier under clause 8. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear).

- c) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to any Replacement Supplier and/or the completion of any work in progress to include, where required, employee information as may be required for either Party or a Replacement Supplier to fulfil their respective obligations under TUPE; and
- d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or the Replacement Supplier to conduct due diligence.

34.2. If the Supplier fails to comply with clause a and clause b, the Authority may recover possession thereof and the Supplier grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or Sub-Contractors where any such items may be held.

34.3. Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under clause 34.1c) and clause d) free of charge. Otherwise, the Authority shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

35. DISPUTE RESOLUTION

35.1. If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this Contract, the parties shall follow the procedure as set out below:

- a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, an officer of the Authority and an employee of the Supplier, both of sufficient standing within their respective organisation shall attempt in good faith to resolve the Dispute.
- b) if the officer of the Authority and employee of the Supplier are for any reason unable to resolve the Dispute within 20 Working Days of service of the Dispute Notice, the Dispute shall be referred to a

senior officer of the Authority and senior employee of the Supplier who shall attempt in good faith to resolve it; and

- c) if the senior officer of the Authority and senior employee of the Supplier are for any reason unable to resolve the Dispute within 20 Working Days of it being referred to them, the parties may attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

- 35.2. No party may commence any court proceedings under clause 39 in relation to the whole or part of the Dispute until attempts to resolve the Dispute have been made in accordance with clauses 35.1 a), b) and c), provided that the right to issue proceedings is not prejudiced by a delay.

36. FORCE MAJEURE

- 36.1. Neither Party shall be in breach of this Contract nor liable for delay in performing, or failure to perform any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for four weeks, the Party not affected may terminate this Contract by giving fourteen days written notice to the affected Party.

37. ENTIRE AGREEMENT

- 37.1. This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 37.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this Contract, provided that nothing in this clause 37 shall operate to exclude any liability for fraud.
- 37.3. In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to

in those clauses, the conflict shall be resolved in accordance with the following order of precedence:

- a) the clauses of the Contract.
- b) the Order Form/Schedule One at Annex 1 of the Service Specification.
- c) Authority's requirements and Invitation to Tender;
- d) any other document referred to in the clauses of the Contract.

38. NOTICES

- 38.1. Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.
- 38.2. Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or e-mail. Such letters shall be addressed to the other Party in the manner referred to in clause 38.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours in the case of e-mail, or sooner where the other Party acknowledges receipt of such letters or e-mail. Where communication of the notice was by email, and the receipt of the email occurred outside business hours in the place of receipt, then notice shall be deemed to be given when business hours resume or 2 days after the email was sent which ever is the earliest.
- 38.3. For the purposes of clause 38.2 the address of each Party shall be:
 - a) for the Authority: Transport Operations, Leicestershire County Council, County Hall, Glenfield, Leicestershire, LE3 8RJ
 - b) for the Supplier: the details shall be as provided by the supplier and recorded on the Transport Operations Database (STADs).
- 38.4. Either Party may change its address for service by serving a notice in accordance with this clause.

39. GOVERNING LAW AND JURISDICTION

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

40. DATA PROTECTION

- 40.1. The Parties shall at all times comply with the Data Protection Legislation.
- 40.1A Words not defined in this Clause shall have the meaning given to them in the prevailing Data Protection Legislation
- 40.1B The Supplier will comply with all applicable requirements of and all their obligations under the Data Protection Legislation which arise in connection with the Contract.
- 40.2. At the time of signing this Agreement it is understood and agreed by the Parties that no Personal Data is to be processed by either Party on behalf of the other Party under this Agreement, and nor is it the intention to enter into an agreement to exchange or to jointly hold Personal Data.
- 40.3. In the event it is established at any time during this Agreement that Personal Data is to be processed by the Supplier under this Agreement on behalf of the Authority then the Provider shall:
- (i) immediately enter into a data processing agreement with the Authority on reasonable terms to be determined by the Authority to ensure full compliance with the Data Protection Legislation by both Parties; and
 - (ii) indemnify and keep the Authority indemnified in full for any and all consequences (including a Personal Data breach) arising as a result of the Supplier's (or its Subcontractors) failure to comply with any of its obligations under this clause 40.3.
- 40.4. In the event that the Parties agree that it is necessary to exchange or to jointly hold Personal Data for the purpose of fulfilling the Parties obligations under this Contract (except where the Provider shall be processing Personal Data on the Authority's behalf) then the Parties shall enter into such additional or varied terms as are reasonably determined by the Authority to ensure full compliance with Data Protection Legislation.

- 40.5. Failure by the Supplier to enter into a data processing agreement in accordance with clause 40.3(i) or additional or varied terms in accordance with clause 40.4 shall be deemed a material/serious breach which shall entitle the Authority to immediately terminate the Contract without consequence or any liability under this Contract.
- 40.6. Any clause in this Contract limiting the Supplier's liability in respect of any obligations, claims, losses, damages, liabilities, fines, penalties or otherwise under the Data Protection Legislation and/or this clause 40 shall not apply.

41. FREEDOM OF INFORMATION

- 41.1. The Supplier acknowledges that the Authority is subject to the requirements of the Freedom of Information Act (FOIA) and the Environmental Information Regulations (EIRs). The Supplier shall:
- a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs.
 - b) transfer to the Authority all Requests for Information relating to this contract that it receives as soon as practicable and in any event within 2 Working Days of receipt.
 - c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 41.2. The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but the Authority shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

42. PUBLICITY

- 42.1. Unless otherwise directed by the Authority, the Supplier shall not make any press announcements or publicise this contract in any way without the Authority's prior written consent.
- 42.2. The Authority shall be entitled to publicise this contract in accordance with any legal obligation on the Authority, including any examination of this contract by the Auditor or otherwise.
- 42.3. The Supplier shall not do anything that may damage the reputation of the Authority or bring the Authority into disrepute.

43. BUSINESS CONTINUITY

- 43.1. The Contractor will throughout the contract maintain in place business continuity arrangements and will review those arrangements at appropriate intervals during the contract and if necessary, update them, so as to ensure as far as reasonably practical, that in the event of unexpected circumstances, either within or external to the Contractor's organisation, service delivery to the Council is subject to the minimum level of disruption.
- 43.2. Contractors are expected to provide a copy of their business continuity plans on request to the Council within 10 working days of that request being made.

44. INTELLECTUAL PROPERTY

- 44.1. All intellectual Property Rights created by the Supplier in the course of the performing of the services or exclusively for the purposes shall vest in the Authority upon creation and the Authority shall grant the Supplier a non-exclusive royalty free licence to use such material for the purpose of this Agreement.
- 44.2. All Intellectual Property right introduced in connection with this Contract shall remain the property of the introducing party. Any Intellectual Property 'right created Pursuant to this Contract shall vest in the Authority.
- 44.3. The Supplier shall indemnify the Authority against all claims, demands, actions costs expenses (including legal costs and disbursements on a solicitor and client basis) losses and damages arising from or incurred by reason of any infringement or alleged

infringement including any defence or such alleged infringement) of any Intellectual Property Rights by the availability of the Services, except to the extent that they have been caused by or contributed to by the acts or omissions from the Authority.

45. BRIBERY CLAUSE

- 45.1. The Authority may terminate this Contract and recover all its loss from the Supplier if the Supplier, its employees or anyone acting on the Supplier's behalf do any of the following things:
- a) 45.1 offer, give or agree to give to anyone any personal inducement or reward in respect of this or any other Authority contract (even if the Supplier does not know what has been done);
or
 - b) commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or
 - c) commit any fraud in connection with this or any other Authority contract whether alone or in conjunction with Authority members, contractors or employees.
- 45.2. Any Condition limiting the Supplier's liability shall not apply to Condition 45.2.