
*Issued by: Transport Operations Environment & Transport Department,
Leicestershire County Council, County Hall, Glenfield, Leicester, LE3 8RJ*

Dynamic Purchasing System (DPS) Agreement (BB4)

For the provision of

Large Vehicle Passenger Transport Services

9+ Passenger seats

**For Mainstream, SEN and Social Care Transport
(excluding Local Bus Services)**

20th July 2020 – 19th July 2022

Version 1.0

Date: 1st June 2020

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INTRODUCTION

THIS AGREEMENT is dated 1st June 2020

PARTIES

- (1) **LEICESTERSHIRE COUNTY COUNCIL** whose principal place of business is at County Hall, Glenfield, Leicestershire, LE3 8RJ (**Authority**).

The SUPPLIER, the details of full company name, company registration and registered office address are as provided by or on its behalf in application to join the DPS (**Supplier**).

Each to be described individually as “the Party” and collectively as “the Parties”

BACKGROUND

- (A) The Authority placed a contract notice on 2nd June 2020 in the Official Journal of the European Union to give notice of its intention to invite tenders for the provision of large vehicle passenger transport services under a Dynamic Purchasing System (DPS) Agreement, known throughout this document as Agreement or DPS Agreement.
- (B) The Supplier has achieved the required standard as set out within the Authority’s tender documents and has therefore been selected to join this Agreement.
- (C) This Agreement sets out the procedure for ordering the Services, the main terms and conditions for the provision of the Services and the obligations of the Supplier under this Agreement. Each Order for Services shall be placed as a separate Contract under the terms and conditions set out herein.
- (D) The Parties agree that the Authority has no obligation to place Orders with the Supplier under this Agreement or at all.
- (E) The Parties agree that the terms of Contract will apply for each Order issued by the Council.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

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

Approval: means the prior written approval of the Authority.

Auditor: means an auditor appointed by the Authority as the context requires.

Authorised Representative: means the persons respectively designated as such by the Authority and the Supplier, and notified as such from time to time between the Parties.

Award Criteria: means the Services Award Criteria to be used in a further-competition.

Call-off Terms and Conditions: means the terms and conditions in Schedule 2A

Change of Control: means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.

Commencement Date: means 20th July 2020

Confidential Information: means any information, clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

Contract: means a legally binding agreement (made pursuant to the provisions of this Agreement) for the provision of Services made between the Authority and the Supplier comprising the DPS Agreement, an Order Form, its appendices, the Order the Call-off Terms and Conditions and the Operational Specifications (as may be amended pursuant to clause 4.2).

Default: means any breach of the obligations of the relevant Party under a Contract (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or 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.

Data Controller: has the meaning given to 'Data Controller', or 'Controller' as appropriate, in the Data Protection Legislation;

Data Breach: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed;

Data Processor: has the meaning given to "Data Processor" or "Processor" as appropriate, in the Data Protection Legislation.

Data Protection Legislation: any and all laws, statutes, enactments, orders or regulations or other similar instruments of general application and any other rules, instruments or provisions in force from time to time relating to the processing of personal data and privacy applicable to the performance of this Agreement, including where applicable the Data

Protection Act 1998, the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and the GDPR (Regulation (EU) 2016/679), as amended or superseded.

Dynamic Purchasing System (DPS): an electronic system that can be established to purchase goods and services.

DPS Agreement: means this Dynamic Purchasing System Agreement and all Schedules to this Agreement.

DPS Providers: means the Supplier and other suppliers appointed as DPS providers under this Agreement.

DPS Year: means a period of 12 Months, commencing on the Commencement Date.

Environmental Information Regulations (EIR): mean the Environmental Information Regulations 2004 (SI 2004/3391) and any amendments thereto together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: means the Freedom of Information Act 2000 and any amendments thereto and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Guidance: means any guidance issued or updated by the UK government from time to time in relation to the Regulations.

General Data Protection Regulation (GDPR): Regulation (EU) 2016/679 of the European Parliament and of the Authority 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, and repealing directive 95/46/EC as updated, superseded or repealed from the time to time.

Information: has the meaning given under section 84 of the FOIA.

Law: means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body.

Month: means a calendar month.

Operational Specifications: the operational specifications outlining the scope of the Agreement as set out in Schedule 2B.

Other Authority: means another public body who fall within the definition of a contracting authority under the Public Contract Regulations 2015 and have been granted access to the DPS Agreement by the Authority to purchase from the DPS by running a competition in accordance with clause 4 of this Agreement and entering into a Contract.

Order: means an order for Services sent by the Authority to the Supplier in accordance with the award procedures in clause 0 which is communicated to Suppliers in the form set out in Schedule 1 Part b.

Order Form: means a document setting out details of an Order in the form set out in Schedule 1, Part A or as otherwise agreed in accordance with clause 4.6, which requests Suppliers to tender for opportunities under this DPS Agreement.

Parent Company: means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the 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-enactment or amendment thereto.

Party: means the Authority and/or the Supplier.

Personal Data: has the meaning given in the Data Protection Laws.

Prohibited Act: 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 or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;

- (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Authority;
or
- (d) defrauding, attempting to defraud or conspiring to defraud the Authority.

Regulations: means the Public Contracts Regulations 2015 (SI 2015/102).

Regulated Activity: means in relation to a Child and/or Children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to Vulnerable Adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;

Regulatory Bodies: means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Authority.

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

Services: means the services to be provided by the Supplier under a Contract.

Staff: means all persons employed by the Supplier together with the Supplier's servants, agents, suppliers and subcontractors used in the performance of its obligations under this Agreement or Contracts.

Subcontract: any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

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

Supplemental Tender: means the information submitted to the Authority in response to the Authority's invitation to DPS Providers to participate in a further-competition for Services for formal offers to supply it with Services.

Tender: Submissions made to the Authority by a Supplier either to apply for a place on the DPS.

Term: means the period commencing on the Commencement Date and ending on 19th July 2022, or later if extensions are exercised by the Authority, or on earlier termination of this Agreement.

Termination Date: means the date of expiry or termination of this Agreement.

Working Days: means any day other than a Saturday, Sunday or public holiday in England and Wales.

Year: means a calendar year.

1.2 The interpretation and construction of this Agreement shall all be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- (g) the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement shall include the Schedules;
- (h) references in this Agreement to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to this Agreement so numbered;
- (i) references in this Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Agreement so numbered; and
- (j) reference to a clause is a reference to the whole of that clause unless stated otherwise.

DPS ARRANGEMENTS AND AWARD PROCEDURE

2. TERM OF AGREEMENT

The Agreement shall take effect on the Commencement Date and (unless it is terminated in accordance with the terms of this Agreement or is otherwise lawfully terminated) shall terminate at the end of the Term.

3. SCOPE OF AGREEMENT

3.1 This Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Services by the Supplier to the Authority.

3.2 The Authority appoints the Supplier as a DPS Provider of the Services and the Supplier shall be eligible to receive Orders for such Services during the Term.

3.3 The Authority may at its absolute discretion and from time to time order Services from the Supplier in accordance with the ordering procedure set out in clause 4 during the Term.

3.4 If and to the extent that any Services under this Agreement are required the Authority shall:

- (a) enter into a contract with the Supplier for these Services materially in accordance with the terms of the Contract; and
- (b) comply with the ordering procedure in clause 4.

The Supplier acknowledges that, in entering this Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for the Services and that the Authority is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all services which are the same as or similar to the Services.

4. Award procedures

4.1 If the Authority or Other Authority decides to source Services through the Agreement, then it shall satisfy its requirements for Services by awarding a Contract in the terms set out at Schedule 2A following a further-competition conducted in accordance with the requirements of clause 4.2

- 4.2 When ordering Services under the Agreement the Authority or Other Authority shall:
- (a) identify the DPS Providers capable of providing the Services;
 - (b) supplement and refine the Call-off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance (in which case it shall notify DPS Providers accordingly);
 - (c) invite tenders by conducting a further-competition by way of email or e-auction by issuing an Order Form for its Services requirements in accordance with the Regulations and in particular:
 - (i) consult in writing the DPS Providers capable of performing the Contract for the Services requirements;
 - (ii) set a tendering period for the receipt of the bids which takes into account factors such as the complexity of the subject matter of the Contract and the time needed to submit tenders; and
 - (iii) keep each response to the Order Form unopened on the portal (or e-mail inbox as the case may be) and confidential until the expiry of the time limit for the receipt by it of the Supplemental Tenders;
 - (d) apply the Services Award Criteria to any compliant bid submitted through the further-competition; and
 - (e) subject to clause 4.4 place an Order with the successful DPS Provider.
- 4.3 The Supplier agrees that all bids submitted by it in relation to a further-competition held pursuant to this clause 4 shall remain open for acceptance for six Months (or such other period specified in the invitation to tender issued by the Authority or Other Authority in accordance with this clause 4.
- 4.4 Notwithstanding the fact that the Authority or Other Authority has followed the procedure set out above for Services, the Authority may cancel, postpone, delay or end the procedure without placing an Order for Services or awarding a Contract. Nothing in this Agreement shall oblige the Authority or Other Authority to place any Order for Services.
- 4.5 In the event that the Authority wishes to place an Order for Services that are required urgently then the Authority may seek tenders from Suppliers without adhering to the full procedure and/or time-scales set

out in clause 4.2. (providing that deviation from same does not constitute a breach of the Regulations).

Form of Order

- 4.6 Subject to clauses 4.1 to clause 4.5 above, the Authority or Other Authority may accept the bid of the Supplier placed first in the further-competition by notifying it in writing by letter, e-mail or other online solution of its acceptance of the Supplier's offer and such shall constitute a binding contract.
- 4.7 If the Supplier attempts to modify or impose conditions on the fulfilment of an Order, then the Authority or Other Authority may either:
- (a) reissue an Order Form to all Supplier's incorporating the modifications or conditions and re-run the further competition process; or
 - (b) treat the Supplier's response as notification of its inability to fulfil the Order and award the opportunity to the Supplier that submitted the next lowest bid.

CONTRACT OPERATIONS

5. CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS

- 5.1 The Supplier shall perform all Contracts entered into with the Authority or Other Authority in accordance with:
- (a) the requirements of this Agreement; and
 - (b) the terms and conditions of the respective Contracts.
- 5.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Agreement and the Schedules therein, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the Contract;
 - (b) Schedule One;
 - (c) the terms of the Agreement, and the Schedules to the Agreement and Schedule 2B;
 - (d) any other document referred to in the clauses of the Contract; and
 - (e) the Supplier's Tender.

6. PRICES FOR SERVICES

- 6.1 The prices offered by the Supplier for Contracts for Services shall be tendered in accordance with the requirements of the further-competition held pursuant to clause 4.

7. WARRANTIES AND REPRESENTATIONS

The Supplier warrants and represents to the Authority 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 to perform its obligations under this Agreement;
- (b) this Agreement is executed by a duly authorised representative of the Supplier;
- (c) in entering into this Agreement or any Contract it has not committed any Prohibited Act;
- (d) as at the Commencement Date, all information, statements and representations contained in the Tender are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority before the execution of this Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware during the Term that 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 any of its assets that will or might affect its ability to perform its obligations under this Agreement and any Contract which may be entered into with the Authority;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement and any 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 has not engaged in collusion of any kind with any of the other DPS Providers in relation to this Agreement or future Contract; and

- (i) up until the date of this Agreement, it has not directly or indirectly canvassed any member, official or employee of the Authority or their advisers in relation to this agreement or its subject matter.

SERVICE PRE-REQUISITES

- 8. The supplier shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this agreement and any contract.

REPORTING AND MEETINGS

- 8.1 The Supplier shall submit such information to the Authority as the Authority may reasonably require throughout the Term and for a period of three Months after expiry or termination of any Contract awarded under the Agreement.
- 8.2 The Authorised Representatives shall meet from time to time as reasonably requested by the Authority throughout the Term.

9. RECORDS AND AUDIT ACCESS

- 9.1 The Supplier shall keep and maintain until six years after the date of termination or expiry of this Agreement or any Contract awarded thereunder (whichever is the later) or as long a period as may be agreed between the Parties, full and accurate records and accounts of the operation of this Agreement including the Services provided under it, the Contracts entered into and the amounts paid by the Authority.
- 9.2 The Supplier shall keep the records and accounts referred to in clause 9.1 above in accordance with good accountancy practice.
- 9.3 The Supplier shall afford the Authority or the Auditor (or both) such access to and copies of such records and accounts as may be required from time to time.

10. CONFIDENTIALITY

- 10.1 Subject to clause 10.2, the Parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

- 10.2 Clause 10.1 shall not apply to any disclosure of information:
- (a) required by any applicable law, including any disclosures required under the FOIA or the Environmental Information Regulations;
 - (b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Agreement;
 - (c) that is reasonably required by other customers of the Supplier;
 - (d) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 10.1;
 - (e) by the Authority of any document to which it is a party and which the Parties to this Agreement have agreed contains no Confidential Information;
 - (f) to enable a determination to be made under clause 177;
 - (g) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
 - (h) by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the information; and
 - (i) by the Authority relating to this Agreement and in respect of which the Supplier has given its prior written consent to disclosure.

11. GENERAL DATA PROTECTION REGULATION (GDPR)

11.1 Each Party shall comply with Schedule 3 (Data Protection).

12. FREEDOM OF INFORMATION

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

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

12.2 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 (notwithstanding any other provision in this Agreement) 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.

13. PUBLICITY

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

TERMINATION

14. TERMINATION ON DEFAULT

- 14.1 The Authority may terminate the Agreement by serving written notice on the Supplier with effect from the date specified in such notice:
 - (a) where the Supplier commits a material breach and:

- (i) 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
- (ii) the material breach is not, in the reasonable opinion of the Authority, capable of remedy; or
- (b) where the Authority terminates a Contract awarded to the Supplier under this Agreement as a consequence of a material breach by the Supplier; or
- (c) the Supplier repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- (d) any warranty given by the Supplier in clause 7 of this Agreement is found to be untrue or misleading; or
- (e) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

14.2 For the purposes of clause 14.1(a), **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 Agreement.

14.3 The Authority may terminate the Agreement by giving written notice to the Supplier with immediate effect in the circumstances set out at in the Operational Specifications at Schedule 2B of this Agreement.

14.4 In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

Termination on insolvency and Change of Control

14.5 Without affecting any other right or remedy available to it, the Authority may terminate this Agreement 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 14.5(a) to clause 14.5(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.

14.6 The Supplier shall notify the Authority immediately if the Supplier undergoes a Change of Control. The Authority may terminate the Agreement by giving notice in writing to the Supplier 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;

- 14.7 The notice shall have immediate effect except as otherwise notified to the Supplier by the Authority
- 14.8 The Authority shall not be permitted to terminate where an Approval was granted before the Change of Control.

Termination by Authority for convenience

- 14.9 The Authority shall have the right to terminate this Agreement, or to terminate the provision of any part of the Agreement at any time by giving three Months' written notice to the Supplier and all other DPS Providers.

15. CONSEQUENCES OF TERMINATION AND EXPIRY

- 15.1 Notwithstanding the service of a notice to terminate the Agreement, the Supplier shall continue to fulfil its obligations under the Agreement until the date of expiry or termination of the Agreement or such other date as required under this clause 15.
- 15.2 Unless expressly stated to the contrary, the service of a notice to terminate the Agreement shall not operate as a notice to terminate any Contract made under the Agreement. Termination or expiry of the Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 15.3 Within 20 Working Days of the date of termination or expiry of the Agreement, the Supplier shall return or destroy at the request of the Authority any data, personal information relating to the Authority or its personnel or Confidential Information belonging to the Authority in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority, together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information for a period of up to six years to comply with its obligations under the Agreement, or such other period as is necessary for such compliance.
- 15.4 Termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Agreement before termination or expiry.

- 15.5 The provisions of clause 7, clause 9, clause 10, clause 11, clause 12, clause 13, clause 15, clause 20, and clause 28 shall survive the termination or expiry of the Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

COMPLAINTS AND DISPUTES

16. COMPLAINTS HANDLING AND RESOLUTION

- 16.1 The Supplier shall notify the Authority of any complaint in connection with the Services made to it by any third party including the Authority's service users within twenty-four hours (or less where the gravity or urgency of the complaint warrants an earlier notification) of becoming aware of that Complaint.
- 16.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Agreement or a Contract, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Agreement or a Contract, the Supplier shall use its best endeavours to resolve the Complaint within five Working Days (and less where the gravity or urgency of the complaint warrants it) and in so doing, shall deal with the complaint fully, expeditiously and fairly and shall provide to the Authority full details of the actions taken and shall undertake further actions as reasonably required by the Authority to avoid further similar complaints arising

17. DISPUTE RESOLUTION

- 17.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, 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.

17.2 No party may commence any court proceedings under clause 34 in relation to the whole or part of the Dispute until attempts to resolve the Dispute have been made in accordance with clauses 17.1 (a) and (b), provided that the right to issue proceedings is not prejudiced by a delay.

18. INSURANCE

18.1 The Supplier shall take out and maintain with a reputable insurance underwriter or companies a policy or policies of insurance which are adequate to cover its liability under this agreement, and any other insurances required in order to comply with the Law for the duration of the Agreement. These insurances must be effective in each case not later than the date on which the relevant risk commences.

18.2 The insurances referred to at this clause 18.2 shall include but not be limited to the following, in each case for any one occurrence or series of occurrences arising out of one event:

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. A fully comprehensive motor insurance policy with Public Liability cover to the value of at least £5 (five) million in respect of motor vehicle related property damage

And either:

- b. (i) A fully comprehensive motor insurance policy with Public Liability cover to the value of at least £5 (five) million in respect of non-motor vehicle related property damage

Or

- b. (ii) A standalone Public Liability Policy to the value of at least £5 (five) million in respect of non-motor vehicle related property damage

Combined Motor Vehicle/ Public Liability Policies will be accepted. Insurance cover value should not be less than the amounts detailed above for each and every claim.

Where necessary, 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.

- 18.3 The Supplier shall provide to the Authority on request, copies of all insurance policies referred to in this clause 18 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 18.4 The Supplier shall not take any action or fail to take any reasonable action, or permit anything to occur, which would entitle any insurer to refuse to pay any claim under any insurance policy referred to in clause 18.1.

19. INDEMNITIES

- 19.1 Neither Party excludes or limits liability to the other Party for:
 - (a) death or personal injury;
 - (b) fraud; or
 - (c) fraudulent misrepresentation.
- 19.2 The Supplier shall indemnify the Authority against all liabilities, costs, expenses, breaches of statutory duty, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of

profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with:

- (a) the Supplier's breach, negligent performance or non-performance of any of its obligations under this Agreement;
- (b) the enforcement of this agreement;
- (c) any claim made against the Authority for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with any act or omission by the Supplier, Supplier personnel, Sub-Contractors, professional advisors and consultants in the delivery of its obligations under this agreement; or
- (d) any claim made against the Authority by a third party arising out of or in connection with this agreement to the extent that such claim arises out of the performance, breach, negligent performance or failure or delay in performance of this Agreement by, the Supplier, Supplier personnel, Sub-Contractors, professional advisors and consultants.

OPERATIONAL PENALTIES

20. OPERATIONAL PENALTY POINTS

- 20.1 The Council operates a system of penalty points for any failure to operate Services as specified in individual Contract Schedules (including Schedule 1 and/or any official order) and Schedules 2A and 2B, so as to ensure any penalties applied are fair and consistent; the system in use is described in Appendix A to Schedule 2B.

21. FINANCIAL PENALTIES

- 21.1 The Council reserves the right to introduce a financial penalties system to supplement the existing penalty points system at some point during the period of the DPS. If introduced, the financial penalties system will be appended to Schedule 2B.

- 21.2 The Council will provide all DPS suppliers with sufficient notice (at least 2 calendar months) prior to introducing the financial penalties system.

GENERAL PROVISIONS

22. PREVENTION OF BRIBERY

22.1 The Supplier:

- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Agreement and any Contract made under it commit a Prohibited Act; and
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Agreement.

22.2 The Supplier shall:

- (a) if requested, provide the Authority with any reasonable assistance, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- (b) within 20 Working Days of the Commencement Date certify to the Authority in writing (such certification to be signed by an appropriate employee of the Supplier) compliance with this clause 22 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request.

- 22.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

- 22.4 If any breach of clause 22.1 is suspected or known, the Supplier must notify the Authority immediately.

- 22.5 If the Supplier notifies the Authority that it suspects or knows that there may be a breach of this clause 22, the Supplier must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documents. This obligation shall continue for six years following the expiry or termination of this Agreement.
- 22.6 The Authority may terminate this Agreement by written notice with immediate effect if the Supplier, its Staff or Sub-Contractors (in all cases whether or not acting with the Supplier's knowledge) breaches clause 22.1.
- 22.7 Any notice of termination under clause 22.6 must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
 - (c) the date on which this Agreement will terminate.
- 22.8 Despite clause 177, any dispute relating to:
- (a) the interpretation of this clause 22; or
 - (b) the amount or value of any gift, consideration or commission,
shall be determined by the Authority and its decision shall be final and conclusive.
- 22.9 Any termination under this clause 22 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.
- 22.10 **Conflict of Interest**
- (a) The Supplier acknowledges and agrees that no conflict of interest exists between the Supplier and the Authority at the date stated on the face of this Agreement.
 - (b) In undertaking this Agreement, the Supplier shall at all times act in the best interests of the Authority and shall at no time subordinate or otherwise undermine the Authority's interests to the advantage of its own interests or those of any third party.
 - (c) The Supplier shall immediately notify the Authority in writing upon becoming aware of any actual or potential conflict of interest between the interests of the Authority and itself or any other third party and will take all necessary steps to remove or

avoid the cause of such conflict of interest to the reasonable satisfaction of the Authority.

- (d) Where the Supplier is unable to reasonably satisfy the Authority in respect of a conflict of interest the Authority may terminate this agreement forthwith.

23. DISCRIMINATION

23.1 The Supplier acknowledges the Authority's obligations under equality Law and agrees to perform its obligations under this Agreement, and procure that any Supplier personnel shall perform its obligations under this Agreement with regard to:

- (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- (b) the Authority's expectations of its suppliers with regards to equality and diversity as outlined in the Supplier Code of Conduct (Oct 2018), updated from time to time;
- (c) the Equality and Human Rights Commission's Code of Practice in Employment as updated from time to time;
- (d) any other relevant statutory code of practice in relation to equalities legislation or prevention of discrimination in the workplace; and
- (e) any other requirements and instructions which the Authority imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law or under the Authority's own policies or rules.
- (f) The Supplier shall take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

23.2 To the extent that the Supplier's obligations under this agreement involve the exercise of public functions of the Authority, the Supplier shall, and shall procure that any Supplier personnel and if applicable any Sub-Contractor shall comply to the extent permitted by Law with the provisions of:

- (a) Sections 28 and 29 of the Equality Act 2010, as if they were a body within the meaning of those Sections 28 and 29; and
- (b) Part 11 of Chapter 1 of the Equality Act 2010, as if they were a body within the meaning of Schedule 19 of that Act.

- 23.3 The Supplier shall assist the Authority in its performance of its obligations under the Equality Act 2010, including but not limited to the provision of information that the Authority shall require in order to monitor:
- (a) equality of access to the Services; and
 - (b) compliance with the Authority's obligation under the equality Law.
- 23.4 The Supplier shall provide to the Authority such information as the Authority may require within seven (7) days of receipt of a request from the Authority's duly Authorised Representative.
- 23.5 The Supplier shall ensure and shall procure that any Sub-Contractor shall ensure that any Supplier personnel or any Sub-Supplier personnel engaged in the provision of the Services shall comply with the requirements of this clause 23.
- 23.6 Breach of this clause 23 by the Supplier shall entitle the Authority to terminate the Agreement with immediate effect.

24. HEALTH AND SAFETY

- 24.1 The Supplier shall (and shall ensure that all Sub-Contractors and other related parties shall) at all times comply with all relevant health and safety procedures which shall include the requirements of the Health and Safety at Work etc. Act 1974, all other applicable Law, its own health and safety policies and safe working systems (to be produced to the Authority on request) and, in respect of the Authority's staff and others who may be affected by the provision of the Services, the Authority's health and safety policies and procedures.
- 24.2 The Supplier shall promptly notify the Authority of any incidents related to the provision of the Services which are or may give rise to a health and safety or an environmental hazard.

25. SAFEGUARDING

- 25.1 The Supplier acknowledges that in providing the Services it is carrying out work which is particularly sensitive because of its safeguarding context.
- 25.2 The Supplier shall:

- (a) ensure that all individuals engaged in providing the Services are subject to a valid enhanced disclosure check for Regulated Activity undertaken through the Disclosure and Barring Service (“DBS”);
 - (b) monitor the level and validity of the checks under this clause 25.2 for each such member of staff; and
 - (c) not employ or use the Services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

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

- 25.4 The Supplier shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 25 have been met.

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

- 25.6 In the event that the Supplier or Supplier personnel become aware, or have reasonable cause to believe that a service user is suffering or likely to suffer Harm, Abuse or neglect then the Supplier or Supplier personnel must immediately inform the police and the Authority as soon as reasonably possible thereafter.

- 25.7 If a criminal investigation is instigated as a result of concerns raised by the Supplier or the Supplier personnel the parties agree that they will cooperate and provide all such assistance to the police and to each other to enable the police to conduct their investigation.

- 25.8 If an internal investigation is instigated by the Authority as a result of concerns raised by the Supplier or the Supplier personnel the Supplier agrees that it shall cooperate with the Authority and all other parties as necessary for the purposes of the investigation.

25.9 The Supplier agrees to procure that any Sub-Contractor shall comply with the provisions of this clause 25.

26. SUBCONTRACTING AND ASSIGNMENT

26.1 Subject to clause 26.2 and clause 26.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other party; neither may the Supplier subcontract the whole or any part of its obligations under this Agreement except with the express prior written consent of the Authority.

26.2 The Authority shall be entitled to novate the Agreement to any other body which substantially performs any of the functions relevant to the Agreement that previously had been performed by the Authority.

26.3 Provided that the Authority has given prior written consent, the Supplier shall be entitled to novate the Agreement where:

- (a) the specific change in Supplier was provided for in the procurement process for the award of this Agreement;
- (b) 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 that meets the criteria for qualitative selection applied in the procurement process for the award of this Agreement.

27. VARIATIONS TO AGREEMENT

Any variations to the Agreement must be made only in accordance with the procedure set out below.

27.1 The Authority may propose a variation only where the variation does not amount to a material change in the Agreement or the Services and does not prevent one or more of the Suppliers from performing its obligations under this Agreement or is in contravention of any law.

27.2 The Authority may propose a variation using the procedure contained in this clause 27.

27.3 In order to propose a variation, the Authority shall serve each DPS Provider with written notice of the proposal to vary the Agreement (Notice of Variation).

27.4 On receipt of the Notice of Variation, each DPS Provider has 10 Working Days to respond in writing with any objections to the variation.

27.5 Where the Authority does not receive any written objections to the variation within the timescales detailed in clause 27.4, the Authority may then serve each DPS Provider with a written agreement detailing the variation to be signed and notify the date upon which the variation shall take effect.

27.6 In the event that the Authority receives one or more written objections to a variation, the Authority may:

(a) withdraw the proposed variation; or

(b) propose an amendment to the variation.

28. THIRD PARTY RIGHTS

28.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

28.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

29. SEVERANCE

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

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

30. RIGHTS AND REMEDIES

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

31. WAIVER

31.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default

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

32. ENTIRE AGREEMENT

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

32.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement, provided that nothing in this clause 32 shall operate to exclude any liability for fraud

33. NOTICES

33.1 Except as otherwise expressly provided within this Agreement no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party sending the communication.

33.2 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 by e-mail. Such letters shall be addressed to the other Party in the manner referred to in clause 33.3. 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.

33.3 For the purposes of clause 33.2, the address for the Authority shall be:

Address: Transport Operations, Leicestershire County Council,
County Hall, Glenfield, Leicestershire, LE3 8RJ

E-mail: TO@leics.gov.uk

For the Supplier the details shall be as provided by or on its behalf in its application to join the DPS.

33.4 Either Party may change its address for service by serving a notice in accordance with this clause.

34. GOVERNING LAW AND JURISDICTION

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

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

This Agreement has been entered into on the date of the written confirmation sent by the Council to the Supplier.