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

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# **Schedule 3: Data Protection**

## **General Data Protection Regulations (GDPR)**

### **For**

### **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)**

**Version 1.0**

**Date: 1st June 2020**

# **SCHEDULE 3: DATA PROTECTION**

## **General Data Protection Regulations (GDPR)**

### **Controller to Processor**

All contracts issued by LEICESTERSHIRE COUNTY COUNCIL shall be subject to the following regulations:

#### **DEFINITIONS**

**Business Day:** Monday to Friday excluding any public holiday in England

**Caldicott Principles:** means the seven revised principles detailed in the Department of Health's "Information – to Share or not to Share" 2013

**Data Controller:** as defined under Data Protection Legislation

**Data Processor:** as defined under Data Protection Legislation

**Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data

**Data Protection Legislation:** (i) unless and until the Data Protection Act 1998 (DPA 1998) is no longer directly applicable in the UK, the DPA 1998 and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then; (ii) on and from 25th May, 2018 unless and until the General Data Protection Regulation ((EU) 2016/679) (GDPR) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK including the Data Protection Act 2018 and then;(iii) any successor legislation to the GDPR .

**Personal Data:** as defined under Data Protection Legislation

#### **S1. DATA PROTECTION**

S1.1 Words not defined in this clause shall have the meaning as given to them in prevailing Data Protection Legislation.

S1.2 Both Parties will comply with all applicable requirements of the Data Protection Legislation and where applicable, the Parties shall also give full regard to the Caldicott Principles.

S1.3 The Provider/Supplier agrees that it will process Personal Data on the Council/Authority's behalf and that nothing within this Agreement shall relieve it of its own direct responsibilities and liabilities under Data Protection Legislation.

S1.4 The Parties acknowledge that for the purposes of this Agreement, the Council/Authority is the Data Controller and the Provider/Supplier is the Data Processor. Annex 2 sets out the subject matter, duration, nature and purpose of processing and the types of personal data and categories of data subjects to be processed.

S1.5 Without prejudice to the generality of this clause S1 the Council/Authority shall only transfer to the Provider/Supplier personal data in full accordance with its obligations under Data Protection Legislation.

S1.5A If required by the Council the Provider/Supplier shall provide all reasonable assistance to the Council/Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council/Authority, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

S1.6 Without prejudice to the generality of this Agreement the Provider/Supplier shall:

- (a) not process any Personal Data except on the written instruction of the Council/Authority unless required to do so by the laws of the European Union or a Member State to which the Provider/Supplier is subject in which case the Provider/Supplier shall promptly inform the Council/Authority of that legal requirement before processing, unless that law prohibits such on important grounds of public interest;
- (b) having satisfied the Council/Authority that it has and shall continue to have in place appropriate technical and organisational measures to ensure a level of security appropriate to the risk of and to protect against, unauthorised or unlawful processing of Personal Data and from accidental or unlawful destruction, loss, damage, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed until such time as it has discharged all its obligations under this Agreement. In determining appropriate technical and organisational measures the Provider/Supplier shall have regard to the measures detailed in Article 32.1(a) to (d) of the GDPR (or other prevailing Data Protection Legislation)

- (c) take all reasonable steps to ensure the reliability and integrity of any of its personnel who have access to Personal Data and ensure that they:
  - (i) keep the Personal Data confidential; and
  - (ii) do not process Personal Data except in accordance with this Agreement
  - (iii) are aware of and comply with the Provider/Supplier's duties under this Agreement
  - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data
  
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council/Authority has been obtained and the following conditions are fulfilled:
  - (i) the Provider/Supplier has provided appropriate safeguards in relation to the transfer as determined by the Council/Authority;
  
  - (ii) the data subject has enforceable rights and effective legal remedies;
  
  - (iii) the Provider/Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
  
  - (iv) the Provider/Supplier complies with reasonable instructions notified to it in advance by the Council/Authority with respect to the processing of the Personal Data; and
  
  - (v) the relevant applicable provisions and conditions of Chapter V of the GDPR (or other prevailing Data Protection Legislation) are fully complied with.
  
- (e) assist the Council/Authority by appropriate technical, organisational or other measures as may be required by the Council/Authority for the fulfilment of the Council's/Authority's obligation to respond to requests for exercising a Data Subject's rights as detailed in Chapter III of the GDPR (or other prevailing Data Protection Legislation);
  
- (f) notify the Council/Authority as soon as possible and in any event within no more than two Business Days if it receives a request or other communication from a Data Subject or other party relating to either a Data Subject's rights under Chapter III GDPR (or other prevailing Data Protection Legislation) or otherwise relating to either Party's obligations under Data Protection Legislation and provide without delay any information requested by the Council in connection with the matter notified(g) assist the Council/Authority in ensuring compliance with its obligations under Articles 32 to 36 of the GDPR ((or other prevailing Data Protection Legislation) including with respect to security, breach

notifications, impact assessments and consultations with supervisory authorities or regulators in an appropriate and timely manner;

- (g) notify the Council/Authority without undue delay and within twenty-four hours of becoming aware of any incident giving rise to an actual, suspected or potential loss of Personal Data and where requested by the Council/Authority provide prompt assistance to the Council/Authority to enable it to notify the supervisory authority and/or the affected Data Subject of any such loss or breach;
- (h) not appoint another processor (whether as a sub-contractor or otherwise) of Personal Data under this clause unless the Provider/Supplier has first obtained the express written consent of the Council/Authority in which case the Provider/Supplier confirms that it has entered or (as the case may be) shall enter with the third party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause S1 and in any event as between the Council/Authority and the Provider/Supplier, the Provider/Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause S1.6(g); and shall provide the Council/Authority with such information regarding the third-party processor as the Council/Authority may reasonably require;
- (i) at any time, or upon expiry of this Agreement, and in any event without additional cost to the Council/Authority; (i) where so directed by the Council/Authority securely delete the Personal Data (in which case the Provider/Supplier shall also provide a certificate of deletion to the Council/Authority within 7 days of request) or (ii) where so directed by the Council/Authority securely return the Personal Data and copies thereof to the Council/Authority, or (iii) where so directed by the Council/Authority securely transfer the Personal Data to a new processor appointed by the Council/Authority;
- (j) maintain complete and accurate records and information to demonstrate its compliance with this clause [1] and allow for audits and/or inspections by the Council/Authority or the Council's/Authority's designated auditor or inspector for such same purpose;
- (k) inform the Council/Authority immediately if in the Provider's/Supplier's opinion an instruction given by the Council/Authority infringes the Data Protection Legislation or European Union or Member State law;
- (l) designate a data protection officer if required by Data Protection Legislation

S1.7 The Provider/Supplier agrees to fully indemnify and keep indemnified and defend at its own expense the Council/Authority against all costs, claims, damages or expenses incurred by the Council/Authority or for which the Council/Authority may become liable due to any failure by the Provider/Supplier or its employees, agents or third-party processor to comply with any of its obligations under this clause S1.

S1.8 The Council/Authority may at any time and without additional cost to it unilaterally vary the provisions of this clause S1 by amending it or varying it with terms forming part of an applicable certification scheme or otherwise, created by the European Commission or a Supervising Authority (such as the Information Commissioner’s Office) which shall apply when notified by the Council/Authority to the Provider/Supplier.

S1.9 Any clause in this Agreement limiting the Provider/Supplier’s liability in respect of any obligations, claims, losses, damages or otherwise under the Data Protection Legislation and/or this clause S1 shall not apply and the Provider/Supplier shall indemnify the Council/Authority against all liabilities, claims, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Council/Authority or for which it may become liable as a result of or in connection with any failure of the Data Processor, its employees, agents, consultants, subcontractors or sub-processors to comply with this Schedule.

## Annex 2

### ALL CONTRACTS ISSUED BY LEICESTERSHIRE COUNTY COUNCIL

<b>DESCRIPTION &amp; CONTRACT NUMBER</b>	<b>DETAILS Start and end dates</b>
Subject matter of the processing	<i>Mainstream Home to School service users, service users with Special Educational Needs and Adult Social Care service users accessing transport services arranged by Leicestershire County Council.</i>
Duration of the processing	<i>Information will be used and retained for as long as necessary or as the law requires. For these services it will be as long as the service user accesses transport services arranged by Leicestershire County Council and provided by the supplier.</i>
Nature and purposes of the processing	<i>Receive / collect / download information, dissemination, storage, use, destruction and disposal</i>
Type of Personal Data	<i>Name, address, contact details and details of the service user if not the same. The details of the service user include data regarding health, special educational needs and financial circumstances.</i>
Categories of Data Subject	<i>Mainstream Home to School service users, service users with Special Educational Needs and Adult Social Care service users accessing transport services arranged by Leicestershire County Council.</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to	<i>Information will be used and retained for as long as necessary or as the law requires. For these services it will be as long as the service user accesses transport services arranged by Leicestershire County Council</i>

preserve that type of data	<p><i>and provided by the supplier.</i></p> <p><i>Once the service user ceases accessing transport services arranged by Leicestershire County Council and provided by the supplier, all data will be destroyed and disposed of appropriately.</i></p>
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### Document Control

<b>Issue</b>	<b>Amendment Detail</b>	<b>Author</b>	<b>Date</b>
v1.0	Document complete and published	BM	22/4/20