

**(1) HAMPSHIRE COUNTY COUNCIL**

**AND**

**(2) DPS SUPPLIER**

---

**OVERARCHING AGREEMENT  
FOR THE DYNAMIC PURCHASING SYSTEM FOR THE PROVISION OF  
PASSENGER TRANSPORT SERVICES**

---

<b>PART 1: GENERAL</b> .....	<b>1</b>
<b>1. DEFINITIONS AND INTERPRETATION</b> .....	<b>1</b>
<b>PART 2: DPS ARRANGEMENTS AND CALL-OFF AWARD PROCEDURE</b> .....	<b>2</b>
<b>2. COMMENCEMENT AND DURATION</b> .....	<b>2</b>
<b>3. SCOPE OF THIS DPS AGREEMENT</b> .....	<b>2</b>
<b>4. DPS SUPPLIER’S APPOINTMENT</b> .....	<b>3</b>
<b>5. CALL-OFF ORDER PROCEDURE</b> .....	<b>4</b>
<b>6. NEW ENTRANTS</b> .....	<b>9</b>
<b>7. PRECEDENCE OF DOCUMENTS</b> .....	<b>10</b>
<b>8. PRICES AND PAYMENT FOR THE DPS SERVICES</b> .....	<b>10</b>
<b>PART 3: THE DPS SUPPLIER’S GENERAL DPS OBLIGATIONS</b> .....	<b>10</b>
<b>9. WARRANTIES, REPRESENTATIONS AND GUARANTEES</b> .....	<b>10</b>
<b>10. CONSENTS, LICENCES AND REGISTRATIONS</b> .....	<b>12</b>
<b>11. REPORTING AND MEETINGS</b> .....	<b>13</b>
<b>12. REPRESENTATIVES AND LIASON RELATING TO THE DPS</b> .....	<b>13</b>
<b>13. HEALTH AND SAFETY</b> .....	<b>14</b>
<b>14. CORRUPT GIFTS AND FRAUD</b> .....	<b>14</b>
<b>15. E-COMMERCE</b> .....	<b>15</b>
<b>16. FINANCIAL INFORMATION, AUDITS AND COMPLIANCE WITH SELECTION CRITERIA</b> .....	<b>15</b>
<b>PART 4 – DPS SUPPLIER’S INFORMATION OBLIGATIONS</b> .....	<b>15</b>
<b>17. RECORDS AND AUDIT ACCESS</b> .....	<b>16</b>
<b>18. PUBLICITY AND BRANDING</b> .....	<b>16</b>
<b>19. CONFIDENTIALITY AND TRANSPARENCY</b> .....	<b>17</b>
<b>20. FREEDOM OF INFORMATION AND TRANSPARENCY</b> .....	<b>18</b>
<b>21. DATA PROTECTION</b> .....	<b>19</b>
<b>PART 5 – DEFAULT, TERMINATION AND REMOVAL OF THE DPS SUPPLIER FROM THE DPS</b> 22	
<b>22. TERMINATION</b> .....	<b>22</b>
<b>23. SUSPENSION</b> .....	<b>23</b>
<b>24. CONSEQUENCES OF TERMINATION AND EXPIRY</b> .....	<b>26</b>
<b>PART 6 – INSURANCE</b> .....	<b>26</b>
<b>25. INSURANCE</b> .....	<b>26</b>
<b>PART 7 – OTHER PROVISIONS</b> .....	<b>28</b>
<b>26. VARIATIONS</b> .....	<b>28</b>
<b>27. FORCE MAJEURE</b> .....	<b>28</b>
<b>28. SUB-CONTRACTING, ASSIGNMENT AND NOVATION</b> .....	<b>28</b>
<b>29. THIRD PARTY RIGHTS</b> .....	<b>29</b>
<b>30. SEVERABILITY</b> .....	<b>29</b>
<b>31. RIGHTS AND REMEDIES</b> .....	<b>30</b>
<b>32. WAIVER</b> .....	<b>30</b>
<b>33. ENTIRE AGREEMENT</b> .....	<b>30</b>
<b>34. NOTICES</b> .....	<b>31</b>
<b>35. DISPUTE RESOLUTION</b> .....	<b>31</b>
<b>36. AGENCY AND PARTNERSHIP</b> .....	<b>32</b>
<b>37. GOVERNING LAW AND JURISDICTION</b> .....	<b>32</b>
<b>DPS SCHEDULE 1 – DEFINITIONS</b> .....	<b>34</b>
<b>DPS SCHEDULE 2 - DPS GOVERNANCE</b> .....	<b>44</b>
<b>DPS SCHEDULE 3 – CALL-OFF CONTRACT TERMS</b> .....	<b>45</b>
<b>DPS SCHEDULE 4 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS</b> .....	<b>46</b>
<b>DPS SCHEDULE 5 – DPS VARIATION PROCEDURE</b> .....	<b>48</b>

**This agreement is dated the date both parties sign the Award Letter**

## **PARTIES**

- (1) **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UJ (**Council**)
- (2) **DPS SUPPLIER** is as stated in the Award Letter (**DPS Supplier**)

## **BACKGROUND**

- (A) The Council sought applications for appointment to a dynamic purchasing system for the provision of passenger transport services (the “**DPS**”) to itself and the Other Contracting Authorities and by a contract notice [insert number] dated [insert date] placed in the Find a Tender Service.
- (B) On the basis of the DPS Supplier’s response to the Council’s invitation to participate in the DPS, the Council appointed the DPS Supplier to the DPS, as a potential provider of the DPS Services on a call-off tender basis in accordance with this DPS Agreement.
- (C) This DPS Agreement sets out the Call-off Order Procedure that will be followed for any DPS Services which may be required by the Participating Authorities during the DPS Term and the main terms and conditions for any Call-Off Contract which the Participating Authorities may conclude and the obligations of the DPS Supplier under this DPS Agreement.
- (D) It is the parties’ intention that there will be no obligation for the Participating Authorities to award any Call-Off Contract under this DPS Agreement during the DPS Term.
- (E) From the DPS Commencement Date, the DPS shall be continually open to new joiners throughout the DPS Term until three (3) Months prior to the expiry date of the DPS Term.

**IT IS AGREED** as follows:

## **PART 1: GENERAL**

### **1. DEFINITIONS AND INTERPRETATION**

1.1 In this DPS Agreement, unless the context otherwise requires:

1.1.1 reference to any statute, order, regulation or other similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended or re-enacted by any subsequent statute, order, regulation or instrument.

1.1.2 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.1.3 words importing the masculine include the feminine and the neuter and

vice versa;

- 1.1.4 the words 'include', 'includes' 'including' 'for example' and 'in particular' and words of similar effect shall be construed as if they were immediately followed by the words 'without limitation';
  - 1.1.5 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;
  - 1.1.6 headings are included in this DPS Agreement for ease of reference only and shall not affect the interpretation or construction of this DPS Agreement.
  - 1.1.7 references in this DPS Agreement to any clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to this DPS Agreement so numbered;
  - 1.1.8 references in this DPS 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 DPS Agreement so numbered;
  - 1.1.9 time shall, during the summertime be British summer time but otherwise Greenwich mean time;
  - 1.1.10 reference to a clause is a reference to the whole of that clause unless stated otherwise; and
  - 1.1.11 in the event and to the extent only of any conflict between the clauses of this DPS Agreement and any of the Schedules, the clauses shall prevail over the Schedules.
- 1.2 Any decision, act or thing which the Council is required or authorised to take or do under this DPS Agreement may be taken or done by the Authorised Officer or any person authorised, either generally or specially, by the Council to take or do that decision, act or thing, provided that upon receipt of a written request the Council shall inform the DPS Supplier of the name of any person so authorised.

## **PART 2: DPS ARRANGEMENTS AND CALL-OFF AWARD PROCEDURE**

### **2. COMMENCEMENT AND DURATION**

- 2.1 This DPS Agreement shall commence on the DPS Commencement Date and shall (unless terminated in accordance with the terms of this DPS Agreement or by operation of law, or is otherwise lawfully terminated) remain in force for a period of ten years from the DPS Commencement Date ("**DPS Term**").

### **3. SCOPE OF THIS DPS AGREEMENT**

- 3.1 This DPS Agreement governs the relationship between the Council and the DPS

Supplier in respect of the commissioning of the DPS Services by the Participating Authorities, and the provision of the DPS Services by the DPS Supplier to the Participating Authorities under the Call-Off Contracts awarded under the DPS.

- 3.2 The DPS Supplier shall be eligible to participate in Mini-Competitions, E-Auctions or Quick Quotes under this DPS Agreement run by any Participating Authority during the DPS Term.
- 3.3 The Council enters into this DPS Agreement for itself and on behalf of the Other Contracting Authorities. A Participating Authority may at its absolute discretion and from time to time order the DPS Services from the DPS Supplier in accordance with the Regulations and the Call-Off Order Procedure.
- 3.4 The Parties acknowledge and agree that the Other Contracting Authorities have the right to order the DPS Services pursuant to this DPS Agreement provided that they comply at all times with the Regulations and the Call-Off Order Procedure. If there is a conflict between the Call-Off Order Procedure and the Regulations, the Regulations shall take precedence.
- 3.5 The DPS Supplier acknowledges that, in entering this DPS Agreement, no form of exclusivity or volume guarantee has been granted by the Participating Authorities for the DPS Services and that each Participating Authority is at all times entitled to enter into other contracts and arrangements with other suppliers (including other DPS Providers) for the provision of any or all services which are the same as or similar to the DPS Services.
- 3.6 The Council does not guarantee that any Call-Off Contracts will be awarded to the DPS Supplier under this DPS Agreement. The DPS Supplier acknowledges that there is no obligation for a Participating Authority to purchase any DPS Services from the DPS Supplier during the DPS Term and the Council similarly acknowledges that there is no obligation for the DPS Supplier to bid for any DPS Services awarded through the DPS during the DPS Term.
- 3.7 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council in respect of the total quantities or values of the DPS Services to be procured by it or any Other Contracting Authority pursuant to this DPS Agreement and the DPS Supplier acknowledges and agrees that it has not entered into this DPS Agreement on the basis of any such undertaking, statement, promise or representation.
- 3.8 For the avoidance of doubt, the Council shall not in any circumstances have any involvement, responsibility, or liability to the DPS Supplier and/or any Other Contracting Authority in respect of a Call-Off Contract and/or the DPS Services provided thereunder by the DPS Supplier to any Other Contracting Authority.

#### **4. DPS SUPPLIER'S APPOINTMENT**

- 4.1 The Council hereby appoints the DPS Supplier as a DPS Provider for the Categories listed in the Award Letter sent to the DPS Supplier ("**Relevant Categories**"), and the DPS Supplier shall be eligible to be considered for the award of Call-Off Contracts for DPS Services falling within the Relevant

Categories during the DPS Term in accordance with the terms of this DPS Agreement. In addition, the Award Letter will identify any Flags which the DPS Supplier has been allocated to (“**Relevant Flags**”).

- 4.2 DPS Schedule 2 (*DPS Governance*) details all of the Categories and Flags and the Award Letter sets out the Relevant Categories and Flags (i.e. those Categories or Flags to which the DPS Supplier has been appointed).
- 4.3 The DPS Supplier shall at all times during the DPS Term maintain the organisational and technical ability and capacity to provide the DPS Services for the Relevant Categories and Flags in accordance with this DPS Agreement. For the avoidance of doubt, the DPS Supplier shall at all times during the DPS Term ensure that the Mandatory Dynamic Purchasing System Requirements set out in Call-Off Contract Schedule 2 (DPS Services Specification) are complied with, regardless of whether a Call-Off Contract has been awarded to the DPS Supplier. If the DPS Supplier is unable to comply with this clause at any time during the DPS, they shall notify the Council immediately and the Council shall be entitled to suspend and/or terminate the DPS Supplier’s appointment to the DPS as appropriate.
- 4.4 Appointment as a DPS Provider entitles the DPS Supplier to receive ITCs (and, where successful, Call-Off Contracts resulting from the relevant Mini-Competition, E-Auctions or Quick Quotes) for the Relevant Categories and Flags from the Participating Authorities in accordance with the terms of this DPS Agreement.
- 4.5 As part of a Mini-Competition, E-Auction or Quick Quotes, and/or at the time of awarding a Call-Off Contract, or at any time throughout the DPS Term or the Call-Off Contract Period, a Participating Authority shall have the right to challenge any information provided by the DPS Supplier in response to the Selection Questionnaire for admittance to the DPS and the relevant Participating Authority shall be entitled to request from the DPS Supplier such confirmation and additional information as it deems necessary to demonstrate the DPS Supplier’s ability to provide the DPS Services in accordance with this DPS Agreement and/or its Services Requirements in accordance with the Call-Off Contract Terms. Failure to provide such information may lead to the suspension and/or removal of the DPS Supplier from the DPS or from the provision of the DPS Services under any Call-Off Contract.

## **5. CALL-OFF ORDER PROCEDURE**

- 5.1 If a Participating Authority decides to commission DPS Services through the DPS at any time during the DPS Term, it will conduct a Mini-Competition, E-Auction or Quick Quote in accordance with the Call-Off Order Procedure.
- 5.2 Any Other Contracting Authority shall only be entitled to issue an Order and enter into a Call-Off Contract following completion of an Access Agreement.
- 5.3 Where a Participating Authority wishes to procure DPS Services using the DPS it shall:
  - 5.3.1 identify the Category and (if applicable) the Flag into which its Services

Requirements falls;

- 5.3.2 identify whether a Mini-Competition, E-Auction or Quick Quote is appropriate for the DPS Services;
  - 5.3.3 identify all the (or the applicable) DPS Suppliers appointed to that Category and (if applicable) Flag;
  - 5.3.4 identify the Award Criteria that will apply to the evaluation of Mini-Competition, E-Auction or Quick Quote Submissions;
  - 5.3.5 supplement and refine the Call-Off Contract Terms to reflect the Services Requirements of the Participating Authority only to the extent permitted by and in accordance with the requirements of the Regulations and the Guidance.
  - 5.3.6 invite Submissions by conducting a Mini-Competition, E-Auction or Quick Quote in accordance with clauses 5.5 to 5.15.
- 5.4 Any Mini-Competition, E-Auction or Quick Quote conducted pursuant to this DPS Agreement shall be undertaken in accordance with the principles of fairness, openness and transparency.

#### **Mini-Competition Process**

- 5.5 To ensure maximum fairness, openness and transparency, the Mini-Competition for any Services Requirements will be provided to all DPS Suppliers for the applicable Category and/or Flag by way of an ITC.
- 5.6 The ITC will include:
  - 5.6.1 details of the Category (and, if applicable, the Flag) to which the Services Requirements relate;
  - 5.6.2 full details of the Services Requirements, the Order Form Specification and any other information the Participating Authority considers relevant to the Services Requirements;
  - 5.6.3 details of the time limit for the receipt of Mini-Competition Submissions, which shall be a minimum of ten (10) calendar days from the date on which the ITC is published (“**Mini-Competition Deadline**”). In setting the Mini-Competition Deadline the Participating Authority shall take into account factors such as the complexity of the subject matter of the Services Requirements and the time needed to prepare a response and such time limits will at all times be reasonable and proportionate. In the event that there is a requirement for the DPS Services to be operational sooner, the Participating Authority reserves the right (and the DPS Providers agree) to reduce the Mini-Competition Deadline accordingly (but no shorter than 72 hours). The maximum duration for a Call-Off Contract awarded following a Mini-Competition advertised for less than ten (10) calendar days shall be one year;

- 5.6.4 where the Mini-Competition evaluation basis is to be other than on price alone, a proposed evaluation matrix, indicating the Mini-Competition Award Criteria that will apply (which shall seek to balance the need for quality against cost and to maximise overall value for money). Any Mini-Competition which has a Mini-Competition Deadline of less than ten (10) calendar days shall be evaluated on price alone; and
- 5.6.5 instructions regarding how the Mini-Competition Submission must be completed and returned.
- 5.7 In the event that no Mini-Competition Submissions are received by the Participating Authority, the Participating Authority may award a Call-Off Contract directly to a DPS Provider without a further Competition being undertaken.

### **E-Auctions**

- 5.8 To ensure maximum fairness, openness and transparency, the E-Auction for any Services Requirements will be provided to all DPS Suppliers for the applicable Category and/or Flag by way of an ITC.
- 5.9 All ITCs for E-Auctions will be issued electronically to all DPS Suppliers via the Council's preferred electronic tendering system.
- 5.10 The ITC for an E-Auction will include:
  - 5.10.1 details of the Category (and, if applicable, the Flag) to which the Services Requirements relate;
  - 5.10.2 full details of the Services Requirements, the Order Form Specification and any other information the Participating Authority considers relevant to the Services Requirements;
  - 5.10.3 details of the time limit for the receipt of E-Auction Submissions, which shall be a minimum of two (2) calendar days from the date on which the ITC is published ("**E-Auction Deadline**"). In setting the E-Auction Deadline the Participating Authority shall take into account factors such as the complexity of the subject matter of the Services Requirements and the time needed to prepare a response and such time limits will at all times be reasonable and proportionate. In the event that there is a requirement for the DPS Services to be operational sooner, the Participating Authority reserves the right (and the DPS Providers agree) to reduce the E-Auction Deadline accordingly. The maximum duration for a Call-Off Contract awarded following a E-Auction advertised for less than two (2) calendar days shall be one year;
  - 5.10.4 all E-Auctions shall be evaluated on price alone; and
  - 5.10.5 instructions regarding how the E-Auction Submission must be completed and returned.
- 5.11 In the event that no E-Auction Submissions are received by the Participating Authority, the Participating Authority may award a Call-Off Contract directly to a

DPS Provider without a further Competition being undertaken.

### **Quick Quotes Process**

- 5.12 In the circumstances where there is an urgent requirement and the DPS Services are required to be operational before the deadlines set out above would allow, the Participating Authority may undertake a Quick Quotes via telephone, email or the Council's preferred electronic tendering system.
- 5.13 The Participating Authority shall select a minimum of three (3) DPS Providers appointed to the applicable Category (and, if applicable, Flag) to be invited to participate in the Quick Quote. If there are less than three (3) DPS Providers then all DPS Providers shall be selected.
- 5.14 The Quick Quote ITC will include full details of the Services Requirements, the Quick Quote Award Criteria, the Order Form Specification and any other information the Participating Authority considers relevant to the Services Requirements.
- 5.15 The maximum duration for a Call-Off Contract awarded pursuant to a Quick Quote process shall be four (4) Months.

### **Urgent Requirements**

- 5.16 Where the Participating Authority has an urgent requirement which, if not delivered will have a detrimental impact on a passenger's wellbeing, and the DPS Service is required to commence within 48 hours, the Participating Authority may contact one DPS Provider from the applicable Category and/or Flag and follow the Quick Quote process in clauses 5.12 to 5.15 above.

### **General Provisions for Further Competitions**

- 5.17 The Participating Authority will seek to minimise and mitigate unnecessary time and costs incurred by the DPS Supplier associated with submitting Submissions.
- 5.18 The Participating Authority shall keep each Submission confidential until the Competition Deadline.
- 5.19 The Participating Authority shall apply the appropriate Award Criteria to each compliant Submission submitted by a DPS Provider as the basis of its decision to award the resulting Call-Off Contract.
- 5.20 The Participating Authority shall award the Call-Off Contract to the DPS Provider whose Submission is assessed to be the most economically advantageous tender pursuant to the pre-notified Award Criteria and evaluation matrix.
- 5.21 Any Submission submitted by a DPS Provider shall remain open for acceptance by the Participating Authority for a minimum period of ninety (90) calendar days.
- 5.22 In the event that none of the DPS Providers respond to a Competition, the Participating Authority reserves the right to enter into other contracts and arrangements for its Services Requirements, including with suppliers not on the

DPS and/or a direct award of its Services Requirements to any DPS Provider as set out above.

- 5.23 Notwithstanding that a Participating Authority has followed the applicable procedure set out above, the Participating Authority may cancel, postpone, delay or end the procedure without awarding a Call-Off Contract. Nothing in this DPS Agreement shall oblige a Participating Authority to award any Call-Off Contract for DPS Services.

**Accepting and declining award of the Call-Off Contract**

- 5.24 Following the Competition, the Participating Authority shall issue an Order Form to the successful DPS Provider. The Order Form may be submitted by post, electronic transmission, email or via the Council's preferred electronic tendering system as appropriate.

- 5.25 Following receipt of the populated Order Form, the DPS Supplier shall promptly and in any event within five (5) Working Days acknowledge receipt of the Order Form and either:

5.25.1 notify the Participating Authority that it declines to accept the award of the Call-Off Contract; or

5.25.2 notify the Participating Authority that it accepts the award of the Call-Off Contract by signing and returning the Order Form to the Participating Authority.

For the avoidance of doubt, a response under this clause may also be by electronic transmission, email or via the Council's preferred electronic tendering system as appropriate.

- 5.26 If the DPS Supplier:

5.26.1 notifies the Participating Authority that it declines to accept the award of a Call-Off Contract in accordance with clause 5.25.1; or

5.26.2 the time-limit referred to in clause 5.25 for acceptance of the Call-Off Contract has expired; or

5.26.3 fails to provide the required Licence(s), insurance documentation or confirmation that the required authorised Drivers are in place within the specified timescale,

then the offer from the Participating Authority to the successful DPS Provider shall lapse and the Participating Authority may award the Call-Off Contract to the DPS Provider that submitted the next most economically advantageous tender in accordance with the Award Criteria.

- 5.27 If the DPS Supplier seeks to modify or impose conditions on the fulfilment of the Call-Off Contract, the award of the Call-Off Contract shall lapse and the Participating Authority may:

5.27.1 award the Call-Off Contract to the second placed DPS Provider under the Competition; or

5.27.2 end the Competition process without awarding the Call-Off Contract.

### **Formation of the Call-Off Contract**

5.28 Subject to the provisions of this clause 5 (Call-Off Order Procedure), following the Mini-Competition, E-Auction or Quick Quote, the Participating Authority may enter into a Call-Off Contract with the successful DPS Provider.

5.29 The issuing of the populated Order Form by the Participating Authority shall be an “invitation to treat”. Accordingly, the DPS Supplier shall sign and return the Order Form which shall constitute its offer to the Participating Authority. The Participating Authority shall signal its acceptance of the DPS Supplier’s offer and the formation of a Call-Off Contract by counter-signing the Order Form. For the avoidance of doubt, the process set out in this clause may also be completed by electronic transmission, email or via the Council’s preferred electronic tendering system as appropriate

5.30 The DPS Supplier warrants that all Submissions submitted by the DPS Supplier shall be made in good faith and that the DPS Supplier shall not fix or adjust the amount of its Submission by or in accordance with any agreement or arrangement with any other person. The DPS Supplier certifies that it will not:

5.30.1 communicate to any person other than the Participating Authority the amount or approximate amount of its Submission, except where the disclosure, in confidence, of the approximate amount of the Submission is necessary to obtain quotations required for the preparation of the Submission; and

5.30.2 enter into any arrangement or agreement with any other person that they or the other person(s) shall refrain from making a Submission or as to the amount of any Submission to be submitted.

5.31 The Call-Off Contract Terms and Conditions for the Services shall be the terms and conditions contained in DPS Schedule 3 (*Call-Off Contract Terms*) of this DPS Agreement.

## **6. NEW ENTRANTS**

6.1 From the DPS Commencement Date the DPS will be continually open to new joiners throughout the DPS Term until three (3) Months prior to the expiry of the DPS. In addition, DPS Providers can apply to new Categories or Flags throughout the DPS Term.

6.2 All potential new entrants to the DPS will be required to complete a replica of the documentation issued during the initial invitation to participate process, and the requests to participate will be evaluated on the same basis as the original requests to participate. Any new entrants will be appointed to the DPS for the remainder of the DPS Term and will be entitled to participate in any Competitions and to be awarded Call-Off Contracts accordingly from the date on which the new entrant is

appointed to the DPS. For the avoidance of doubt, any appointment of new entrants to the DPS will not affect the DPS Supplier's position on the DPS nor any of its rights or obligations under this DPS Agreement or any Call-Off Contracts awarded under it.

## **7. PRECEDENCE OF DOCUMENTS**

7.1 The DPS Supplier shall perform all Call-Off Contracts entered into with any Participating Authority in accordance with:

7.1.1 the requirements of this DPS Agreement; and

7.1.2 the Call-Off Contract Terms.

7.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this DPS Agreement and any Call-Off Contract (including any documents thereof), such conflict or inconsistency shall be resolved according to the following order of priority:

7.2.1 the Signed Order Form;

7.2.2 the Call-Off Contract Terms;

7.2.3 the Order Form Specification;

7.2.4 the Call-Off Contract Specification;

7.2.5 the terms of this DPS Agreement (excluding the Schedules);

7.2.6 the Schedules to this DPS Agreement;

7.2.7 any other document referred to in the Call-Off Contract Terms;

7.2.8 any other document referred to in this DPS Agreement;

7.2.9 the DPS Supplier's Submission,

save to the extent that the standards or levels of service set out in the DPS Supplier's Submission exceed those set out in DPS Schedule 2 (*DPS Governance*), the Call-Off Contract Specification and/or the Order Form Specification; in which case, such higher standards or levels of performance set out in the DPS Supplier's Submission shall prevail (to the extent necessary to achieve the performance of such higher standards or levels of performance only).

## **8. PRICES AND PAYMENT FOR THE DPS SERVICES**

8.1 The Call-Off Contract Charges shall be those offered by the DPS Supplier in its Submission as recorded in the Signed Order Form.

## **PART 3: THE DPS SUPPLIER'S GENERAL DPS OBLIGATIONS**

## **9. WARRANTIES, REPRESENTATIONS AND GUARANTEES**

- 9.1 The DPS Supplier warrants, represents and undertakes to the Council that:
- 9.1.1 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 DPS Agreement;
  - 9.1.2 this DPS Agreement is executed by a duly authorised representative of the DPS Supplier;
  - 9.1.3 in entering into this DPS Agreement and any Call-Off Contract the DPS Supplier has not committed any Prohibited Act;
  - 9.1.4 as at the DPS Commencement Date, all information, statements, warranties and representations contained in the DPS Supplier's response to the Selection Questionnaire and (unless otherwise agreed) any other document which resulted in the appointment of the DPS Supplier onto the DPS are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of this DPS Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
  - 9.1.5 it has not in any other way breached the Bribery Act 2010 or the Section 117(2) of the Local Government Act 1972;
  - 9.1.6 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 which will or might affect its ability to perform its obligations under this DPS Agreement and/or any Call-Off Contract thereunder;
  - 9.1.7 it is not subject to any contractual obligation, compliance with which will be likely to have an effect on its ability to perform its obligations under this DPS Agreement and/or any Call-Off Contract thereunder; and
  - 9.1.8 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of their knowledge, are threatened) for the winding up of the DPS 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 DPS Supplier's assets or revenue.
- 9.2 Each time a Call-Off Contract is entered into, the warranties, representations and undertakings in this clause shall be deemed to be repeated by the DPS Supplier with reference to the circumstances existing at the time that they are deemed to be repeated.
- 9.3 For the avoidance of doubt, the fact that any provision within this DPS Agreement is expressed as a warranty shall not preclude any right of termination the Council may have in respect of breach of that provision by the DPS Supplier.
- 9.4 The DPS Supplier acknowledges and agrees that:

- 9.4.1 the warranties, representations and undertakings contained in this DPS Agreement are material and are designed to induce the Council into appointing the DPS Supplier to the DPS and to induce the Participating Authorities to enter into any and all Call-Off Contracts thereunder;
  - 9.4.2 the Council has been induced into appointing the DPS Supplier to the DPS and in doing so has relied upon the warranties, representations and undertakings contained in this DPS Agreement; and
  - 9.4.3 each Participating Authority will (amongst other things) on each and every occasion that it enters into a Call-Off Contract be induced into doing so by, and in being so induced shall rely upon, the warranties, representations and undertakings contained in this DPS Agreement.
- 9.5 The DPS Supplier warrants, represents and undertakes for the duration of the DPS Term that:
- 9.5.1 all personnel used to provide the DPS Services will be vetted in accordance with Good Industry Practice and as set out further in the Call-Off Contract;
  - 9.5.2 all Drivers and Escorts used to provide the DPS Services will be approved by the Participating Authority as set out in DPS Schedule 2 (*DPS Governance*) of the Call-Off Contract to include, where applicable, the DBS checks;
  - 9.5.3 it has and will continue to hold all necessary (if any) regulatory approvals and Licences from the Regulatory Bodies necessary to perform the DPS Supplier's obligations under this DPS Agreement; and
  - 9.5.4 it shall at all times comply with Law in carrying out its obligations under this DPS Agreement.

## **10. CONSENTS, LICENCES AND REGISTRATIONS**

- 10.1 The DPS Supplier shall at its own expense obtain and keep in force any Licence necessary to provide the DPS Services and shall ensure that the requirements of that Licence are observed at all times. Failure to comply may result in the Council terminating this DPS Agreement in accordance with clause 22.1.12 (Termination for breach).
- 10.2 The DPS Supplier shall notify the Council in writing within five (5) calendar days of any changes its makes to its Licence arrangements.
- 10.3 The DPS Supplier shall notify the Council in writing within five (5) calendar days of any changes made to its Licence by the appropriate licensing body, including curtailment.
- 10.4 Without prejudice to the Council's rights and remedies, including but not limited to its termination rights, the Council may suspend this DPS Agreement (and any Call-Off Contracts) during any period when the DPS Supplier does not have the appropriate Licence in place, or when a Licence previously granted has been

suspended or has had conditions attached which prevent the operation of the DPS Services in accordance with this DPS Agreement.

- 10.5 The DPS Supplier shall ensure that any DPS Service awarded under Flag A (Public Bus) is correctly registered with the local authority at all times. Should any Public Bus Service not be properly registered the Council may suspend or terminate the DPS Agreement (and any Call-Off Contracts) in accordance with clauses 22 (Termination) and 23 (Suspension).
- 10.6 The DPS Supplier shall ensure that it and its Personnel are licensed and insured in accordance with all legal requirements in respect of the DPS Services to be undertaken and shall conform at all times with any local by-laws relating to such DPS Services.
- 10.7 As and when the DPS Supplier is reasonably required to do so by the Council (including but not limited to expiry of any Licence), the DPS Supplier shall produce and shall cause any Sub-Contractor to produce for inspection by the Council, documentary evidence that the Licences required above are properly maintained, but on any occasion the Council may (but not unreasonably or vexatiously) require to have produced for its inspection the licencing documentation/certificates in question.
- 10.8 The DPS Supplier shall immediately advise the Council of any action being taken by the Traffic Commissioner, Driver and Vehicle Standards Agency or other government body/licencing authority.
- 10.9 The DPS Supplier shall, within seven (7) calendar days of a notification in accordance with clause 10.8 provide a full written report of the action being taken to the Council.
- 10.10 If the DPS Supplier is subject to the action set out in clause 10.8, the Council shall be entitled to suspend the DPS Supplier in accordance with clause 23.1.2.

## **11. REPORTING AND MEETINGS**

- 11.1 The Council may require the DPS Supplier to attend performance monitoring meetings, to assess the quality and progress of the DPS Services being provided to Passengers by giving not less than five (5) Working Days written notice. In the event of an urgent requirement arising, the Council may require the DPS Supplier to attend by giving not less than two (2) Working Days written notice.
- 11.2 During the DPS Term, should the Supplier change its registered company name and/or address as defined above in the DPS Supplier's party information it shall, within five (5) Working Days of changing its registered company name and/or address notify the Council of its new registered company name and/or address.

## **12. REPRESENTATIVES AND LIASON RELATING TO THE DPS**

- 12.1 The Authorised Officer shall liaise with and instruct the DPS Supplier and the DPS Supplier's Representatives regarding all matters relating to performance by the DPS Supplier of its obligations under this DPS Agreement and shall determine any matters or issue any notices as stipulated under this DPS Agreement.

- 12.2 If the DPS Supplier holds a PSV Licence, a Transport Manager must be in place. The DPS Supplier must ensure that the Transport Manager's details provided to the Council are up to date and any change is notified to the Council within thirty (30) calendar days of any change in the identity of the Transport Manager.

### **13. HEALTH AND SAFETY**

- 13.1 The DPS Supplier shall comply and ensure the DPS Supplier's Representatives comply at all times with the Health and Safety at Work etc. Act 1974 and all other Laws pertaining to health and safety of employees and other affected persons including, but not limited to, the Management of Health and Safety at Work etc. Regulations 1999, the Reporting of Injuries, Diseases & Dangerous Occurrences Regulations 2013 and all other health, safety and welfare requirements applicable to the DPS Services including those detailed in the relevant Call-Off Contract Specification and Order Form Specification.

### **14. CORRUPT GIFTS AND FRAUD**

- 14.1 The DPS Supplier shall not (and will procure that anyone acting on its behalf or to its knowledge shall not):

14.1.1 offer, give or agree to give to any employee, agent or representative of the Council or any other person any gift or consideration at any time which could act as an as an inducement or reward:

14.1.1.1 for doing or not doing any act in relation to the obtaining or performance of this DPS Agreement, any Call-Off Contract or any other contract with the Council; or

14.1.1.2 for showing or not showing favour or disfavour to any person in relation to this DPS Agreement, any Call-Off Contract or any other contract with the Council;

14.1.2 enter into this DPS Agreement, any Call-Off Contract or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the DPS Supplier (or anyone acting on its behalf or to its knowledge) unless (before such contract is made) particulars of any such commission have been disclosed in writing to the Council;

14.1.3 fix or adjust the amount of any Submission by or in accordance with any agreement or arrangement with any other person;

14.1.4 communicate to any person other than the Participating Authority the amount or approximate amount of its proposed Submission prices (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the tender or for insurance purposes);

14.1.5 enter into any agreement or arrangement with any other person that it shall refrain from tendering or as to the amount of any tender submitted for this DPS Agreement or a Competition;

14.1.6 commit any offence under:

14.1.6.1 the Bribery Act 2010 (or any legislation repealed or revoked by such Act);

14.1.6.2 sub-section (2) of section 117 of the Local Government Act 1972;

14.1.6.3 legislation or common law concerning of fraudulent acts;

in relation to this DPS Agreement, any Call-Off Contract or any other contract with the Council;

14.1.7 defraud or attempt to defraud or conspire to defraud the Council.

Each of which shall be a “**Prohibited Act**”

14.2 The DPS Supplier shall promptly inform the Council of the occurrence of any such Prohibited Act or offence of which it becomes aware.

## **15. E-COMMERCE**

15.1 The Council is committed to employing e-Commerce throughout its purchase to pay process and data management systems, including asset management systems. The DPS Supplier will therefore be expected to support the Council in its aim of improving and increasing efficiency through the use of the systems throughout the DPS Term.

15.2 The DPS Supplier will be required to access and use all current and future systems as requested by the Council to deliver the DPS Services under this DPS Agreement.

15.3 The DPS Supplier shall be required to register on the Council’s e-Invoicing System upon acceptance to the DPS.

## **16. FINANCIAL INFORMATION, AUDITS AND COMPLIANCE WITH SELECTION CRITERIA**

16.1 The DPS Supplier shall, whenever so required by the Council, provide the Council with such financial information and data reasonably requested by the Council to enable the Council:

16.1.1 to comply with the Code of Practice on Local Council Accounting in the United Kingdom 2017/18 issued by the Chartered Institute of Public Finance and Accountancy (as the same may be updated or replaced from time to time);

16.1.2 examine, evaluate and be satisfied as to the Council’s minimum standards of economic and financial standing, technical and professional ability and general standing required of the DPS Supplier with regard to the provision of the DPS Services (as set out in the Selection Questionnaire).

## **PART 4 – DPS SUPPLIER’S INFORMATION OBLIGATIONS**

## **17. RECORDS AND AUDIT ACCESS**

- 17.1 The DPS Supplier shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of this DPS Agreement (or any longer period as may be agreed between the Parties), full and accurate records and accounts of the operation of this DPS Agreement including the DPS Services provided under it, the Call-Off Contracts entered into and the amounts paid to the DPS Supplier by the Participating Authorities thereunder.
- 17.2 The DPS Supplier shall keep the records referred to in clause 17.1 in accordance with Good Industry Practice.
- 17.3 The DPS Supplier shall provide such records and accounts on request during the DPS Term and for a period of six (6) years after expiry of the DPS Term to the Council and its internal and external Auditors.
- 17.4 The Council shall use reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the DPS Supplier or delay the provision of the Services pursuant to a Call-Off Contract, save insofar as the DPS Supplier accepts and acknowledges that the conduct of an audit carried out by the National Audit Office is outside of the control of the Council.
- 17.5 Subject to the Council's rights of confidentiality, the DPS Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:
- 17.5.1 all information requested by the Auditor within the scope of the audit;
  - 17.5.2 reasonable access to sites controlled by the DPS Supplier and to equipment used in the provision of the Services; and
  - 17.5.3 access to its Personnel.
- 17.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit reveals a material Default by the DPS Supplier in which case the DPS Supplier shall reimburse the Council's reasonable costs incurred in relation to the audit.

## **18. PUBLICITY AND BRANDING**

- 18.1 The DPS Supplier shall not:
- 18.1.1 advertise or publicise, or make any public announcements relating to, this DPS Agreement and its content, or the DPS Services; or
  - 18.1.2 use the name or brand of any Participating Authority in any promotion or marketing or announcement of orders;
- without the prior consent of the relevant Participating Authority.
- 18.2 The Council shall be entitled to publicise this DPS Agreement.

- 18.3 Each party acknowledges to the other that nothing in this DPS Agreement either expressly or by implication constitutes an endorsement of any products or services of the other party and each party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.
- 18.4 The DPS Supplier shall not do anything or cause anything to be done which may damage the reputation of the Participating Authorities and/or bring any Participating Authority into disrepute.

## 19. CONFIDENTIALITY AND TRANSPARENCY

- 19.1 The term “Confidential Information” does not include any information that:
- 19.1.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party or its representatives in breach of this clause); or
  - 19.1.2 was available to the receiving Party on a non-confidential basis prior to disclosure by the disclosing Party; or
  - 19.1.3 was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party’s knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party; or
  - 19.1.4 was known to the receiving Party before the information was disclosed to it by the disclosing Party; or
  - 19.1.5 the Parties agree in writing is not.
- 19.2 Each Party shall keep the other Party’s Confidential Information confidential and shall not:
- 19.2.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Call-Off Contract (“**Permitted Purpose**”); or
  - 19.2.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 19.3 A Party may disclose the other Party’s Confidential Information to those of its representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- 19.3.1 it informs such representatives of the confidential nature of the Confidential Information prior to disclosure; and
  - 19.3.2 at all times, it is responsible for such representatives’ compliance with the confidentiality obligations set out in this clause.
- 19.4 A Party may disclose Confidential Information to the extent required by Law, by any governmental or other regulatory authority or by a court or other authority of

competent jurisdiction or in accordance with the Council's obligations under the FOIA and Data Protection Legislation as set out in clauses 20 (*Freedom of Information and Transparency*) and 21 (*Data Protection*) below, provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible.

- 19.5 The Council, in line with the Government's ongoing drive to open up the activities of the Public Sector to greater scrutiny, has prepared its transparency agenda and the DPS Supplier hereby agrees that, notwithstanding anything set out in this clause or elsewhere in this DPS Agreement, the Council shall be entitled to publish this DPS Agreement in whole or in part (including from time to time any agreed changes to the DPS Agreement), in whatever form the Council may decide. The DPS Supplier further agrees that the Council may publish any payments made by the Council to the DPS Supplier under this DPS Agreement.
- 19.6 The DPS Supplier acknowledges that the Council may, during the DPS Term, be required by Law to publish certain information in relation to the DPS Supplier's performance.
- 19.7 On termination of this DPS Agreement, each Party shall:
- 19.7.1 return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
  - 19.7.2 erase all the other Party's Confidential Information from its computer systems (to the extent possible); and
  - 19.7.3 certify in writing to the other Party that it has complied with the requirements of this clause, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by Law or any applicable governmental or regulatory authority.
- 19.8 The provisions of this clause shall survive for a period of six (6) years from termination of this DPS Agreement.

## **20. FREEDOM OF INFORMATION AND TRANSPARENCY**

- 20.1 The DPS Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIR. The DPS Supplier shall:
- 20.1.1 provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIR;
  - 20.1.2 transfer to the Council all Requests for Information relating to this DPS Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - 20.1.3 provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or

control in the form that the Council requires within five (5) Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and

20.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Council.

20.2 The DPS Supplier acknowledges that the Council may be required under the FOIA and EIR to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the DPS Supplier. The Council shall take reasonable steps to notify the DPS Supplier of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 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 DPS Agreement) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information or any other information is exempt from disclosure in accordance with the FOIA or the EIR.

20.3 Notwithstanding any other term of this DPS Agreement, the DPS Supplier consents to the publication of this DPS Agreement in its entirety (including variations), subject only to the redaction of information that the Council considers is exempt from disclosure in accordance with the provisions of the FOIA and EIR.

20.4 The Council shall, prior to publication, consult with the DPS Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion. The DPS Supplier shall assist and co-operate with the Council to enable the Council to publish this DPS Agreement.

## **21. DATA PROTECTION**

21.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the DPS Supplier is the Processor. The only processing that the DPS Supplier is authorised to do is listed in DPS Schedule 4 (*Processing, Personal Data and Data Subjects*) by the Council and may not be determined by the DPS Supplier.

21.2 The DPS Supplier shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

21.3 The DPS Supplier shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing.

21.4 The DPS Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Call-Off Contract:

21.4.1 process that Personal Data only in accordance with DPS Schedule 4 (*Processing, Personal Data and Data Subjects*), processing may not be determined by the DPS Supplier unless it is required to do so by Law. If it is so required the DPS Supplier shall promptly notify the Council before

processing the Personal Data unless such notification is prohibited by Law;

21.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:

21.4.2.1 nature of the data to be protected;

21.4.2.2 harm that might result from a Data Loss Event;

21.4.2.3 state of technological development; and

21.4.2.4 cost of implementing any measures;

21.4.3 ensure that:

21.4.3.1 the Personnel do not process Personal Data except in accordance with this Call-Off Contract (and in particular DPS Schedule 4 (*Processing, Personal Data and Data Subjects*));

21.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Personnel who have access to the Personal Data and ensure that they:

21.4.3.2.1 are aware of and comply with the DPS Supplier's duties under this clause;

21.4.3.2.2 are subject to appropriate confidentiality undertakings with the DPS Supplier or any Sub-Processor;

21.4.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Call-Off Contract; and

21.4.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data;

21.4.3.3 not transfer Personal Data outside of the EU/EEA and/or the UK; and

21.4.3.4 at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Call-Off Contract unless the DPS Supplier is required by Law to retain the Personal Data.

21.5 Subject to clause 21.6, the DPS Supplier shall notify the Council immediately if it:

21.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);

- 21.5.2 receives a request to rectify, block or erase any Personal Data;
  - 21.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 21.5.4 receives any communication from the Information Commissioner's Office or any other regulatory authority in connection with Personal Data processed under this Call-Off Contract;
  - 21.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 21.5.6 becomes aware of a Data Loss Event.
- 21.6 Taking into account the nature of the processing, the DPS Supplier shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 21.5 (and insofar as possible within the timescales reasonably required by the Council).
- 21.7 The DPS Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the DPS Supplier employs fewer than 250 staff, unless:
- 21.7.1 the Council determines that the processing is not occasional;
  - 21.7.2 the Council determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
  - 21.7.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 21.8 The DPS Supplier shall allow for audits of its data processing activity by the Council or the Council's designated auditor.
- 21.9 The DPS Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 21.10 Before allowing any Sub-Processor to process any Personal Data related to this Call-Off Contract, the DPS Supplier must:
- 21.10.1 notify the Council in writing of the intended Sub-Processor and processing;
  - 21.10.2 obtain the written consent of the Council;
  - 21.10.3 enter into a written agreement with the Sub-Processor which gives effect to the terms set out in this clause such that they apply to the Sub-Processor; and

- 21.10.4 provide the Council with such information regarding the Sub-Processor as the Council may reasonably require.
- 21.11 The DPS Supplier shall remain fully liable for all acts or omissions of any Sub-Processor.
- 21.12 The DPS Supplier agrees to indemnify the Council against all Losses, claims, liabilities costs and expenses (including reasonable legal costs) that the Council incur as a result of the DPS Supplier's failure or that of any Sub-Contractor to comply with the Data Protection Legislation as required by this clause.
- 21.13 The Council may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Call-Off Contract).
- 21.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than thirty (30) Working Days' notice to the DPS Supplier amend this Call-Off Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **PART 5 – DEFAULT, TERMINATION AND REMOVAL OF THE DPS SUPPLIER FROM THE DPS**

### **22. TERMINATION**

- 22.1 Without affecting any other right or remedy available to it, and subject to clause 23, the Council may terminate this DPS Agreement with immediate effect or on the expiry of the period specified in the Termination Notice by giving written notice to the DPS Supplier if one or more of the following circumstances occurs or exists:
- 22.1.1 where the DPS Supplier commits a Default and the DPS Supplier has not remedied the Default to the satisfaction of the Council within twenty (20) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied;
- 22.1.2 if the DPS Supplier is in Default of this DPS Agreement, which is irreparable;
- 22.1.3 if there is an Insolvency Event;
- 22.1.4 if there is a change of control of the DPS Supplier within the meaning of section 1124 of the Corporation Tax Act 2010 to which the Council reasonably objects, provided that the Council serves its Termination Notice within six (6) Months of the date on which the DPS Supplier informs the Council (by written notice) of the change of control or on which the Council otherwise becomes aware of the change of control;
- 22.1.5 the Council reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply;

- 22.1.6 the DPS Supplier fails to maintain the organisational and technical ability and capacity to provide the DPS Services as detailed in clause 4.3 (*DPS Supplier's Appointment*);
- 22.1.7 the DPS Supplier commits a breach of clause 13 (*Health and Safety*);
- 22.1.8 the DPS Supplier fails to effect or maintain the Required Insurances under clause 25 (*Insurances*);
- 22.1.9 the DPS Supplier commits a breach of clause 19 (*Confidentiality and Transparency*) or clause 21 (*Data Protection*);
- 22.1.10 the DPS Supplier makes an assignment or novation of this DPS Agreement in breach of clause 28 (*Sub-Contracting, Assignment and Novation*);
- 22.1.11 the DPS Supplier, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;
- 22.1.12 the DPS Supplier fails to maintain its Licences as required in clause 10.1 (*Consents, Licences and Registration*); or
- 22.1.13 the DPS Supplier fails to comply with a Suspension Notice issued pursuant to clause 23.6 (*Suspension*).
- 22.2 Without affecting any other right or remedy available to it, the Council shall be entitled to terminate this DPS Agreement without cause (and without liability to the DPS Supplier) in whole or in part by giving the DPS Supplier not less than thirty (30) calendar days' notice in writing.
- 22.3 Without affecting any other right or remedy available to it, the DPS Supplier shall be entitled to terminate this DPS Agreement (where no Call-Off Contracts have been awarded) without cause (and without liability to the Council) in whole or in part by giving the Council not less than thirty (30) calendar days' notice in writing

## **23. SUSPENSION**

- 23.1 Without prejudice to the Council's rights to terminate this DPS Agreement, if:
  - 23.1.1 a right to suspend arises under clauses 4.3 (*DPS Supplier's Appointment*), 10.4, 10.5 and 10.10 (*Consents, Licences and Registrations*);
  - 23.1.2 the DPS Supplier is in breach of clause 10 (*Consents, Licences and Registrations*), clause 13 (*Health and Safety*), clause 11 (*Reporting and Meetings*) or clause 25 (*Insurances*);
  - 23.1.3 the DPS Supplier uses an unauthorised Driver in breach of clause 9.5.2;
  - 23.1.4 the Council reasonably considers that a breach by the DPS Supplier of

any obligation under this DPS Agreement or any other act or omission committed by the DPS Supplier in respect of any other contract held by them:

23.1.4.1 may create an immediate and serious threat to the health or safety of any passenger;

23.1.4.2 may create a serious reputational risk for the Council; or

23.1.4.3 may result in a material interruption in the provision of any one or more of the DPS Services;

23.1.5 the DPS Supplier is prevented, or will be prevented, from providing the DPS Services due to the termination, suspension, restriction or variation of any necessary consent;

23.1.6 a right to terminate arises under clause 22.1 (in which case the Council may, at its sole discretion, select to suspend the DPS Services or to terminate this DPS Agreement (in whole or in part));

23.1.7 the DPS Supplier commits a material Default in relation to this DPS Agreement;

23.1.8 the DPS Supplier or any Personnel is suspected of having committed a Prohibited Act;

23.1.9 the DPS Supplier's circumstances change at any time during the DPS Agreement, such that any of the exclusion grounds set out in regulation 57 of the Public Contracts Regulations 2015 would apply;

23.1.10 the Council, acting reasonably considers that the circumstances constitute an emergency (which may include, but is not limited to, an event of Force Majeure) affecting the provision of the DPS Services;

23.1.11 the Council acting reasonably, proportionately and in good faith, considers that there are other sufficient grounds to justify the DPS Supplier's suspension,

each a "**Suspension Event**",

the Council may suspend the DPS Supplier's appointment to the DPS (in whole or in part) with immediate effect by giving notice in writing ("**Suspension Notice**") to the DPS Supplier.

23.2 If the Council serves a Suspension Notice on the DPS Supplier in accordance with this clause, the DPS Supplier shall be suspended (in whole or in part) for the period set out in the Suspension Notice or such other period notified to the DPS Supplier by the Council in writing from time to time. During such suspension, the DPS Supplier shall not be eligible to participate in any further Competitions or receive any new Call-Off Contracts.

23.3 A Suspension Notice issued by the Council shall state on the face of it that it is a

Suspension Notice and shall set out the reasons why the Council considers suspension is necessary and include details of any actions or performance improvements required from the DPS Supplier including timescales for such improvement. The DPS Supplier shall be required to comply with the requirements of the Suspension Notice in order to remedy the Suspension Event and within the timescales set out in the Suspension Notice or such other timescale as may be agreed in writing between the Parties, including where the Council's decision to suspend pursuant to clause 23.1 has been referred to dispute resolution under clause 35 (*Dispute Resolution*) of this DPS Agreement.

- 23.4 The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Passengers as a result of the suspension of the DPS Supplier.
- 23.5 Except where suspension occurs by reason of an event of Force Majeure, the DPS Supplier shall indemnify the Council in respect of any Losses directly and reasonably incurred by the Council in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended DPS Services from another party).
- 23.6 In the event that the DPS Supplier fails to comply with the Suspension Notice to the Council's reasonable satisfaction, the Council shall be entitled to terminate this DPS Agreement in accordance with clause 22.1.13 (*Termination*).
- 23.7 The service of a Suspension Notice shall not automatically operate as a notice to terminate or suspend any Call-Off Contract unless otherwise specified by the Council in the Suspension Notice.
- 23.8 Without prejudice to any other provisions of this DPS Agreement, the Council reserves the right to reasonably suspend the issuing of Competitions to any DPS Provider under this DPS Agreement, where a Suspension Notice has been served under a Call-Off Contract or there are concerns about the financial stability of the DPS Supplier (for example, their financial score decreases to a score unacceptable to the Council), the delivery, operation, quality, performance or the management of the DPS Services, and/or protection of Passengers to allow for any investigation or implementation of improvements to the DPS Services. Suspensions will remain in place until such time that the Council is satisfied that concerns have been addressed and improvements are sustainable or that any risks have been minimised. The Council is entitled to suspend the issuing of any Competitions to any DPS Provider where that DPS Provider hands bank any Call-Off Contract within six (6) Months of commencement.
- 23.9 Without prejudice to the other rights or remedies of the Council, if the DPS Supplier receives a Suspension Notice the Council may reasonably increase its monitoring and/or contract management of the DPS Supplier for such period as the Council considers necessary. The DPS Supplier may not increase the Call-Off Contract Charges to take account of any additional monitoring and shall promptly reimburse the Council for any additional direct costs reasonably and necessarily incurred by the Council in respect of any such additional monitoring.
- 23.10 Where a Suspension Notice is served by the Council, the Council may notify the

Participating Authorities and/or any relevant licensing authority of the suspension.

## **24. CONSEQUENCES OF TERMINATION AND EXPIRY**

- 24.1 For the avoidance of doubt, the Council shall be entitled to exercise any of its rights of termination set out in clause 22 (*Termination*) without incurring any penalty or additional costs to the DPS Supplier.
- 24.2 Notwithstanding the service of a notice to terminate this DPS Agreement, the DPS Supplier shall continue to fulfil its obligations under this DPS Agreement until the date of expiry or termination set out in the notice.
- 24.3 The rights of the Council (to terminate or otherwise) under clause 22 (*Termination*) are in addition (and without prejudice) to any other right or remedy which the Council may have to claim the amount of loss or damage suffered by the Council on account of the acts or omissions of the DPS Supplier (or to take any action other than termination of this DPS Agreement).
- 24.4 The service of a notice to terminate this DPS Agreement under clause 22.1 shall (unless specified otherwise by the Participating Authority) operate as a notice to terminate any Call-Off Contracts awarded under this DPS Agreement.
- 24.5 The service of a notice to terminate this DPS Agreement under clauses 22.2 shall not (unless specified otherwise by the Participating Authority) operate as a notice to terminate any Call-Off Contracts awarded under this DPS Agreement.
- 24.6 Expiry of this DPS Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with the Call-Off Contract Terms.
- 24.7 Termination or expiry of this DPS Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this DPS Agreement before such termination or expiry.
- 24.8 The provisions of the following clauses shall survive the termination or expiry of this DPS Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination: clause 1 (*Definitions and Interpretation*); clause 9 (*Warranties, Representations and Guarantees*); clause 14 (*Corrupt Gifts and Fraud*); clause 17 (*Records and Audit Access*); clause 18 (*Publicity and Branding*); clause 19 (*Confidentiality and Transparency*); clause 19.6 and 20 (*Freedom of Information*); clause 21 (*Data Protection*); clause 24 (*Consequences of Termination and Expiry*); clause 25 (*Insurance*); clause 29 (*Third Party Rights*); clause 30 (*Severability*); clause 33 (*Entire Agreement*); clause 35 (*Dispute Resolution*), and clause 37 (*Governing Law and Jurisdiction*).

## **PART 6 – INSURANCE**

### **25. INSURANCE**

- 25.1 The DPS Supplier shall ensure that, in respect of any DPS Services provided by them throughout the duration of this DPS Agreement, they shall effect and

maintain (in their legal name as registered on the DPS) the following insurances with a reputable insurance company in relation to its obligations under this DPS Agreement:

25.1.1 public liability insurance with a limit of indemnity of at least ten million pounds (£10,000,000) in respect of any one (1) occurrence or series of occurrences arising out of the same event;

25.1.2 employers' liability insurance with a limit of at least ten million pounds (£10,000,000) in respect of any one (1) occurrence or series of occurrences arising out of the same event;

25.1.3 motor vehicle insurance with an unlimited liability in respect of death or bodily injury to third parties, including passengers, and five million pounds (£5,000,000) liability in respect of loss of, or damage to property in respect of any one (1) occurrence or series of occurrences arising out of the same event. For DPS Services awarded under the Flag A (Public Bus) (except where the DPS Services are operated under a Section 22 Permit) or where a double decker Vehicle is used an increased level of ten million pounds (£10,000,000) liability in respect of loss of, or damage to property in respect of any one (1) occurrence or series of occurrences arising out of the same event is required;

25.1.4 where relevant, (for example where specialist ambulance or medical transport services are being provided and medical intervention insurance and/or medical malpractice insurance is required for medical professionals engaged in the delivery of the DPS Services) medical indemnity/clinical negligence insurance (medical malpractice) appropriate for the size and scope of their business activities and the DPS Services being delivered. Such insurance shall have a limit of indemnity of not less than two million pounds (£2,000,000) and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the DPS Services hold and maintain appropriate cover;

together the "**Required Insurances**". The cover shall be in respect of all risks which may be incurred by the DPS Supplier, arising out of the DPS Supplier's performance of the DPS Services, 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 DPS Supplier.

25.2 Where the DPS Supplier uses Owner Drivers it shall take out and maintain motor contingent liability insurance to cover the risk of an Owner Driver not holding adequate insurance cover and such insurance liability level shall be no less than five million pounds (£5,000,000) in the aggregate. For DPS Services awarded under the Flag A (Public Bus) or where a double decker vehicle is used this limit is increased to ten million pounds (£10,000,000) in the aggregate.

25.3 Where the DPS Supplier uses Owner Drivers it is the DPS Supplier's responsibility to ensure that its Personnel has the appropriate insurance policies in place before any DPS Services are provided to any Participating Authority and

thereafter reviewed on a regular basis.

## **PART 7 – OTHER PROVISIONS**

### **26. VARIATIONS**

26.1 Any variations to this DPS Agreement (“**Variation**”) and Call-Off Contracts must be made in accordance with the DPS Variation Procedure set out in DPS Schedule 5 (*DPS Variation Procedure*).

### **27. FORCE MAJEURE**

27.1 Neither Party shall be liable to the other for any failure to perform its obligations under this DPS Agreement where such performance is rendered impossible in the circumstances of a Force Majeure Event, but nothing in this clause shall limit the obligations of the DPS Supplier to use its best endeavours to fulfil its obligations under this DPS Agreement.

27.2 A Party cannot claim the relief from liability set out in clause 27.1 if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

### **28. SUB-CONTRACTING, ASSIGNMENT AND NOVATION**

28.1 This DPS Agreement is personal to the DPS Supplier and the DPS Supplier shall not:

28.1.1 assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this DPS Agreement without the prior written consent of the Council;

28.1.2 sub-contract any part of its obligations under the DPS Agreement without the prior written approval of the Council. In addition, where possible, the DPS Supplier may only award a Sub-Contract to a supplier who is currently or who shall join the DPS prior to the award of a Sub-Contract. For the avoidance of doubt, the Sub-Contractor must not be currently suspended from the DPS.

28.2 The parties agree that where a new supplier replaces the DPS Supplier as a consequence of universal or partial succession into the position of the DPS Supplier, following corporate restructuring, takeover, merger, acquisition or insolvency, the Council may agree to the novation of this DPS Agreement to the new supplier, such agreement to be in writing, PROVIDED THAT:

28.2.1 the new supplier fulfils the criteria for qualitative selection initially established during the procurement of this DPS Agreement;

28.2.2 the result of the universal or partial succession does not entail other substantial modifications to the contract; and

28.2.3 the succession complies with Regulation 72 of the Public Contract Regulations 2015.

- 28.3 Subject to clause 28.1.2, with respect to any of the obligations that the DPS Supplier proposes to sub-contract, the DPS Supplier shall provide the Council with full details of:
- 28.3.1 the specific elements of the DPS Services which it proposes to sub-contract;
  - 28.3.2 the scope of the proposed Sub-Contract;
  - 28.3.3 the identity, and, unless the Sub-Contractor is already on the DPS, to the extent known by the DPS Supplier, the qualifications, experience and financial standing of the proposed Sub-Contractor;
  - 28.3.4 unless the Sub-Contractor is already on the DPS, how such arrangements shall enable the DPS Supplier to meet its obligations to provide the DPS Services; and
  - 28.3.5 such further information as the Council may reasonably request.
- 28.4 Where the DPS Supplier enters into a Sub-Contract for the purpose of performing its obligations under this DPS Agreement, it shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due from the DPS Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a valid invoice.
- 28.5 The Council may assign, novate or otherwise dispose of any or all of its rights and obligations under this DPS Agreement and any associated third party licences to any other Contracting Authority or to any other body which substantially performs any of the functions that previously had been performed by the Council and shall give notice of such assignment, novation or disposal to the DPS Supplier.
- 28.6 The DPS Supplier shall enter into such agreement and/or deed as the Council shall reasonably require so as to give effect to any assignment, novation or disposal made pursuant to this clause.
- 28.7 The Council reserves the right to seek reimbursement of its reasonable costs in effecting any novation/Sub-Contract arrangement requested by the DPS Supplier.

## **29. THIRD PARTY RIGHTS**

- 29.1 Except as provided in clauses 3 (*Scope of this DPS Agreement*) and 5 (*Call-Off Order Procedure*), a person who is not a party to this DPS Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this DPS Agreement.
- 29.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this DPS Agreement are not subject to the consent of any other person.

## **30. SEVERABILITY**

- 30.1 If any provision, clause or part-provision of this DPS Agreement is or becomes invalid, illegal or unenforceable for any reason, by any court of competent jurisdiction, such provision 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, clause or part-provision shall be severed and deemed deleted and the remainder of the provisions and clauses hereof shall continue in full force.
- 30.2 If a provision of this DPS Agreement that is fundamental to the accomplishment of the purpose of this DPS Agreement is held to any extent to be invalid, the DPS Supplier and the Council shall immediately commence good faith negotiations to remedy that invalidity.
- 30.3 Any modification to or deletion of a provision, clause or part-provision under this clause shall not affect the validity and enforceability of the rest of this DPS Agreement.

### **31. RIGHTS AND REMEDIES**

- 31.1 Except as expressly provided in this DPS Agreement, the rights and remedies of the Parties provided under this DPS Agreement are in addition to, and not exclusive of, any rights or remedies provided by Law and the rights and remedies under this DPS Agreement shall be cumulative.
- 31.2 Unless a right or remedy of the Council is expressed to be an exclusive right or remedy, the exercise of it by the Council is without prejudice to the Council's other rights and remedies.

### **32. WAIVER**

- 32.1 No failure or delay by a Party to exercise any right or remedy provided under this DPS 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.
- 32.2 The rights and remedies provided by this DPS Agreement may only be waived in writing by the relevant Party in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to in such written notice.

### **33. ENTIRE AGREEMENT**

- 33.1 Without prejudice to clause 9.1.4, this DPS Agreement (including the Schedules) and the documents referred to in it constitutes the entire agreement and understanding 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, provided that nothing in this clause shall operate to exclude any liability for or misrepresentation.
- 33.2 Save as provided for in clause 9 (*Warranties, Representations and Guarantees*), each of the Parties acknowledges and agrees that in entering into this DPS

Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this DPS Agreement.

### **34. NOTICES**

34.1 Any notice given or made under this DPS Agreement shall be in writing and in English and signed by or on behalf of the Party giving it and may be given by:

34.1.1 delivering the notice by hand, in which case the notice shall be deemed to have been duly served at the time it is so delivered or left; or

34.1.2 posting the notice in a pre-paid envelope by first class, special delivery or recorded delivery post, in which case the notice shall be deemed to have been duly served at the time it would be delivered in the ordinary course of that method of posting; or

34.1.3 by email transmission, in which case the notice shall be deemed to have been duly served at the time of transmission.

34.2 For the purpose of clause 34.1, the address of each Party shall be:

34.2.1 For the Council:

Address: [INSERT]  
Telephone: [INSERT]  
Email: [INSERT]  
For the attention of: [the DPS Manager]

with copies to [INSERT]

34.2.2 For the DPS Supplier:

Address: [INSERT]  
Telephone: [INSERT]  
Email: [INSERT]  
For the attention of: [INSERT]

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

### **35. DISPUTE RESOLUTION**

- 35.1 The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this DPS Agreement within twenty (20) Working Days of either Party notifying the other of a dispute.
- 35.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 35.3 The obligations of the Parties under this DPS Agreement and/or any Call-Off Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation pursuant to this clause and the DPS Supplier and its Personnel shall comply fully with the requirements of this DPS Agreement at all times.
- 35.4 If the dispute cannot be resolved by the Parties pursuant to clause 35.1, the Parties shall use their best endeavours in good faith to resolve the dispute by agreement. Such endeavours should include conciliation by an independent person to be agreed between the Parties, or in the case of failure to agree, by a representative of a professional body appropriate in the circumstances of the case. Such an independent person shall be given all information and assistance by the Parties in carrying out his duties, and may be given by agreement between the Parties the duty to recommend or approve terms of settlement between the Parties.
- 35.5 In the event the dispute cannot be resolved by negotiation or conciliation under clause 35.4 within three (3) Months, both parties shall attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- 35.6 If the Parties fail to resolve the dispute by mediation within sixty (60) Working Days of a mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts pursuant to clause 37 (*Governing Law and Jurisdiction*).

## **36. AGENCY AND PARTNERSHIP**

- 36.1 The DPS Supplier is not and shall in no circumstances hold itself out as being the agent of the Council, otherwise than in circumstances expressly permitted by this DPS Agreement.
- 36.2 Nothing in this DPS Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party. Neither Party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party.

## **37. GOVERNING LAW AND JURISDICTION**

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

Wales.

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

## **DPS SCHEDULE 1 – DEFINITIONS**

“Access Agreement”	means an access agreement for the purposes of this DPS Agreement between the Council and an Other Contracting Authority;
“Auditor”	means an auditor appointed by the National Audit Office or the Council or some other body that is required to audit the accounts of the Council including those relating to the Council’s purchase of the DPS Services under this DPS Agreement;
“Authorised Officer”	means the representative(s) of the Council appointed to manage the performance of DPS Suppliers under the DPS (as the same may be replaced or delegate his functions from time to time);
“Award Criteria”	means the award criteria to be applied for Mini Competitions, E-Auctions or Quick Quotes;
“Award Letter”	means the letter sent by the Council to the DPS Supplier confirming their appointment to the DPS and setting out the Categories and/or Flags they have been appointed to;
“Call-Off Contract”	means the legally binding agreement (made pursuant to the provisions of this DPS Agreement) for the provision of the Services made between a Participating Authority and the DPS Supplier comprising a Signed Order Form, the Call-Off Contract Terms, the DPS Governance applicable to the Call-off Contract, the Call-Off Contract Specification, the DPS Supplier’s Submission and such Schedules and other documents as are referred to in the Call-off Contract Terms and / or are expressly incorporated by the signed Order Form;
“Call-Off Contract Charges”	means the charges exclusive of Value Added Tax payable by the relevant Participating Authority in accordance with the relevant Call-Off Contract as specified in the relevant Order Form;
“Call-Off Contract Period”	means the period of any Call-off Contract (as specified in the relevant Order Form);
“Call-Off Order Procedure”	means the ordering procedures specified in clause 5 (Call-Off Order Procedure);

“Call-Off Specification”	Contract	means the description of the DPS Services set out at Call-Off Contract Schedule 2 (DPS Services Specification);
“Call-Off Contract Terms”		means the terms on which the DPS Supplier shall provide the ordered DPS Services to the Participating Authority as set out in DPS Schedule 3 (Call-off Contract Terms) subject to any amendments permitted pursuant to clause 5.3.5 hereof and which, for the avoidance of doubt, shall automatically be bound into the Call-off Contract upon signature of the Order Form by the Participating Authority (after it has been signed by the DPS Supplier);
“Categories”		means DPS service categories as set out in DPS Schedule 2 (DPS Governance) for the DPS and “ <b>Category</b> ” shall be interpreted accordingly;
“Commercially Sensitive Information”		means the Confidential Information identified by the DPS Supplier as being commercially sensitive information relating to the DPS Supplier, its IPR or its business or which the DPS Supplier has indicated to the Council that, if disclosed by the Council, would cause the DPS Supplier significant commercial disadvantage or material financial loss;
“Competition”		means a Mini-Competition, E-Auction or Quick Quotes process being undertaken by a Participating Authority;
“Competition Deadline”		means the deadline for any Competition being undertaken by a Participating Authority;
“Confidential Information”		means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Legislation;
“Contracting Authority”		means any contracting authority as defined in the Regulations including the Council;
“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Special Category Data”, “Personal Data Breach”, “Data Protection Officer”		shall take the meaning given in the UK GDPR;

“Council’s System”	e-Invoicing	<p>means the invoicing system available at the following link: <a href="https://supplier.selfservice.hants.gov.uk">Supplier Self Service   Business and economy   Hampshire County Council (hants.gov.uk)</a></p> <p>or such other replacement system as may be notified by the Council to the DPS Supplier in writing;</p>
“Data Loss Event”		<p>means any event that results, or may result, in unauthorised access to Personal Data held by the DPS Supplier under this DPS Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this DPS Agreement, including any Personal Data Breach;</p>
“Data Protection Assessment”	Impact	<p>means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;</p>
“Data Protection Legislation”		<p>means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and any successor legislation;</p>
“Data Request”	Subject Access	<p>means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;</p>
“Default”		<p>means any breach of the obligations of the DPS Supplier or any other default (including material Default), act, omission, negligence or statement of the DPS Supplier, of its Sub-Contractors or any DPS Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this DPS Agreement and in respect of which the DPS Supplier is liable to the Council;</p>
“Dispute”		<p>means any dispute, difference or question of interpretation arising out of or in connection with this DPS Agreement, including any dispute, difference or question of interpretation relating to the DPS Services, failure to agree in accordance with the DPS Variation Procedure or any matter where this DPS Agreement directs the Parties to resolve an issue by reference to the dispute resolution procedure set out in clause 35;</p>

“DPA 2018”		means the Data Protection Act 2018;
“DPS”		as defined in Recital A;
“DPS Agreement”		means this agreement and all schedules hereto;
“DPS Commencement Date”		means <b>[insert]</b> ;
“DPS Provider”		means any DPS Supplier appointed by the Council as a potential provider of the DPS Services for the relevant Category;
“DPS Services”		means any and all of the services to be provided under the DPS as more particularly described in DPS Schedule 2 ( <i>DPS Governance</i> ) and Call-Off Contract Schedule 2 ( <i>DPS Services Specification</i> );
“DPS Supplier”		means the DPS Provider awarded this DPS Agreement to supply the DPS Services (may also be referred to as Supplier);
“DPS Supplier’s Representatives”	Supplier’s	means the representative(s) of the DPS Supplier appointed to manage the performance of the DPS Services under the DPS. Usually the individual named on the DPS Supplier’s account on the Council’s preferred electronic tendering system and/or the application to join the DPS;
“DPS Supplier’s Submission”		means the successful DPS Supplier’s tender submission submitted in response to a Mini Competition, E-Auction or Quick Quote;
“DPS Term”		as defined in clause 2.1;
“Driver/Drivers”		means a suitably trained competent and qualified person engaged by the DPS Supplier to operate the Vehicle(s) from time to time, as part of the provision of the DPS Services;
“E-Auction”		means a tendering process carried out in relation to the award of a Call-off Contract pursuant to this DPS Agreement in accordance with clauses 5.8 to 5.11 and “ <b>E-Auctions</b> ” shall be interpreted accordingly;
“E-Auction Award Criteria”		means the award criteria to be applied for E-Auctions;
“E-Auction Deadline”		as defined in clause 5.6.3;
“E-Auction Submission”		means a tender submission submitted in response to a E-Auction;

“Environmental Information Regulations”	means the Environmental Information Regulations 2004 together with any guidance and / or codes of practice issues by the Information Commissioner’s Office or relevant Government Department in relation to such regulations;
“Escort/Escorts”	means a suitably trained competent person engaged by the DPS Supplier to accompany the Driver from time to time as specified by the Participating Authority, as part of the provision of the DPS Services. An Escort may also be known as/called a Passenger Assistant;
“Find a Tender Notice”	means the contract notice [Insert reference and date] published on the Find a Tender Service;
“Flag”	means the particular characteristics of the DPS Services that some DPS Suppliers are able to provide as further set out in DPS Schedule 2 ( <i>DPS Governance</i> ) and “ <b>Flags</b> ” shall be interpreted accordingly;
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under the FOIA from time to time together with any guidance and/or codes of practice issued by the Information Commissioner’s Office or relevant Government Department in relation to such legislation;
“Force Majeure Event”	<p>means any circumstance affecting a Party’s performance of its obligations under this DPS Agreement not within a Party’s reasonable control including, without limitation:</p> <p>acts of God, flood, drought, earthquake or other natural disaster;</p> <p>epidemic or pandemic (excluding Covid-19);</p> <p>terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations;</p> <p>nuclear, chemical or biological contamination or sonic boom;</p> <p>any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;</p>

collapse of buildings, fire, explosion or accident; and  
any labour or trade dispute, strikes, industrial action or  
lockouts; and

interruption or failure of utility service

but excluding any industrial dispute relating to the  
DPS Supplier or the Personnel or any other failure in  
the DPS Supplier's supply chain

“Good Industry Practice”

means using standards, practices, methods and  
procedures conforming to the Law and exercising that  
degree of skill and care, diligence, prudence and  
foresight which would reasonably and ordinarily be  
expected from a skilled and experienced person  
engaged as the case may be in the same type of  
undertaking as that of the DPS Supplier under the  
same or similar circumstances at the relevant time for  
such exercise;

“Guidance”

means any guidance issued or updated by the UK  
government or statutory authority from time to time in  
relation to the Regulations;

“Information”

has the meaning given under section 84 of the FOIA;

“Information Commissioner’s  
Office”

means the office of the Information Commissioner,  
being the regulator appointed in the UK as the data  
protection supervisory authority;

“Insolvency Event”

in relation to the DPS Supplier, means:

any arrangement or composition with or for the  
benefit of its creditors (including any voluntary  
arrangement as defined in the Insolvency Act  
1986) being entered into (or, in the case of such  
a voluntary arrangement, being proposed);

a supervisor, receiver, administrator,  
administrative receiver or other encumbrancer of  
a similar nature taking possession of or being  
appointed over or any distress, execution or  
other process being levied or enforced (and not  
being discharged with seven (7) calendar days)  
upon the whole or any material part of the DPS  
Supplier’s assets;

where a court makes an order that the DPS  
Supplier be wound up or a resolution for a  
voluntary winding up of the DPS Supplier is  
passed;

the DPS Supplier ceasing or threatening to cease carrying on business or being or being deemed to be unable to pay its debts when they become due within the meaning of Section 123 of the Insolvency Act 1986;

the DPS Supplier, being an individual(s), has a bankruptcy order made against him or compounds with his creditor or comes to any arrangements with any creditors;

“ITC”		means an invitation to a Competition (Mini-Competition, E-Auction or Quick Quote) issued by a Participating Authority;
“Law”		means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
“Licence”		means all Driver, Vehicle and operator licences issued by the appropriate Regulatory Bodies as further set out in DPS Schedule 2 ( <i>DPS Governance</i> ) and Call-Off Contract Schedule 2 ( <i>DPS Services Specification</i> );
“Losses”		means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and “ <b>Loss</b> ” shall be interpreted accordingly
“Mini-Competition”		means a tendering process carried out in relation to the award of a Call-Off Contract pursuant to this DPS Agreement and “ <b>Mini Competitions</b> ” shall be interpreted accordingly;
“Mini-Competition Criteria”	Award	means the award criteria to be applied for Mini Competitions;
“Mini-Competition Deadline”		as defined in clause 5.6.3;
“Mini-Competition Submission”		means a tender submission submitted in response to a Mini Competition;
“ <b>Month</b> ”		means a calendar month and “ <b>Monthly</b> ” shall be interpreted accordingly;

“Notice of Variation”	as defined in clause b) of DPS Schedule 5 ( <i>DPS Variation Procedure</i> );
“Order Form”	means a document setting out the details of the relevant Call-Off Contract;
“Order Form Specification”	means the Participating Authority’s detailed description of the Services Requirements, as published with the ITC;
“Other Contracting Authority”	means all Participating Authorities except for the Council;
“Owner Driver”	means owner drivers as employees or self-employed drivers using their own vehicles covered by their own insurance policies;
“Parent Company”	shall have the meaning as set out in Section 1162 of the Companies Act 2006;
“Participating Authority”	means the Council and any Contracting Authority identified in the Find a Tender Notice;
<b>"Party"</b>	means the Council or the DPS Supplier and <b>"Parties"</b> shall mean both of them;
“Passengers”	means any person using the DPS Services;
“Personnel”	means all employees, staff, other workers, agents, suppliers, Escorts, Owner Drivers and consultants of the DPS Supplier and of any Sub-Contractors who are engaged in the provision of the DPS Services from time to time
“Prohibited Act”	as defined in clause 14.1;
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;
“Quick Quote”	means a tendering process carried out in relation to the award of a Call-off Contract pursuant to this DPS Agreement in accordance with clauses 5.12 to 5.15 and <b>“Quick Quotes”</b> shall be interpreted accordingly;

“Quick Quote Award Criteria”	means the award criteria to be applied for Quick Quotes;
“Quick Quote Deadline”	as defined in clause 5.6.3;
“Quick Quote Submission”	means a tender submission submitted in response to a Quick Quote;
“Regulations”	means the Public Contracts Regulations 2015 (SI 2015/102);
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees 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 DPS Agreement or any other affairs of the Council and " <b>Regulatory Body</b> " shall be construed accordingly;
“Relevant Categories”	as defined in clause 4.1;
“Relevant Flags”	as defined in clause 4.1;
“Request for Information”	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations relating to this DPS Agreement and “Requests for Information” shall be construed accordingly;
“Required Insurances”	as defined in clause 25.1;
“Selection Questionnaire”	means the selection questionnaire submitted by the DPS Supplier with its Submission;
“Services Requirements”	means the elements of the DPS Services required by the Participating Authority for the particular Call-Off Contract, as described in the Order Form Specification;
“Signed Order Form”	means an Order Form signed by both the DPS Supplier and the relevant Participating Authority as further set out in clause 5.29 above;
“Sub-Contract”	means any contract or agreement (or proposed contract or agreement), other than this DPS Agreement or a Call-Off Contract, pursuant to which a third party provides the DPS Services (or any part of them);

	provides facilities or services necessary for the provision of the DPS Services (or any part of them); and/or
	is responsible for the management, direction or control of the provision of the DPS Services (or any part of them);
“Sub-Contractor”	means any person other than the DPS Supplier, who is a party to a Sub-contract and the servants or agents of that person;
“Sub-Processor”	means any third Party appointed to process Personal Data on behalf of the DPS Supplier related to this DPS Agreement;
“Submission”	means a tender submission submitted in response to a Mini Competition, E-Auction or Quote and “ <b>DPS Supplier’s Submissions</b> ” shall be interpreted accordingly;
“Termination Notice”	means any notice to terminate this DPS Agreement which is given by either Party;
“Transport Manager”	means the individual appointed to manage the DPS Supplier’s operations under a PSV licence;
“UK GDPR”	means Regulation (EU) 2016/679 of the European Parliament and of 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;
“Variation”	as defined in clause 26.1;
“Vehicle/Vehicles”	means the vehicle or vehicles used by the DPS Supplier for the provision of the DPS Services from time to time;
“Working Day”	means any day other than a Saturday, Sunday or public holiday in England and Wales.

## **DPS SCHEDULE 2 - DPS GOVERNANCE**

**DPS SCHEDULE 3 – CALL-OFF CONTRACT TERMS**

## **DPS SCHEDULE 4 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

38. The DPS Supplier shall comply with any further written instructions with respect to processing by the participating authority.
39. Any such further instructions shall be incorporated into this schedule.

### **Description Details**

The subject matter is described within the definitions and descriptions of services in the contract.

### **Duration of the processing**

The data will only be processed for the duration of the contract unless required longer:

1. for retention purposes; or
2. as required by law and in either of those cases as confirmed in writing by the Controller.

### **Nature and purposes of the processing**

Such processing as is necessary to enable the DPS Supplier to comply with obligations under the DPS Agreement to include any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.

The purpose of the processing is the performance of the DPS Supplier's obligations under this DPS Agreement including the performance of functions required or requested by the Council.

### **Type of Personal Data**

#### **Personal/Special Category Data**

Examples here include:

Name,  
Address,  
Date of birth,  
Telephone number,  
Email address,  
Pay,  
Images,  
Health information,  
Biometric data,  
Personal data relating to criminal convictions and offences detail, etc

## **Categories of Data Subject:**

Examples here include:

Staff (including volunteers, agents, and temporary workers),  
Customers/ clients,  
Suppliers,  
Patients,  
Members of the public,  
Users of a particular website,  
Carers or representatives,  
Children under the age of 18, including students and pupils,  
Complainants, enquirers or their representatives,  
Licence and permit holders,  
People captured by CCTV images,  
Professional advisers and consultants,  
Service users and their representatives,  
Persons contracted to provide a service  
Traders and others subject to inspection,  
Representatives of other organisations.

**Plan for return and destruction of the data once the processing is complete  
UNLESS requirement under domestic law to preserve that type of data**

Unless otherwise agreed in writing all personal data is to be destroyed/returned at the end of the contract and confirmation of this is to be provided in writing to the Council.

## **DPS SCHEDULE 5 – DPS VARIATION PROCEDURE**

### **INTRODUCTION**

- a) This DPS Schedule 5 (*DPS Variation Procedure*) details the scope of the Variations permitted and the process to be followed where the Council/Participating Authority proposes a Variation to this DPS Agreement and/or the Call-Off Contract or the DPS Supplier proposes a Variation to a Call-Off Contract.
- b) The Council/Participating Authority or the DPS Supplier may propose a Variation under this DPS Schedule 5 (*DPS Variation Procedure*) only where the Variation does not amount to a material change to the DPS Services.
- c) Details of the Variations which the Council/Participating Authority anticipates may be required throughout the DPS Term are included at Annex 1 to this Schedule.

### **PROCEDURE FOR PROPOSING A VARIATION**

- a) Except where paragraph 0 (Variations that are not permitted) applies, the Council/Participating Authority or the DPS Supplier may propose a Variation using the procedure contained in this paragraph 2 (Procedure for Proposing a Variation).

#### **Procedure for use by the Council/Participating Authority**

- b) In order to propose a Variation, the Council/Participating Authority shall serve each DPS Supplier with written notice of the proposal to vary this DPS Agreement and/or the Call-Off Contract (“**Notice of Variation**”). For the avoidance of doubt, this Notice of Variation may be served by email or on the Council via the Council’s preferred electronic tendering system.
- c) The Notice of Variation shall confirm whether the Variation applies to the DPS Agreement and/or the Call-Off Contract and contain details of the proposed Variation providing sufficient information to allow each DPS Supplier to assess the impact of the Variation.
- d) On receipt of the Notice of Variation, each DPS Supplier has five (5) Working days to respond in writing with any objections to the Variation. In the event of an urgent Variation the Council/Participating Authority may request a shorter timeframe for response.
- e) Where the Council/Participating Authority does not receive any written objections to the Variation within the timescales detailed in paragraph d), the Council/Participating Authority may then serve each DPS Supplier with a written agreement detailing the Variation to be signed and returned by each DPS Supplier within five (5) Working Days of receipt (to include by email or via the Council’s preferred electronic tendering system). In the event of an urgent Variation the Council/Participating Authority may request a shorter timeframe for return.

- f) On receipt of a signed agreement from each DPS Supplier, the Council/Participating Authority shall notify all DPS Suppliers in writing of the commencement date of the Variation.

#### **Procedure for use by the DPS Supplier**

- g) In order to propose a Variation to a Call-Off Contract, the DPS Supplier shall serve the Council/Participating Authority with written notice of the proposal to vary a Call-Off Contract ("**Notice of Variation**"). For the avoidance of doubt, this Notice of Variation may be served by email or on the Council via the Council's preferred electronic tendering system.
- h) The Notice of Variation shall contain details of the proposed Variation to the Call-Off Contract providing sufficient information to allow the Council/Participating Authority to assess the impact of the Variation.
- i) On receipt of the Notice of Variation, the Council/Participating Authority has ten (10) Working days to either agree the Variation or respond in writing with any objections to the Variation. In the event of an urgent Variation the DPS Supplier may request a shorter timeframe for response.
- j) Where the Council/Participating Authority agree the Variation, this shall be confirmed to the DPS Supplier together with confirmation of the commencement date of the Variation. The Council/Participating Authority shall thereafter prepare a written agreement detailing the Variation to be signed and returned by the DPS Supplier to the Council/Participating Authority within ten (10) Working Days of receipt (to include by email or to the Council via the Council's preferred electronic tendering system).
- k) For the avoidance of doubt, any Variation made pursuant to this paragraph 0 (Procedure for Proposing a Variation) need not be executed as a deed provided it is executed by a duly authorised representative of each of the Parties.

#### **OBJECTIONS TO A VARIATION**

- a) In the event that the Council/Participating Authority or DPS Supplier receives one or more written objections to a Variation, the Council/Participating Authority or DPS Supplier may:
  - b) withdraw the proposed Variation; or
  - c) propose an amendment to the Variation.

#### **VARIATIONS THAT ARE NOT PERMITTED**

- a) In addition to the provisions contained in paragraph b), the Council/Participating Authority or DPS Supplier may not propose any Variation that may prevent the Council/Participating Authority or one or more of the DPS Suppliers from performing its obligations under the DPS Agreement and/or Call-Off Contract.

## **ANNEX 1 TO DPS SCHEDULE 5**

### **PERMITTED MODIFICATIONS**

1. As far as is permissible by current legislation, the Council/Participating Authority (as applicable) reserves the right to vary the terms and conditions of the DPS Agreement and/or Call-Off Contracts as set out in the above Schedule. For the avoidance of doubt, such a Variation may include changes:
  - 2.1. to the length of the Call-Off Contract and Call-Off Contract Charges in the circumstances where the Passenger's needs change, may be varied. Such circumstances may include, but not be limited to, where a Passenger requires transport for a fixed period of time for attendance at health appointments but further treatment is then required;
  - 2.2. Vehicle features, including electronic equipment and seating capacity;
  - 2.3. times and routes of journeys;
  - 2.4. fares (to be charged) (where appropriate);
  - 2.5. to take account of climate change/carbon reduction measures required including the introduction of electric or cleaner fuel Vehicles;
  - 2.6. changes in grant funding received by the Council and/or Participating Authority;
  - 2.7. changes to the links with other local transport authorities (for example, to include additional services for neighbouring counties where required);
  - 2.8. changes in the decisions made by the Council and/or Participating Authority (for example, a policy change which is made in relation to the provision of services i.e. no Sunday services);
  - 2.9. introduce the ability to limit the Vehicle size for low passenger numbers to improve the level of omissions.
2. A Call-Off Contract, including the Call-Off Contract Charges, may be modified in the following circumstances (as far as is permissible by current legislation) as to term length, Vehicle features (including electronic equipment and seating capacity), times and routes of journeys, fares to be charged (where appropriate) or any other provision of the DPS Services:
  - 1.1 if the number of Passengers using the Services require a Vehicle or Vehicle(s) of a different capacity or specification to be used;
  - 1.2 to meet changes in Passenger demand and/or requirements and this may include:
    - 1.2.1 a revised timetable with more or fewer journeys or different order of collections/drop offs due to Passenger requirements;
    - 1.2.2 providing transport on additional, fewer or different days;
    - 1.2.3 the inclusion or exclusion of an Escort from the service requirements;
    - 1.2.4 a change in the risk assessment requirements for a Passenger;

- 1.2.5 providing a Vehicle of different capacity and/or specification (for example, a wheelchair accessible vehicle; or
- 1.2.6 providing transport to/from alternative origins and destinations (either temporarily or permanently);
- 1.3 if the route and/or timetable (to include between two destinations or number of pick up points along the route) needs amending for any of the following reasons:
  - 1.3.1 due to a change in opening hours of any destination Passengers are travelling to/from;
  - 1.3.2 to ensure punctuality and reliability are maintained;
  - 1.3.3 to provide transport for the same or a different purpose in the same geographical area;
  - 1.3.4 due to a change in the route set up for example a new housing estate/school being completed along the route or long term roadworks which impact on the service provision; or
  - 1.3.5 circumstances which the Participating Authority could not have foreseen including but not limited to changes in levels of funding, legislation and Participating Authority policy, provided that the Participating Authority shall not require a Variation to be made that falls outside the terms of any licence or other authorisation issued to the DPS Supplier by a competent governmental body unless it is approved by the relevant authorising authority.
- 2. The Council reserves the right to introduce the requirement for DPS Suppliers to provide Performance Bonds or Company Parent Guarantees if the payment requirements of a Call-Off Contract change.