

DPS SCHEDULE 3 - CALL-OFF CONTRACT TERMS

RECITALS

- A. The Participating Authority has followed the call for competition procedure set out in clause 5 of the DPS Agreement (Call-Off Order Procedure) and has awarded this Call-Off Contract to the DPS Supplier by way of Competition.
- B. The Participating Authority issued its Services Requirements for the provision of the DPS Services.
- C. In response to the Services Requirements the DPS Supplier submitted a Call-Off Contract Tender to the Participating Authority through which it provided to the Participating Authority its solution for providing the DPS Services.
- D. On the basis of the Call-Off Contract Tender, the Participating Authority selected the DPS Supplier to provide the DPS Services to the Participating Authority in accordance with the terms of this Call-Off Contract.

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Call-Off Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Call-Off Contract Schedule 1 (*Definitions*) or the relevant Call-Off Contract Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Call-Off Contract Schedule 1 (*Definitions*) or relevant Call-Off Contract Schedule, it shall have the meaning given to it in the DPS Agreement. If no meaning is given to it in the DPS Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Call-Off Contract, unless the context otherwise requires:
 - 1.3.1 clause, Schedule and paragraph headings shall not affect the interpretation of this Call-Off Contract;
 - 1.3.2 the Schedules form part of this Call-Off Contract and shall have effect as if set out in full in the body of the Call-Off Contract. Any reference to this Call-Off Contract includes the Schedules;
 - 1.3.3 references to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
 - 1.3.4 words in the singular includes the plural and vice versa;
 - 1.3.5 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
 - 1.3.6 a reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts;

- 1.3.7 reference to writing or written includes emails;
 - 1.3.8 references to clauses and Schedules are, unless otherwise provision, to the clauses and Schedules of this Call-Off Contract, references to paragraphs are to paragraphs of the relevant Schedule; and
 - 1.3.9 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.4 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of the DPS Agreement and this Call-Off Contract (including any documents thereof), such conflict or inconsistency shall be resolved according to the following order of priority:
- 1.5 the Signed Order Form;
 - 1.6 the Call-Off Contract Terms;
 - 1.7 the Order Form Specification;
 - 1.8 the Call-Off Contract Specification;
 - 1.9 the terms of this DPS Agreement (excluding the Schedules);
 - 1.10 the Schedules to this DPS Agreement;
 - 1.11 any other document referred to in the Call-Off Contract Terms;
 - 1.12 any other document referred to in this DPS Agreement;
 - 1.13 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).
- 1.5 Any permitted changes by the Participating Authority to the Template Call-Off Contract Terms under clause 5 (*Call-Off Order Procedure*) of the DPS Agreement prior to them becoming the Call-Off Contract Terms and the Order Form which comprise this Call-Off Contract shall prevail over the DPS Agreement.

2. CONTRACT PERIOD

- 2.1 This Call-Off Contract shall take effect on the Call-Off Contract Commencement Date and the term of this Call-Off Contract shall be the Call-Off Contract Period.
- 2.2 Where the Participating Authority has specified a Call-Off Contract Extension Period in the Order Form, the Participating Authority may extend this Call-Off Contract for the Call-Off Contract Extension Period by providing written notice to the DPS Supplier before the end of the Initial Call-Off Contract Period. The minimum period for the written notice shall be four weeks or such period which the Participating Authority considers reasonable given the length of the Call-Off Contract.

2.3 In respect of Call-Off Contracts which are awarded in respect of Flag A (Public Bus) the minimum period for the written notice to be provided in accordance with clause 2.2 shall be three (3) Months to enable the DPS Supplier to deregister the services from relevant local authority if the Call-Off Contract is not extended.

3. LICENCES AND REGISTRATIONS

3.1 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 is observed at all times. Failure to comply may result in the Participating Authority terminating this Call-Off Contract in accordance with clause 29.1.1(Termination for breach).

3.2 The DPS Supplier shall notify the Participating Authority in writing within five (5) calendar days of any changes it makes to its Licence arrangements.

3.3 The DPS Supplier shall notify the Participating Authority in writing within five (5) calendar days of any changes made to its Licence by the appropriate licensing body, including curtailment.

3.4 Without prejudice to the Participating Authority's rights and remedies, including but not limited to its termination rights, the Participating Authority may suspend this Call-Off Contract 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 would prevent the operation of any DPS Services in accordance with this Call-Off Contract. The DPS Supplier shall be liable to the Participating Authority for the additional cost incurred by the Participating Authority in providing a replacement service for up to four (4) Months during the period of such suspension or until this Call-Off Contract is terminated under clause 29.1.1(Termination for breach).

3.5 The DPS Supplier shall ensure that any DPS Service awarded under Flag A (Public Bus) is correctly registered with the relevant local authority at all times. Should any Public Bus Service not be properly registered the Participating Authority may suspend or terminate this Call-Off Contract in accordance with clause 29.1.1 (Termination for breach).

3.6 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.

3.7 As and when the DPS Supplier is reasonably required to do so by the Participating Authority (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 Participating Authority, documentary evidence that the Licences required above are properly maintained, but on any occasion the Participating Authority may (but not unreasonably or vexatiously) require to have produced for its inspection the licencing documentation/certificates in question.

3.8 The DPS Supplier shall immediately advise the Participating Authority of any action being taken by the Traffic Commissioner, Driver and Vehicle Standards Agency or other government body/licencing authority.

- 3.9 The DPS Supplier shall, within seven (7) calendar days of a notification in accordance with clause 3.8 provide a full written report of the action being taken to the Participating Authority.
- 3.10 If the DPS Supplier is subject to the action set out in clause 3.8, the Participating Authority shall be entitled to suspend the DPS Supplier in accordance with clause 30.1.1.

4 WARRANTIES AND DUE DILIGENCE

- 4.1 Each Party represents and warrants that:
- 4.1.1 it has full capacity and authority to enter into and to perform this Call-Off Contract;
 - 4.1.2 this Call-Off Contract is executed by its duly authorised representative;
 - 4.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the DPS Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Call-Off Contract; and
 - 4.1.4 its obligations under this Call-Off Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).
- 4.2 Subject to clause 6 (Service Standards), the DPS Supplier represents and warrants to the Participating Authority that:
- 4.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - 4.2.2 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Call-Off Contract;
 - 4.2.3 its execution, delivery and performance of its obligations under this Call-Off Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
 - 4.2.4 as at the Call-Off Contract Commencement Date, all written statements and representations in any written submissions made by the DPS Supplier as part of the procurement process, its Call-Off Contract Tender, Call-Off Contract Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Call-Off Contract;
 - 4.2.5 it has and shall continue to have all necessary rights in and to the Third Party IPR, the DPS Supplier Background IPRs and any other materials made available by the DPS Supplier (and/or any Sub-Contractor) to the

Participating Authority which are necessary for the performance of the DPS Supplier's obligations under this Call-Off Contract including the receipt of the DPS Services by the Participating Authority;

- 4.2.6 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements into systems, data, software or the Participating Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Participating Authority;
 - 4.2.7 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Call-Off Contract;
 - 4.2.8 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the 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 Suppliers assets or revenue; and
 - 4.2.9 for the Call-Off Contract Period and for a period of twelve (12) Months after the termination or expiry of this Call-Off Contract, the DPS Supplier shall not employ or offer employment to any staff of the Participating Authority which have been associated with the provision of the DPS Services without Approval or the prior written consent of the Participating Authority which shall not be unreasonably withheld.
- 4.3 Each of the representations and warranties set out in clauses 4.1 and 4.24.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Call-Off Contract.
- 4.4 If at any time a Party becomes aware that a representation or warranty given by it under clauses 4.1 and 4.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 4.5 For the avoidance of doubt, the fact that any provision within this Call-Off Contract is expressed as a warranty shall not preclude any right of termination the Participating Authority may have in respect of breach of that provision by the DPS Supplier which constitutes a material Default.
- 4.6 The DPS Supplier acknowledges that:
- 4.6.1 the Participating Authority has delivered or made available to the DPS Supplier all of the information and documents that the DPS Supplier considers necessary or relevant for the performance of its obligations under this Call-Off Contract;
 - 4.6.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
 - 4.6.3 it has raised all relevant due diligence questions with the Participating Authority before the Call-Off Contract Commencement Date;

- 4.6.4 it has undertaken all necessary due diligence and has entered into this Call-Off Contract in reliance on its own due diligence alone; and
- 4.6.5 it shall not be excused from the performance of any of its obligations under this Call-Off Contract on the grounds of, nor shall the DPS Supplier be entitled to recover any additional costs or charges, arising as a result of any:
 - 4.6.5.1 misinterpretation of the requirements of the Participating Authority in the Order Form or elsewhere in this Call-Off Contract;
 - 4.6.5.2 failure by the DPS Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
 - 4.6.5.3 failure by the DPS Supplier to undertake its own due diligence.

5. DPS SERVICES

- 5.1 The DPS Supplier shall provide the DPS Services to the Participating Authority with effect from the date specified in the Order Form and for the duration of this Call-Off Contract in accordance with the provisions of this Call-Off Contract.
- 5.2 The DPS Supplier shall ensure that the DPS Services:
 - 5.2.1 comply in all respects with the description of the DPS Services in Call-Off Contract Schedule 2 (DPS Services Specification) or elsewhere in this Call-Off Contract and the Order Form; and
 - 5.2.2 are supplied in accordance with the provisions of the Call-Off Contract Tender.

Undelivered DPS Services

- 5.3 In the event that any of the DPS Services are not delivered in accordance with this clause ("**Undelivered DPS Services**"), the Participating Authority, without prejudice to any other rights and remedies of the Participating Authority howsoever arising, shall be entitled to withhold payment of the applicable Call-Off Contract Charges for the DPS Services that were not so Delivered. For the avoidance of doubt, no invoice should be submitted for any DPS Services which are not Delivered.
- 5.4 The Participating Authority may, at its discretion and without prejudice to any other rights and remedies of the Participating Authority howsoever arising, deem the failure to comply with this clause to be a material Default.

Continuing Obligation to Provide the DPS Services

- 5.5 The DPS Supplier shall continue to perform all of its obligations under this Call-Off Contract and shall not suspend the provision of the DPS Services, notwithstanding:
 - 5.5.1 any withholding or deduction by the Participating Authority of any sum due to the DPS Supplier pursuant to the exercise of a right of the Participating Authority to such withholding or deduction under this Call-Off Contract;
 - 5.5.2 the existence of an unresolved Dispute; and/or

5.5.3 any failure by the Participating Authority to pay any Call-Off Contract Charges.

6. SERVICE STANDARDS

6.1 Without prejudice to clause 4 (Warranties and Due Diligence) and clause 8 (Service Levels and Service Credits), the DPS Supplier warrants that it shall provide the DPS Services, or procure that they are provided:

6.1.1 diligently and with all skill and care as can be reasonably expected of an appropriately qualified and competent provider or contractor experienced in performing the same services and shall perform the DPS Services at all times in compliance with the Participating Authority's requirements set out in this Call-Off Contract including, but not limited to, the Order Form (to include the Order Form Specification);

6.1.2 in all respects in accordance with the Policies (including, when on any premises of the Participating Authority or on any other premises where it works alongside the Participating Authority's staff, any racial discrimination and equal opportunities policies, rules, procedures and the quality standards of the Participating Authority as amended from time to time);

6.1.3 in accordance with all applicable Laws so that the DPS Supplier, its employees and the Vehicles used in the performance of this Call-Off Contract shall comply with all current relevant legislation and regulations;

6.1.4 promptly (and in any event within any time targets as may be set out in the Specifications), strictly in accordance with this Call-Off Contract and the Specifications (which, for the avoidance of doubt, shall include performance in accordance with routes and timetables detailed in the Specifications unless the same have been varied with the express written consent of the Participating Authority's Representative);

6.1.5 (except with the Participating Authority's prior written approval) continuously during the hours set out in the Order Form and Specifications;

6.1.6 in a professional and courteous manner so as to reflect and promote the image of the Participating Authority;

6.1.7 in accordance with Good Industry Practice;

6.1.8 exercising due care in relation to all Passengers carried pursuant to the provision of the DPS Services;

6.1.9 to the Participating Authority's reasonable satisfaction and in accordance with the standards of service and quality assurance set out in the Order Form and Specifications or any revisions or additions thereto from time to time agreed by Change between the Participating Authority and the DPS Supplier;

6.1.10 ensuring that the conduct and operation of the DPS Services does not in any way interrupt or interfere with the provision by the Participating Authority of other services or any other activities carried on elsewhere;

- 6.1.11 complying with any reasonable requirements from time to time made by the Participating Authority in connection with the proper management of the Vehicles used in the provision of the DPS Services (including but not limited to those for keeping the Vehicles and all other equipment, fixtures and fittings in a good state of repair, clean and tidy to the reasonable satisfaction of the Participating Authority) and shall ensure that all Personnel are suitably qualified and/or trained in the running of the Vehicles and in all other aspects of the DPS Services and in particular (but without limitation) in all necessary maintenance and cleaning procedures relating to the Vehicles and all other equipment;
 - 6.1.12 (prior to the commencement of the DPS Services and periodically throughout the Call-Off Contract Period), performing appropriate assessments to identify potential risks to the Personnel and Escorts) and users of the DPS Services (including Passengers) and provide the DPS Services in a manner which is calculated to minimise such risks;
 - 6.1.13 notwithstanding the contents of the Specifications and the Policies, ensuring that in providing the DPS Services it shall comply with any policy statement relating to provision of transport issued from time to time by the Participating Authority;
 - 6.1.14 ensuring that all Vehicles provided for the performance of the DPS Services are occupied only by legitimate Passengers and those persons who are directly involved in the provision of the DPS Services and that no unauthorised persons are allowed on to such a Vehicle without the written consent of the Participating Authority whilst such Vehicles are engaged in the provision of the DPS Services;
 - 6.1.15 ensure that any Documentation provided by the DPS Supplier to the Participating Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
 - 6.1.16 co-operate with the Other Suppliers on the Call-Off Contract Expiry Date for any reason, to enable the timely transition of the supply of the DPS Services (or any of them) to the Participating Authority and/or to any Replacement Supplier;
 - 6.1.17 deliver the DPS Services in an efficient manner; and
 - 6.1.18 gather, collate and provide such information and co-operation as the Participating Authority may reasonably request for the purposes of ascertaining the DPS Suppliers compliance with its obligations under this Call-Off Contract.
- 6.2 Without limiting the general obligation set out in clause 6.1, the DPS Supplier shall (and shall procure that the Personnel shall):
- 6.2.1 perform its obligations under this Call-Off Contract (including those in relation to the DPS Services) in accordance with:
 - 6.2.1.1 all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise); and

- 6.2.1.2 any other policies, requirements and instructions which the Participating Authority reasonably imposes in connection with any equality obligations imposed on the Participating Authority at any time under applicable equality Law;
- 6.2.2 take all necessary steps, and inform the Participating Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or any successor organisation.
- 6.3 The DPS Supplier shall at all times and at its own expense during the period of this Call-Off Contract provide and maintain sufficient machinery, Vehicles, equipment, materials and consumables as are required for the proper and efficient performance of the DPS Services as further set out in the Order Form and Specifications.
- 6.4 The DPS Supplier shall, at its own expense, put, keep and maintain all machinery, Vehicles and equipment in proper repair and condition, in order that it shall perform the DPS Services throughout the life of this Call-Off Contract and comply with all applicable Laws. On request, the DPS Supplier shall provide details of arrangements made for maintenance of all such machinery, Vehicles and equipment, together with a schedule of maintenance completed to the date of request.
- 6.5 The DPS Supplier shall ensure that all Vehicles used in the provision of the DPS Services:
 - 6.5.1 are clean and are maintained in such a serviceable condition that they present a professional image to the public;
 - 6.5.2 have either a current MoT certificate, or the equivalent certificate for PSV Vehicles; and
 - 6.5.3 clearly display the name and address of the DPS Supplier.
- 6.6 The DPS Supplier shall keep all records of the maintenance of any Vehicle(s) being used in the operation of the DPS Services during the terms of this Call-Off Contract and for seven (7) years thereafter. Such records, the maintenance facilities and Vehicles shall be made available for inspection by the Participating Authority in accordance with the provisions of clause 26 (Audit).
- 6.7 Without limiting the general obligation set out in clause 6.1, the DPS Supplier shall (and shall procure that the Personnel shall):
 - 6.7.1 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Call-Off Contract. The DPS Supplier shall also undertake, or refrain from undertaking, such acts as the Participating Authority requests so as to enable the Participating Authority to comply with its obligations under the Human Rights Act 1998; and
 - 6.7.2 not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.
- 6.8 The DPS Supplier shall satisfy itself that no product shall be supplied or used in the supply of the DPS Services to the Participating Authority which shall endanger the health of the Passengers, Personnel or others.

- 6.9 The Participating Authority is committed to using the resources entrusted to it to ensure best value for money at the least possible cost to the environment.
- 6.10 As part of this commitment to the environment, the Participating Authority's policies shall, wherever practicable, focus on specifying less environmentally damaging products, promoting greater use of renewable sources and encouraging suppliers to use environmentally friendly practices in providing the DPS Services.
- 6.11 The DPS Supplier at all times during delivery of the DPS Services shall use its best endeavours to minimise any negative impact upon the environment to include using appropriate recycling facilities for waste products (e.g. petrol, oil etc.).
- 6.12 An obligation on the DPS Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the DPS Supplier to procure that all Sub-Contractors and Personnel also do, or refrain from doing, such act or thing.

7. HEALTH AND SAFETY

- 7.1 The DPS Supplier shall, immediately upon its occurrence, inform the Participating Authority of any incident which has been reported to RIDDOR or any highways incident which has been reported to the police involving Vehicles used in the performance of the DPS Services. Such notification is to be made immediately by telephone and thereafter the DPS Supplier shall provide the Participating Authority with a full written report (including full details of the incident) within seven (7) calendar days of such incident.
- 7.2 The DPS Supplier shall, immediately upon its occurrence, inform the Participating Authority of any accidents (including road traffic or other accidents) or near-misses (including injuries to Passengers) involving Vehicles used in the performance of the DPS Services. Such notification is to be made immediately by telephone and thereafter the DPS Supplier shall provide the Participating Authority with a full written report (including full details of the accident and/or any injury) within seven (7) calendar days of the accident.
- 7.3 The DPS Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, including without limitation the Management of Health and Safety at Work Regulations 1999 (SI 1999/3242) and any other Acts, Regulations and Approved Codes of Practice relating to the health and safety of employees and others who may be affected by the DPS Supplier's work activities) which may apply to Personnel and other persons working in the performance of the Call-Off Contract.
- 7.4 The DPS Supplier shall appoint a person to be responsible for health and safety matters as required by the Health and Safety at Work etc. Act 1974 and the Management of Health and Safety at Work Regulations 1999 (SI 1999/3242).
- 7.5 The DPS Supplier shall have a health and safety policy in place at all times as set out in the Specifications.
- 7.6 The DPS Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Participating Authority on request. The DPS Supplier shall ensure that a copy of its statement of health and safety policy, which has been signed and

dated by the person with overall responsibility for health and safety in the DPS Supplier's organisation, is made available to the Participating Authority on request.

- 7.7 Where the Participating Authority considers that the DPS Supplier's health and safety policy is deficient the Participating Authority's Representative may notify the DPS Supplier of the reasonable revisions required and the DPS Supplier shall as soon as reasonably practicable revise the policy in accordance with such reasonable revisions and send a copy of such revised policy to the Participating Authority.

Risk Assessment Of Routes

- 7.8 Prior to commencing any DPS Services, the DPS Supplier shall carry out a risk assessment of the proposed route, including at bus stops (both formal and informal), road layout, traffic calming features, low bridges, overhanging trees and other factors that may affect the safe operation of the DPS Services or of the types or sizes of Vehicle to be used in the performance of this Call-Off Contract, and shall report any concerns to the Participating Authority prior to commencement of the DPS Service or route variation.
- 7.9 If the DPS Services are being provided under Flag A (Public Bus) or Flag C (Enhanced Quality contracts) then the risk assessment required in clause 7.8 above should be in writing and the route must be physically checked or by using specialist route planning software.
- 7.10 For each Call-Off Contract the DPS Supplier shall carry out a further risk assessment of the route (as set out in clause 7.8 above) annually and prior to any variations to any route and shall report any concerns to the Participating Authority.
- 7.11 For urgent and short term Call-Off Contracts, the DPS Supplier should carry out and maintain a risk assessment of the route and any variations as soon as practicable but not later than one (1) week after the commencement of the Call-Off Contract. The DPS Supplier shall report any concerns to the Participating Authority within one (1) week of the start of the Call-Off Contract or not later than one (1) week following any route variation.
- 7.12 For each Call-Off Contract, should any factor arise following the Call-Off Commencement Date that the DPS Supplier considers may affect the safe operation of this Call-Off Contract, the DPS Supplier shall bring this to the immediate attention of the Participating Authority followed by a written report detailing the circumstances. The Participating Authority shall consider this information and the DPS Supplier shall not compromise the health and safety of its Passengers or employees.
- 7.13 In the event of concerns arising regarding the safe operation of this Call-Off Contract, (including allegations made against the Driver and/or any Escort) the Participating Authority, the DPS Supplier and such other bodies as it may be deemed appropriate to involve at the time shall agree and implement promptly such measures as may be deemed necessary by the Participating Authority to remedy the situation.
- 7.14 The DPS Supplier shall ensure that its Personnel are made aware of all hazards identified by any risk assessment and receive sufficient information and training

to mitigate the associated risk, including those arising from the needs of the Passengers, including boarding or alighting, or from Passenger behaviour.

- 7.15 The DPS Supplier shall keep records of risk assessments and shall make those records available for inspection by the Participating Authority in accordance with clause 26 (Audit).

8. SERVICE LEVELS AND SERVICE CREDITS

- 8.1 Where any DPS Service is stated in the Order Form to be subject to a specific KPI, the DPS Supplier shall provide that DPS Service in such a manner as will ensure that the Achieved KPI in respect of that DPS Service is equal to or higher than the corresponding Target KPI to such specific KPI.
- 8.2 If the existing DPS Services subject to a KPI are varied, Target KPIs for the same will be agreed between the Parties.
- 8.3 The DPS Supplier shall provide monthly reports summarising the Achieved KPIs as provided for in clause 14.5.
- 8.4 In the event that any Achieved KPI falls short of the relevant Target KPI, the Participating Authority shall be entitled to either submit an invoice to the DPS Supplier or make deductions from the Call-Off Contract Charges corresponding to the Service Credit set out in the Order Form Specification.

9. BUSINESS CONTINUITY

- 9.1 The DPS Supplier shall have in place a Business Continuity Plan appropriate to their business size that allows for the continued delivery of the DPS Services following an emergency or disruptive occurrence. A Business Continuity Plan shall set out the procedures and actions to be taken if a disruptive event occurs which affects the services provided to the Participating Authority.
- 9.2 The DPS Supplier shall make copies of its Business Continuity Plan available to the Participating Authority upon request.
- 9.3 The DPS Supplier shall ensure that it is able to implement the provisions of the Business Continuity Plan at any time in accordance with its terms. If the DPS Supplier fails to implement the Business Continuity Plan, the Participating Authority shall be entitled to terminate the Call-Off Contract.
- 9.4 The DPS Supplier shall test the Business Continuity Plan on a regular basis, and in any event at least once every twelve (12) Months. Following each test, the DPS Supplier shall promptly implement any actions or remedial measures which arise as a result of those tests.

10. DISRUPTION

- 10.1 The DPS Supplier shall take reasonable care to ensure that in the performance of its obligations under this Call-Off Contract it does not disrupt the operations of the Participating Authority, its employees or any other contractor employed by the Participating Authority.
- 10.2 The DPS Supplier shall immediately inform the Participating Authority of any actual or potential industrial action, whether such action be by the Personnel or others, which affects or might affect the DPS Supplier's ability at any time to perform its obligations under this Call-Off Contract.

- 10.3 In the event of industrial action by the Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the DPS Services in accordance with its obligations under this Call-Off Contract.
- 10.4 If the DPS Supplier's proposals referred to in clause 10.3 are considered insufficient or unacceptable by the Participating Authority acting reasonably then the Participating Authority may terminate this Call-Off Contract for material Default.

11. CALL-OFF CONTRACT CHARGES AND PAYMENT

- 11.1 In consideration of the performance of the DPS Services the Participating Authority shall pay the Call-Off Contract Charges to the DPS Supplier in accordance with Call-Off Contract Schedule 3 (*Charges and Payment*).
- 11.2 The DPS Supplier may request an increase the Call-Off Contract Charges on an annual basis with effect from each anniversary of the Commencement Date up to or in line with the percentage increase in the Consumer Prices Index in the preceding twelve (12) Month period. If agreed by the Participating Authority, the first such increase shall take effect at the beginning of the second Contract Year and shall be in accordance with the latest available figure for the percentage increase in the Consumer Prices Index at the beginning of the last Month of the previous Contract Year.
- 11.3 Any increase to the Call-Off Contract Charges shall not be retrospective.
- 11.4 The Participating Authority reserves the right to apply a different percentage increase or different indices or combination thereof for any element of the DPS Services. Further, in constrained financial circumstances the Participating Authority may require a reduction in the level (and thus cost) of the DPS Services to ensure that the DPS Services remains affordable for Passengers.
- 11.5 Except as otherwise provided in this Call-Off Contract, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Call-Off Contract.
- 11.6 The DPS Supplier shall invoice the Participating Authority for payment of the Call-Off Contract Charges at the time the Call-Off Contract Charges are expressed to be payable in accordance with Call-Off Contract Schedule 3 (*Charges and Payment*). All invoices shall be directed to the Participating Authority's Representative and shall contain such information as the Participating Authority may inform the DPS Supplier from time to time. Any such invoices shall take into account any Service Credits which have been accrued in the previous period (as applicable).
- 11.7 The Participating Authority shall accept for processing any electronic invoice submitted by the DPS Supplier that complies with the standard on electronic invoicing provided that it is valid and undisputed. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.
- 11.8 The Participating Authority shall pay the DPS Supplier any Call-Off Contract Charges due under any valid and undisputed invoice submitted to it by the DPS Supplier within thirty (30) calendar days.

- 11.9 Where the DPS Supplier enters into a Sub-Contract, the DPS Supplier shall include in that Sub-Contract:
- 11.9.1 provisions having the same effect as clause 11.8 of this Call-Off Contract; and
 - 11.9.2 a provision requiring the counterparty to that Sub-Contract to include in any subcontract which it awards provisions having the same effect as clause 11.8 to 11.9 of this Call-Off Contract.
- 11.10 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 18 (Dispute Resolution). Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until thirty (30) calendar days after resolution of the dispute between the parties.
- 11.11 Subject to clause 11.10, interest shall be payable on the late payment of any undisputed Call-Off Contract Charges properly invoiced under this Call-Off Contract in accordance with clause 11.13. The DPS Supplier shall not suspend the supply of the DPS Services if any payment is overdue.
- 11.12 The Call-Off Contract Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Participating Authority following delivery of a valid VAT invoice. The DPS Supplier shall indemnify the Participating Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Participating Authority at any time in respect of the DPS Supplier's failure to account for, or to pay, any VAT relating to payments made to the DPS Supplier under this Call-Off Contract.
- 11.13 If any sum payable under this Call-Off Contract is not paid within thirty (30) calendar days of the due date, the Party to whom the same is due reserves the right to charge interest from the date due for payment to the actual date of payment in accordance with the Late Payments of Commercial Debts (Interest) Act 1998. No interest shall be payable on any amount that is the subject matter of a bona fide dispute between the Parties.
- 11.14 The DPS Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Participating Authority pursuant to this Call-Off Contract. Such records shall be retained for inspection by the Participating Authority for six years from the end of the Contract Year to which the records relate.
- 11.15 The Participating Authority may at any time, set off any liability of the DPS Supplier to the Participating Authority against any liability of the Participating Authority to the DPS Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Call-Off Contract. Any exercise by the Participating Authority of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Call-Off Contract or otherwise.

12. DPS SUPPLIER PERSONNEL

- 12.1 At all times, the DPS Supplier shall ensure that:

- 12.1.1 each of the Personnel is suitably qualified, adequately trained and capable of providing the applicable DPS Services in respect of which they are engaged as further set out in Call-Off Contract Schedule 2 (*DPS Services Specification*). In addition, the Personnel shall undertake any training reasonably required by the Participating Authority (at the expense of the DPS Supplier);
- 12.1.2 there is an adequate number of Personnel to provide the DPS Services properly (including where Personnel are unable to work due to sickness or have failed to attend);
- 12.1.3 only those people who are authorised by the Participating Authority (under the authorisation procedure to be agreed between the Parties) are involved in providing the DPS Services as Drivers and Escorts (with the exception of DPS Services provided under Flag A (Public Bus));
- 12.1.4 all of the Personnel comply with the Policies;
- 12.1.5 all Personnel wear sufficient identification that specifies they are employees of the DPS Supplier
- 12.2 Any Personnel involved in the driving of Vehicles for the DPS Services shall have a valid driver's licence. The DPS Supplier shall conduct a check of all Personnel's driving licence at least every six (6) Months.
- 12.3 The Participating Authority reserves the right to request the DPS Supplier removes a Driver from providing any or all services based on the number of licence penalty points they have endorsed.
- 12.4 The DPS Supplier should ensure that all Personnel involved in the provision of the DPS Services abide by all conditions on medical fitness imposed by the DVLA or other relevant licensing authority. Where any concern arises over the medical fitness of any Driver providing the DPS Services, the Participating Authority reserves the right to require a medical examination of that Driver and a report on their fitness to undertake provision of the DPS Services to be provided by their GP, at the DPS Supplier's expense.
- 12.5 The Participating Authority reserves the right to check independently the validity of any Licence held by the Personnel, and the DPS Supplier will, on the Participating Authority's request, promptly obtain and provide to the Participating Authority signed forms of consent for such checks from all Personnel who may from time-to-time drive Vehicles in the performance of the DPS Services.
- 12.6 If the Participating Authority reasonably believes that any of the Personnel are unsuitable to undertake work in respect of this Call-Off Contract (to include but not limited to non-compliance with the Policies), it may direct the DPS Supplier to end the involvement in the provision of the DPS Services of the relevant person(s).
- 12.7 The DPS Supplier shall maintain up-to-date personnel records on the Personnel engaged in the provision of the DPS Services and shall provide information to the Participating Authority as the Participating Authority reasonably requests on the Personnel.

12.8 The DPS Supplier shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the DPS Services is at least as good as the prevailing industry norm for similar services, locations and environments.

13. SAFEGUARDING

13.1 The Parties acknowledge that, in respect of some DPS Services, the DPS Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Call-Off Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

13.2 The DPS Supplier shall:

13.2.1 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and

13.2.2 monitor the level and validity of the checks under this clause for each member of staff;

13.2.3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Passengers.

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

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

13.5 The DPS Supplier shall immediately notify the Participating Authority where they receive information or have concerns about any person who is, or has previously carried out services on this DPS, if they pose a risk of harm to passengers (or would have, if such person had not otherwise ceased to carry out the DPS Services). This person must be immediately removed from providing the DPS Services.

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

14. REPORTING AND MEETINGS

14.1 Each Party shall nominate a Representative on the Order Form who will have authority to act on its behalf and contractually bind it in respect of all matters relating to the performance of this Call-Off Contract. The Authorised Representatives will co-ordinate and manage the provision of the DPS Services and work with each other to address any problems that arise in connection with

the DPS Services. Any change to the Representatives will be agreed between the Parties.

- 14.2 The Participating Authority reserves the right to require the DPS Supplier to attend a quarterly meeting (and at any other time as reasonable required by the Participating authority) to monitor and review the performance of this Call-Off Contract, including the achievement of any Target KPIs. Such meetings shall be minuted by the Participating Authority's Representative and copies of those minutes shall be circulated to and approved by both parties. The Participating Authority shall provide at least 5 (five) Working Days' notice of a meeting.
- 14.3 At any meeting, the Parties shall agree a plan to address any problems identified in the performance of the Call-Off Contract. In the event of any problem being unresolved, or a failure to agree on the plan, the procedures set out in clause 28 (Remediation Plan Process) shall apply. Progress in implementing the plan shall be included in the agenda for the next meeting (as applicable).
- 14.4 The Participating Authority may increase the extent to which it monitors the performance of the DPS Services if the DPS Supplier fails to meet any Target KPIs or fails to fulfil its other obligations under this Call-Off Contract. The Participating Authority shall give the DPS Supplier prior notification of its intention to increase the level of its monitoring. The DPS Supplier shall bear its own costs in complying with such enhanced monitoring as is conducted by the Participating Authority pursuant to this clause.
- 14.5 The DPS Supplier shall submit any management reports to the Participating Authority in the form and at the interval reasonably required by the Participating Authority.
- 14.6 In respect of Call-Off Contracts which are awarded in respect of Flag A (Public Bus) the DPS Supplier shall complete and submit a passenger data report (in a suitable format as agreed with the Participating Authority) on a monthly basis:
 - 14.6.1 Revenue collected from tickets issued on the service (by total and category);
 - 14.6.2 Passenger numbers by category and journey taken;
 - 14.6.3 The number of journeys made by passengers using the English National Free Travel Pass broken down; and
 - 14.6.4 Total payment revenue taken.

15. COMPLAINTS

- 15.1 The DPS Supplier shall operate a complaints and suggestions procedure whereby all complaints and suggestions received in connection with the performance of this Call-Off Contract are recorded and investigated.
- 15.2 The DPS Supplier shall provide the Participating Authority with details of all complaints received in connection with the performance of this Call-Off Contract, together with copies or details of the DPS Supplier's responses thereto, within five (5) Working Days of the complaint being received by the DPS Supplier.

- 15.3 Where the Call-Off Contract involves transport to any educational establishment, customers, Passengers and the Participating Authority must be able to contact the DPS Supplier by telephone (not a messaging service) between the hours of 0730hrs and 1730hrs on each day that the Call-Off Contract operates unless transport operates outside these hours in which case the DPS Supplier must also be contactable at these times.

16. MONITORING

- 16.1 The Participating Authority may monitor the performance of the DPS Services by the DPS Supplier.
- 16.2 The DPS Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Participating Authority in carrying out the monitoring referred to in clause 16.1 at no additional charge to the Participating Authority.
- 16.3 The Participating Authority shall carry out checks to ensure that the DPS Services are being provided in accordance with this Call-Off Contract. The DPS Supplier shall allow the Participating Authority to carry out those checks. These checks may include:
- Surveys: The DPS Supplier shall allow the Participating Authority to undertake customer satisfaction surveys as required.
- Monitoring and annual checks: The DPS Supplier shall allow the Participating Authority to carry out these and any other checks applicable to this Call-Off Contract.
- 16.4 The DPS Supplier shall allow the Participating Authority, and their nominated auditors, to have access and right to inspect the premises, Vehicles and records of the DPS Supplier in relation to the operation of this Call-Off Contract, with prior arrangement.
- 16.5 The Participating Authority reserves the right to carry out any other checks that may reasonably be required to ensure that the DPS Services are carried out in accordance with this Call-Off Contract.
- 16.6 The DPS Supplier shall notify the Participating Authority immediately of any breach of this Call-Off Contract setting out the details and reasons for such a breach.
- 16.7 The DPS Supplier shall allow persons authorised by the Participating Authority to conduct inspections, ticket/pass checks, surveys and Passenger interviews and to distribute publicity on board Vehicles used in the performance of this Call-Off Contract, and on any other journeys operated by the DPS Supplier along a similar route. Any journeys made would be without charge on presentation of an appropriate authority to travel.
- 16.8 The DPS Supplier shall allow persons holding a valid authority provided by the Participating Authority to travel without charge on any journey provided under this Call-Off Contract and, by prior agreement with the DPS Supplier, on any related positioning or out of service journeys, subject to the maximum capacity of the Vehicle not being exceeded.

17. VARIATION AND CONTINUOUS IMPROVEMENT

- 17.1 Any requirement for a Variation to the Call-Off Contract must be made in accordance with the DPS Variation Procedure set out in DPS Schedule 5 (DPS Variation Procedure) of the DPS Agreement. For the avoidance of doubt, an exchange of emails will be considered acceptance for the purpose of this clause.
- 17.2 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.
- 17.3 The DPS Supplier shall have an ongoing obligation throughout the Call-Off Contract Period to identify new or potential improvements to the DPS Services in accordance with this clause with a view to reducing the Participating Authority's costs (including the Call-Off Contract Charges) and/or improving the quality and efficiency of the DPS Services and their supply to the Participating Authority. As part of this obligation the DPS Supplier shall identify and report to the Participating Authority once every twelve (12) Months:
- 17.3.1 the emergence of new and evolving relevant technologies which could improve the provision of the DPS Services, and those technological advances potentially available to the DPS Supplier and the Participating Authority which the Parties may wish to adopt;
 - 17.3.2 new or potential improvements to the provision of the DPS Services including the quality, responsiveness, procedures, likely performance mechanisms and customer support services in relation to the DPS Services;
 - 17.3.3 changes in business processes and ways of working that would enable the DPS Services to be provided at lower costs and/or at greater benefits to the Participating Authority; and/or
 - 17.3.4 changes to the sites business processes and ways of working that would enable reductions in the total energy consumed annually in the provision of the DPS Services.
- 17.4 The DPS Supplier shall monitor and shall keep the Participating Authority informed in writing of any changes in the Law which may impact the DPS Services and shall provide the Participating Authority with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes. The DPS Supplier shall only implement such changes in accordance with the DPS Variation Procedure.
- 17.5 The DPS Supplier shall neither be relieved of its obligations to supply the DPS Services in accordance with the terms of this Call-Off Contract nor be entitled to an increase in the Call-Off Contract Charges as the result of a General Change in Law.

18. DISPUTE RESOLUTION

- 18.1 If a Dispute arises out of or in connection with this Call-Off Contract or the performance, validity or enforceability of it ("Dispute") then the parties shall follow the procedure set out in this clause:

- 18.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (“Dispute Notice”), together with relevant supporting documents. On service of the Dispute Notice, the Participating Authority and the DPS Supplier shall attempt in good faith to resolve the Dispute;
- 18.1.2 if the Participating Authority and the DPS Supplier are for any reason unable to resolve the Dispute within thirty (30) calendar days of service of the Dispute Notice, the Dispute shall be referred to the senior manager of the DPS Supplier and the senior manager of the Participating Authority who shall attempt in good faith to resolve it; and
- 18.1.3 if the senior manager of the DPS Supplier and the senior manager of the Participating Authority are for any reason unable to resolve the Dispute within thirty (30) calendar days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than fourteen (14) calendar days after the date of the ADR notice.
- 18.2 No Party may commence any court proceedings (in relation to the whole or part of the Dispute until fourteen (14) calendar days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 18.3 If the Dispute is not resolved within fourteen (14) calendar days after service of the ADR notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of fourteen (14) calendar days, or the mediation terminates before the expiration of the said period of fourteen (14) calendar days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 45 (Governing Law and Jurisdiction).

19. RE-TENDER/TUPE AND HANDOVER

- 19.1 The Parties agree that the provisions of Call-Off Contract Schedule 5 (*Staff Transfer and TUPE*) shall apply to any Relevant Transfer of staff under this Call-Off Contract.
- 19.2 The DPS Supplier shall provide the Participating Authority with the information set out in Call-Off Contract Schedule 5 (*Staff Transfer and TUPE*) and such other information and data as the Participating Authority may reasonably require to enable it to prepare the necessary documentation to carry out a procurement process or to appoint a Replacement Supplier to provide the DPS Services in place of the DPS Supplier.

20. SUB-CONTRACTING

- 20.1 The DPS Supplier shall not sub-contract any part of its obligations to perform the DPS Services without the prior written approval of the Participating Authority. 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.

- 20.2 The DPS Supplier acknowledges that the Participating Authority giving the DPS Supplier consent to sub-contract will not relieve the DPS Supplier of its obligations under this Call-Off Contract and that the DPS Supplier will be responsible for the acts, omissions, defaults and neglect of any Sub-Contractor or any employee, agent or servant of any such Sub-Contractor, as if they were the DPS Supplier's own acts, omissions, defaults and neglect. This will be the case even if as a condition of the Participating Authority giving consent, the Participating Authority requires the DPS Supplier to agree directly that it will carry out all the DPS Supplier's obligations under this Call-Off Contract.
- 20.3 Subject to clause 20.1, with respect to any of the obligations that the DPS Supplier proposes to sub-contract, the DPS Supplier shall provide the Participating Authority with full details of:
- 20.3.1 the specific elements of the DPS Services which it proposes to sub-contract;
 - 20.3.2 the scope of the proposed Sub-Contract;
 - 20.3.3 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;
 - 20.3.4 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
 - 20.3.5 such further information as the Participating Authority may reasonably request.
- 20.4 Where the DPS Supplier sub-contracts any of its obligations under this Call-Off Contract, the DPS Supplier shall remain the Participating Authority's sole point of contact for all matters falling within the scope of this Call-Off Contract and shall procure that each Sub-Contractor complies with and is bound by the requirements of this Call-Off Contract as they apply to the DPS Supplier.
- 20.5 The DPS Supplier shall procure that the Participating Authority and/or its auditors are permitted to review the financial records and data security policies of each approved Sub-Contractor to the extent relevant to the performance of the DPS Services.
- 20.6 Where the DPS Supplier enters into a Sub-Contract in connection with the DPS Services it shall impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Call-Off Contract and shall procure that the Sub-Contractor complies with such terms.
- 20.7 The use of agency staff by the DPS Supplier for the provision of any element of the DPS Services will not constitute sub-contracting for the purposes of this clause, as the DPS Supplier will remain solely responsible for the delivery of

the DPS Services and the agency staff will be working under the DPS Supplier's supervision, instruction and direction. Without prejudice to any other provisions of this Call-Off Contract, the DPS Supplier shall ensure and shall satisfy itself that any agency workers used by the DPS Supplier have the necessary employment and Disclosure and Barring Service checks, training, skills and expertise to deliver the DPS Services on behalf of the DPS Supplier. The DPS Supplier will, under the principles of best practice, work to ensure that its use of agency staff kept to a minimum level.

21. LIABILITY AND INDEMNITY

- 21.1 Subject to clause 21.2, the DPS Supplier shall indemnify and keep indemnified the Participating Authority against all actions, proceedings, claims, demands, liabilities, costs, expenses, damages and losses whatsoever whether arising in tort (including negligence) default or breach of contract, including but without limitation:
- 21.1.1 the DPS Supplier's breach or negligent performance or non-performance of this Call-Off Contract;
 - 21.1.2 any claim made against the Participating Authority arising out of or in connection with the provision of the DPS Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Call-Off Contract by the DPS Supplier or Personnel;
 - 21.1.3 the enforcement of this Call-Off Contract;
 - 21.1.4 any breach of the warranties contained in clause 4;
 - 21.1.5 any breach of its obligations set out in clause 24 (Data Protection) and clause 25 (Confidentiality);
 - 21.1.6 any claim made by any employee or agent of the DPS Supplier, whether as to the terms of employment or any other matter;
 - 21.1.7 any breach of its obligations as set out in clause 13 (Safeguarding) and clause 12 (DPS Supplier's Staff);
- 21.2 The indemnity under clause 21.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Participating Authority are directly caused (or directly arise) from the negligence or breach of this Call-Off Contract by the Participating Authority.
- 21.3 Subject to clauses 21.5.1 and 21.6, neither Party shall be liable to the other Party (as far as permitted by Law) for indirect special or consequential loss or damage in connection with this Call-Off Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, use, goodwill or business opportunities whether direct or indirect.
- 21.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other Party pursuant to this Call-Off Contract.

21.5 Subject to clause 21.6, the DPS Supplier's total aggregate liability:

21.5.1 is unlimited in respect of:

21.5.1.1 the indemnities in clause 24 (*Data Protection*), clause 27 (*Intellectual Property Rights*) and Call-Off Contract Schedule 5 (*Staff Transfer and TUPE*);

21.5.1.2 the DPS Supplier's wilful default.

21.5.2 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Call-Off Contract (other than a failure to pay any of the Agreement Price that is properly due and payable and for which the Participating Authority shall remain fully liable), shall in no event exceed the sums referred to in clause 22.1 below in each Agreement Year.

21.6 Notwithstanding any other provision of this Call-Off Contract neither Party limits or excludes its liability for:

21.6.1 Fraud or fraudulent misrepresentation;

21.6.2 death or personal injury caused by its negligence, or that of its staff, agents or Sub-Contractors;

21.6.3 breach of any obligation as to title implied by statute; or

21.6.4 any other act or omission, liability for which may not be limited under any applicable Law.

21.7 Notwithstanding any other clause of this Call-Off Contract the DPS Supplier's liability to the Participating Authority arising out of this Call-Off Contract, whether in contract, tort (including negligence) pursuant to statute or otherwise including by way of indemnity, shall not exceed the sums referred to in clause 21.5 providing that such limitation of liability shall not apply to an amount received under an insurance policy taken out and maintained by the DPS Supplier up to the minimum amount specified pursuant to clauses within this Contract where such amount received exceeds the sum referred to in clause 21.5.

21.8 Nothing in this Call-Off Contract shall impose any liability on the Participating Authority in respect of any liability incurred by the DPS Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Participating Authority to the DPS Supplier that may arise by virtue of either a breach of the Call-Off Contract or by negligence on the part of the Participating Authority or the Participating Authority's employees, servants or agents.

21.9 Where the DPS Supplier comprises more than one person the obligations and liabilities of the DPS Supplier under this Call-Off Contract shall be the joint and several obligations of those persons comprised in the DPS Supplier.

22. INSURANCE

- 22.1 The DPS Supplier shall at its own cost effect and maintain (in their legal name as registered on the DPS) with reputable insurance companies insurance policies to cover its liabilities under this Call-Off Contract providing as a minimum the following levels of cover:
- 22.1.1 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 from the same event;
 - 22.1.2 employer's 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 from the same event;
 - 22.1.3 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 occurrence arising out of the same event is required;
 - 22.1.4 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 Call-Off Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the DPS Supplier.
- 22.2 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 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.
- 22.3 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 the Participating Authority and thereafter reviewed on a regular basis.

- 22.4 In addition, the DPS Supplier shall give the Participating Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 22.5 If, for whatever reason, the DPS Supplier fails to give effect to and maintain the Required Insurances, the Participating Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the DPS Supplier.
- 22.6 The terms of any insurance or the amount of cover shall not relieve the DPS Supplier of any liabilities under the Call-Off Contract.
- 22.7 The DPS Supplier shall hold and maintain the insurances referred to in clause 22.1.4 for a minimum of six years following expiry or earlier termination of the Call-Off Contract.
- 22.8 Where a DPS Supplier ceases to trade, "run off" cover should be purchased and maintained for a minimum of six years following the expiry or early termination of the Call-Off Contract for the insurances referred to in clause 22.1.4.

23. FREEDOM OF INFORMATION

- 23.1 The DPS Supplier acknowledges that the Participating Authority is subject to the requirements of the FOIA and the EIR. The DPS Supplier shall:
 - 23.1.1 provide all necessary assistance and cooperation as reasonably requested by the Participating Authority to enable the Participating Authority to comply with its obligations under the FOIA and EIR;
 - 23.1.2 transfer to the Participating Authority all Requests for Information relating to this Call-Off Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - 23.1.3 provide the Participating Authority with a copy of all Information belonging to the Participating Authority requested in the Request for Information which is in its possession or control in the form that the Participating Authority requires within five (5) Working Days (or such other period as the Participating Authority may reasonably specify) of the Participating Authority's request for such Information; and
 - 23.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Participating Authority.
- 23.2 The DPS Supplier acknowledges that the Participating Authority 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 Participating Authority 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 Call-Off Contract) the Participating Authority 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.

- 23.3 Notwithstanding any other term of this Call-Off Contract, the DPS Supplier consents to the publication of this Call-Off Contract in its entirety (including variations), subject only to the redaction of information that the Participating Authority considers is exempt from disclosure in accordance with the provisions of the FOIA and EIR.
- 23.4 The Participating Authority 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 Participating Authority to enable the Participating Authority to publish this Call-Off Contract.

24. DATA PROTECTION

- 24.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Participating Authority is the Controller and the DPS Supplier is the Processor. The only processing that the DPS Supplier is authorised to do is listed in Call-Off Contract Schedule 4 (*Processing, Personal Data and Data Subjects*) by the Participating Authority and may not be determined by the DPS Supplier.
- 24.2 The DPS Supplier shall notify the Participating Authority immediately if it considers that any of the Participating Authority's instructions infringe the Data Protection Legislation.
- 24.3 The DPS Supplier shall provide all reasonable assistance to the Participating Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing.
- 24.4 The DPS Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Call-Off Contract:
 - 24.4.1 process that Personal Data only in accordance with Call-Off Contract 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 Participating Authority before processing the Personal Data unless such notification is prohibited by Law;
 - 24.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Participating Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - 24.4.2.1 nature of the data to be protected;
 - 24.4.2.2 harm that might result from a Data Loss Event;
 - 24.4.2.3 state of technological development; and
 - 24.4.2.4 cost of implementing any measures;

24.4.3 ensure that:

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

24.4.3.2 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:

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

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

24.4.3.2.3 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 Participating Authority or as otherwise permitted by this Call-Off Contract; and

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

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

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

24.5 Subject to clause 24.6, the DPS Supplier shall notify the Participating Authority immediately if it:

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

24.5.2 receives a request to rectify, block or erase any Personal Data;

24.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

24.5.4 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;

- 24.5.5 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
- 24.5.6 becomes aware of a Data Loss Event.
- 24.6 Taking into account the nature of the processing, the DPS Supplier shall provide the Participating Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 24.5 (and insofar as possible within the timescales reasonably required by the Participating Authority).
- 24.7 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:
- 24.7.1 the Participating Authority determines that the processing is not occasional;
- 24.7.2 the Participating Authority 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
- 24.7.3 the Participating Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 24.8 The DPS Supplier shall allow for audits of its data processing activity by the Participating Authority or the Participating Authority's designated auditor.
- 24.9 The DPS Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 24.10 Before allowing any Sub-Processor to process any Personal Data related to this Call-Off Contract, the DPS Supplier must:
- 24.10.1 notify the Participating Authority in writing of the intended Sub-Processor and processing;
- 24.10.2 obtain the written consent of the Participating Authority;
- 24.10.3 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
- 24.10.4 provide the Participating Authority with such information regarding the Sub-Processor as the Participating Authority may reasonably require.
- 24.11 The DPS Supplier shall remain fully liable for all acts or omissions of any Sub-Processor.

- 24.12 The DPS Supplier agrees to indemnify the Participating Authority against all losses, claims, liabilities costs and expenses (including reasonable legal costs) that the Participating Authority 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.
- 24.13 The Participating Authority 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).
- 24.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Participating Authority 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.

25. CONFIDENTIALITY AND TRANSPARENCY

- 25.1 The term "Confidential Information" does not include any information that:
- 25.1.1 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
 - 25.1.2 was available to the receiving Party on a non-confidential basis prior to disclosure by the disclosing Party; or
 - 25.1.3 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
 - 25.1.4 was known to the receiving Party before the information was disclosed to it by the disclosing Party; or
 - 25.1.5 the Parties agree in writing is not.
- 25.2 Each Party shall keep the other Party's Confidential Information confidential and shall not:
- 25.2.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Call-Off Contract ("Permitted Purpose"); or
 - 25.2.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.

- 25.3 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:
- 25.3.1 it informs such representatives of the confidential nature of the Confidential Information prior to disclosure; and
 - 25.3.2 at all times, it is responsible for such representatives' compliance with the confidentiality obligations set out in this clause.
- 25.4 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 Participating Authority's obligations under the FOIA and Data Protection Legislation as set out in clauses 23 (Freedom of Information/Transparency) and 24 (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.
- 25.5 The Participating Authority, 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 Call-Off Contract, the Participating Authority shall be entitled to publish this Call-Off Contract in whole or in part (including from time to time any agreed changes to the Call-Off Contract), in whatever form the Participating Authority may decide. The DPS Supplier further agrees that the Participating Authority may publish any payments made by the Participating Authority to the DPS Supplier under this Call-Off Contract.
- 25.6 The DPS Supplier acknowledges that the Participating Authority may, during the Call-Off Contract Period, be required by Law to publish certain information in relation to the DPS Supplier's performance against any KPIs as set out in the Order Form and where applicable any breach of the Call-Off Contract by the DPS Supplier and/or termination of the Call-Off Contract. The DPS Supplier shall render such assistance and co-operate with the Participating Authority to enable such publication; however, the Participating Authority shall, at its sole discretion, determine the information and data that it is required to publish and whether there is any confidential or commercially sensitive information to be redacted prior to publication.
- 25.7 On termination of this Call-Off Contract, each Party shall:
- 25.7.1 return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
 - 25.7.2 erase all the other Party's Confidential Information from its computer systems (to the extent possible); and
 - 25.7.3 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.

- 25.8 The DPS Supplier shall procure that each Sub-Contractor used by it in the provision of the DPS Services under this Call-Off Contract executes a confidentiality undertaking in a form approved by the Participating Authority. The DPS Supplier shall immediately notify the Participating Authority of any notification it receives from a party to such an undertaking that it believes there to have been a disclosure of such information or of any reasonable suspicion it has that there has been a breach of such an undertaking.
- 25.9 The provisions of this clause shall survive for a period of six (6) years from termination of this Call-Off Contract.

26. AUDIT

- 26.1 The Participating Authority reserves the right to audit the DPS Supplier's compliance with its obligations under this Call-Off Contract and the DPS Supplier must allow for audits by the Participating Authority or the Participating Authority's designated auditor.
- 26.2 The Participating Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the DPS Supplier that the Participating Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the DPS Supplier or delay performance of its obligations under the Call-Off Contract.
- 26.3 Subject to the Participating Authority's obligations of confidentiality, the DPS Supplier shall on demand provide the Participating Authority and the Participating Authority's auditors with all reasonable cooperation and assistance (and shall procure such co-operation and assistance from its Sub-Contractors) in relation to each audit, including:
- 26.3.1 all information requested by the Participating Authority within the permitted scope of the audit;
 - 26.3.2 reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of its obligations under the Call-Off Contract;
 - 26.3.3 access to the DPS Supplier's systems; and
 - 26.3.4 access to Personnel.
- 26.4 The DPS Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the DPS Supplier's performance of its obligations under the Call-Off Contract against the applicable performance indicators at a level of detail sufficient to verify compliance with the performance indicators.

- 26.5 The Participating Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention to conduct an audit.
- 26.6 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 identifies a material Default by the DPS Supplier, in which case the DPS Supplier shall reimburse the Participating Authority for all the Participating Authority's reasonable costs incurred in connection with the audit.

27. INTELLECTUAL PROPERTY

- 27.1 In the absence of prior written agreement by the Participating Authority to the contrary, all Intellectual Property Rights created by the DPS Supplier or Personnel:
- 27.1.1 in the course of performing the DPS Services; or
- 27.1.2 exclusively for the purpose of performing the DPS Services,
- shall vest in the Participating Authority on creation.
- 27.2 The DPS Supplier shall indemnify the Participating Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the DPS Services, except to the extent that they have been caused by or contributed to by the Participating Authority's acts or omissions.

28. REMEDIATION PLAN PROCESS

- 28.1 The Participating Authority's Representative may investigate any case where the DPS Supplier has or appears to have, in the Participating Authority's reasonable opinion, committed a Default.
- 28.2 Subject to clause 28.3, if the Participating Authority considers that the DPS Supplier has committed a Default and the Default is, in the reasonable opinion of the Participating Authority, capable of remedy, the Participating Authority may not terminate this Call-Off Contract without first operating the Remediation Plan Process. If the DPS Supplier commits such a default, the Participating Authority shall give notice to the DPS Supplier which shall specify the Default in outline and the actions the DPS Supplier needs to take with respect to remedying the Default (a "Remediation Notice").
- 28.3 The Participating Authority shall be under no obligation to initiate the Remediation Plan Process described in this clause if it issues a notice to terminate this Call-Off Contract pursuant to clause 29.1 in the circumstances set out in clauses 29.1.1 and 29.1.3.
- 28.4 Within five (5) Working Days of receipt of a Remediation Notice, the DPS Supplier shall:
- 28.4.1 submit a draft Remediation Plan, even if it disputes that it is responsible for the matters which are the subject of the Remediation Notice; or

- 28.4.2 inform the Participating Authority that it does not intend to submit a Remediation Plan, in which event the Participating Authority shall be entitled to serve a Termination Notice.
- 28.5 The Participating Authority shall either approve the draft Remediation Plan within five (5) Working Days of its receipt pursuant to clause 28.4.1, or it shall inform the DPS Supplier why it cannot accept the draft Remediation Plan together with an explanation as to why it cannot accept it. In the latter circumstance, the DPS Supplier shall address all such concerns in a revised Remediation Plan, which it shall submit to the Participating Authority within five (5) Working Days of its receipt of the Participating Authority's comments. If no such notice is given, the DPS Supplier's draft Remediation Plan shall be deemed to be agreed.
- 28.6 Once agreed, the Remediation Plan shall form part of the Call-Off Contract and shall be subject to the terms and conditions of the Call-Off Contract and the DPS Supplier shall immediately start work on the actions set out in the Remediation Plan.
- 28.7 If, despite the measures taken under clause 28.5, a Remediation Plan cannot be agreed within ten (10) Working Days then the Participating Authority may elect to end the Remediation Plan Process and serve a Termination Notice.
- 28.8 If a Remediation Plan is agreed between the Parties, but the DPS Supplier fails to implement or successfully complete the Remediation Plan by the required completion date, the Participating Authority may:
- 28.8.1 terminate this Call-Off Contract by serving a Termination Notice;
 - 28.8.2 give the DPS Supplier a further opportunity to resume full implementation of the Remediation Plan;
 - 28.8.3 take action to rectify the Default itself (including instructing an alternative supplier to remedy the same) and recover its additional costs of doing so from the DPS Supplier as a debt and without prejudice to any other of its rights under this Call-Off Contract; or
 - 28.8.4 refer the matter for resolution under clause 18 (Dispute Resolution).
- 28.9 The Participating Authority shall not be obliged to follow the Remediation Plan Process if there is a repetition of substantially the same default by the DPS Supplier as had previously been addressed in a Remediation Plan within a period of twelve (12) Months following the conclusion of such previous Remediation Plan. In such event, the Participating Authority may serve a Termination Notice.

29. TERMINATION

- 29.1 Without affecting any other right or remedy available to it, and subject to clause 28, the Participating Authority may terminate this Call-Off Contract 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:
- 29.1.1 where the DPS Supplier commits a material Default and the DPS Supplier has not remedied the material Default to the satisfaction of the Participating Authority within twenty (20) Working Days, or such other

- period as may be specified by the Participating Authority, after issue of a written notice specifying the material Default and requesting it to be remedied;
- 29.1.2 if the DPS Supplier is in material Default of this Call-Off Contract, which is irremediable;
 - 29.1.3 the Participating Authority reasonably considers that a breach by the DPS Supplier of any obligation under this Call-Off Contract:
 - 29.1.3.1 may create an immediate and serious threat to the health or safety of any passenger;
 - 29.1.3.2 may create a serious reputational risk for the Participating Authority; or
 - 29.1.3.3 may result in a material interruption in the provision of any one or more of the DPS Services;
 - 29.1.4 the parties fail to agree the Remediation Plan in accordance with the Remediation Plan Process;
 - 29.1.5 the DPS Supplier fails to implement or successfully complete the Remediation Plan in accordance with the Remediation Plan Process;
 - 29.1.6 the circumstances referred to in clause 28.7 (*Remediation Plan Process*) occur;
 - 29.1.7 if there is an Insolvency Event;
 - 29.1.8 if the Participating Authority elects to terminate pursuant to clause 32.6.2;
 - 29.1.9 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 Participating Authority reasonably objects, provided that the Participating Authority serves its Termination Notice within six (6) Months of the date on which the DPS Supplier informs the Participating Authority (by written notice) of the change of control or on which the Participating Authority otherwise becomes aware of the change of control;
 - 29.1.10 the Participating Authority reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply;
 - 29.1.11 the DPS Supplier commits a breach of clause 7 (*Health and Safety*) or fails to implement its Business Continuity Plan in accordance with clause 9;
 - 29.1.12 the DPS Supplier fails to effect or maintain the Required Insurances under clause 22 (*Insurances*);
 - 29.1.13 the DPS Supplier commits a breach of clause 24 (*Data Processing*) or clause 25 (*Confidentiality and Transparency*);
 - 29.1.14 the DPS Supplier fails to comply with or breaches clause 13 (*Safeguarding*) or clause 33 (*Social Responsibility and Prevent*);

- 29.1.15 the DPS Supplier makes an assignment or novation of this Call-Off Contract in breach of clause 41 (*Assignment and Other Dealings*) or sub-contracts 20 (*Sub-Contracting*);
 - 29.1.16 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;
 - 29.1.17 the DPS Supplier fails to maintain its Licences as required in clause 3.1 (*Licences and Registration*);
 - 29.1.18 the DPS Supplier fails to comply with a Suspension Notice issued pursuant to clause 30 (*Suspension*); or
 - 29.1.19 the Participating Authority concludes that a Passenger's needs change significantly and cannot be met by the DPS Supplier including (but not limited to) a need for a wheelchair accessible Vehicle or a Passenger's medical needs change and a more highly qualified Driver is required.
- 29.2 Either party may, during the continuance of a Force Majeure Event, terminate this Call-Off Contract if the circumstances in clause 31 arise.
- 29.3 Without affecting any other right or remedy available to it, the Participating Authority shall be entitled to terminate this Call-Off Contract 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.
- 29.4 The Participating Authority may terminate a Call-Off Contract (in whole or part) that is specified by the Participating Authority as being a Call-Off Contract for Adult and Children's Services social care and Educational Inclusion Service requirements at its sole discretion and without cause and liability to the DPS Supplier with twenty four (24) hours' notice. For the avoidance of any doubt should this Call-Off Contract be terminated pursuant to this clause no compensation will become due or payable to the DPS Supplier.
- 29.5 Without affecting any other right or remedy available to it, the DPS Supplier shall be entitled to terminate this Call-Off Contract without cause (and without liability to the Participating Authority) in whole or in part by giving the Participating Authority not less than thirty (30) calendar days' notice in writing. Where the Call-Off Contract is awarded in respect of Flag A (Public Bus) or Flag C (Enhanced Quality contracts) the notice given by the DPS Supplier in respect of this clause shall be not less than three (3) Months' notice in writing.

30. SUSPENSION

- 30.1 Without prejudice to the Participating Authority's rights to terminate this Call-Off Contract, if:
- 30.1.1 a right to suspend arises under clauses 3.4 and 3.10 (*Licences and Registrations*),
 - 30.1.2 the DPS Supplier is in breach of clause 3 (*Licences and Registrations*), clause 7 (*Health and Safety*), clause 13 (*Safeguarding*), clause 22 (*Insurances*);

- 30.1.3 the DPS Supplier uses personnel in breach of clause 12.1 (*DPS Supplier Personnel*);
- 30.1.4 the Participating Authority reasonably considers that a breach by the DPS Supplier of any obligation under this Call-Off Contract:
 - 30.1.4.1 may create an immediate and serious threat to the health or safety of any passenger;
 - 30.1.4.2 may create a serious reputational risk for the Participating Authority; or
 - 30.1.4.3 may result in a material interruption in the provision of any one or more of the DPS Services;
- 30.1.5 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;
- 30.1.6 a right to terminate arises under clause 29.1 (in which case the Participating Authority may, at its sole discretion, select to suspend the DPS Services or to terminate this Call-Off Contract (in whole or in part));
- 30.1.7 the DPS Supplier commits a material Default in relation to this Call-Off Contract;
- 30.1.8 the DPS Supplier or any Personnel is suspected of having committed a Prohibited Act;
- 30.1.9 the DPS Supplier's circumstances change at any time during the Call-Off Contract Period, such that any of the exclusion grounds set out in regulation 57 of the Public Contracts Regulations 2015 would apply;
- 30.1.10 the Participating Authority, 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; or
- 30.1.11 the Participating Authority 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 Participating Authority may suspend the DPS Supplier's provision of the DPS Services (in whole or in part) with immediate effect by giving notice in writing ("**Suspension Notice**") to the DPS Supplier.

- 30.2 If the Participating Authority serves a Suspension Notice on the DPS Supplier in accordance with this clause, the DPS Services (in whole or in part) shall be suspended for the period set out in the Suspension Notice or such other period notified to the DPS Supplier by the Participating Authority in writing from time to time. During such suspension, the DPS Supplier shall not be eligible to receive any new Call-Off Contracts.
- 30.3 A Suspension Notice issued by the Participating Authority shall state on the face of it that it is a Suspension Notice and shall set out the reasons why the Participating Authority 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 Participating Authority's decision to suspend pursuant to clause 30.1 has been referred to dispute resolution under clause 18 (*Dispute Resolution*) of this Call-Off Contract.

- 30.4 During the suspension of any part or all of the DPS Services, the DPS Supplier will not be entitled to claim or receive any payment for the suspended DPS Services except in respect of:
- 30.4.1 all or part of the suspended DPS Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause 30.2; and/or
- 30.4.2 all or part of the suspended DPS Service which the DPS Supplier continues to deliver during the period of suspension in accordance with clause 30.8.
- 30.5 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 Service.
- 30.6 Except where suspension occurs by reason of an event of Force Majeure, the DPS Supplier shall indemnify the Participating Authority in respect of any Losses directly and reasonably incurred by the Participating Authority in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended DPS Services from another party).
- 30.7 In the event that the DPS Supplier fails to comply with the Suspension Notice to the Participating Authority's reasonable satisfaction, the Participating Authority shall be entitled to terminate this Call-Off Contract in accordance with clause 29.1.18 (*Termination*)
- 30.8 Without prejudice to the other rights or remedies of the Participating Authority, if the DPS Supplier receives a Suspension Notice the Participating Authority may reasonably increase its monitoring and/or contract management of the DPS Supplier for such period as the Participating Authority considers necessary. The DPS Supplier may not increase the Charges to take account of any additional monitoring and shall promptly reimburse the Participating Authority for any additional direct costs reasonably and necessarily incurred by the Participating Authority in respect of any such additional monitoring.
- 30.9 Where applicable, during any suspension of the DPS Services the DPS Supplier may be required to implement relevant parts of its Business Continuity Plan to ensure there is no interruption in the availability to the relevant part of any DPS Services that may be continuing.
- 30.10 Where a Suspension Notice is served by the Participating Authority, the Participating Authority shall notify the Council, other Participating Authorities and/or any relevant licensing authority of the suspension. The Council may, in its absolute discretion, as a result of the service of a Suspension Notice under this Call-Off Contract suspend the DPS Supplier from the DPS as set out in the DPS Agreement.

31. FORCE MAJEURE

- 31.1 Subject to the remainder of this clause, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this Call-Off Contract by a Force Majeure Event (“Affected Party”), the Affected Party may shall not be in breach of this Call-Off Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 31.2 The corresponding obligations of the other party will be suspended, and it’s time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 31.3 The Affected Party shall:
- 31.3.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Call-Off Contract; and
 - 31.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event.
- 31.4 If the Force Majeure Event prevents, hinders or delays the Affected Party’s performance of its obligations for a continuous period of more than sixty (60) calendar days, the party not affected by the Force Majeure Event may terminate this Call-Off Contract forthwith by written notice.
- 31.5 If a local emergency or major incident is declared by the Participating Authority, the Participating Authority may ask the DPS Supplier to make available the Vehicles(s) and Driver(s) required for the Call-Off Contract to the Participating Authority and if necessary cease operation of the DPS Services specified by the Order Form. If so requested, the Vehicle(s) and Driver(s) shall operate as directed by the Participating Authority’s Representative or nominated officer for the duration of the incident or emergency. All reasonable additional costs properly incurred by the DPS Supplier shall be met by the Participating Authority. The DPS Supplier shall supply the Participating Authority with a telephone number and name of the person to be contacted in an emergency out of office hours.

32. PREVENTION OF FRAUD AND BRIBERY

- 32.1 The DPS Supplier represents and warrants that neither it, nor to the best of its knowledge any Personnel, have at any time prior to the Call-Off Contract Commencement Date:
- 32.1.1 committed a Prohibited Act;
 - 32.1.2 to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or Regulatory Body regarding any Prohibited Act or alleged Prohibited Act; or
 - 32.1.3 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise

ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- 32.2 The DPS Supplier shall promptly notify the Participating Authority if, at any time during the Call-Off Contract Period, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 32.1 at the relevant time.
- 32.3 The DPS Supplier shall (and shall procure that its Personnel shall) during the Call-Off Contract Period:
- 32.3.1 not commit a Prohibited Act;
 - 32.3.2 not do or omit to do anything that would cause the Participating Authority or any of the Participating Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
 - 32.3.3 comply with the Participating Authority's anti-bribery and anti-corruption policy as updated from time to time;
 - 32.3.4 notify the Participating Authority (in writing) if it becomes aware of any breach of clause 32.3.1 or clause 32.3.2, or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this Call-Off Contract.
- 32.4 The DPS Supplier shall maintain appropriate and up to date records showing all payments made by the DPS Supplier in connection with this Call-Off Contract and the steps taken to comply with its obligations under clause 32.3.
- 32.5 The DPS Supplier shall allow the Participating Authority and its third party representatives to audit any of the DPS Supplier's records and any other relevant documentation.
- 32.6 If the DPS Supplier is in default of this clause the Participating Authority may by notice:
- 32.6.1 require the DPS Supplier to remove from performance of this Call-Off Contract any Personnel whose acts or omissions have caused the default; or
 - 32.6.2 immediately terminate this Call-Off Contract.
- 32.7 Any notice served by the Participating Authority under clause 32.6.2 shall specify the nature of the Prohibited Act, the identity of the Party who the Participating Authority believes has committed the Prohibited Act and the action that the Participating Authority has elected to take (including, where relevant, the date on which this Call-Off Contract shall terminate).

33. SOCIAL RESPONSIBILITY AND PREVENT

- 33.1 In the performance of the DPS Services and in its dealings with the Participating Authority, employees, customers and members of the general public, the DPS Supplier shall, as if it were a public body, comply and shall ensure that its representatives comply with:

- 33.1.1 the Human Rights Act 1998;
 - 33.1.2 the Equality Act 2010 and all applicable Laws relating to equal opportunities and shall have an equal opportunities policy; and
 - 33.1.3 the Participating Authority's equal opportunities policies and procedures as may be adopted and amended from time to time and as notified to the DPS Supplier.
- 33.2 The DPS Supplier shall take regard of the Prevent Duty. The DPS Supplier must not be engaged in any extremist activity or espouse extremist views. The DPS Supplier must:
- 33.2.1 protect vulnerable people from being drawn into terrorism by having robust safeguarding policies in place to identify vulnerable people at risk, and intervening as appropriate;
 - 33.2.2 assess the risk of vulnerable people being drawn into terrorism, including support for extremist ideas that are part of terrorist ideology. This should be based on an understanding, shared with partners, of the potential risk in the local area;
 - 33.2.3 ensure that Personnel have a good understanding of the Prevent Duty and are trained to recognise vulnerability to being drawn into terrorism and are aware of available programmes to deal with this issue (e.g. Channel);
 - 33.2.4 ensure Personnel are aware of and know how to contribute to Prevent-related activity in their area where appropriate;
 - 33.2.5 ensure the Prevent Duty is considered in other relevant policies such as IT policies and use of premises.
- 33.3 The DPS Supplier shall establish clear policies to deal with dangerous, exploitative or unsafe behaviour and practice and provide training to all the Personnel to develop appropriate skills and knowledge.
- 33.4 The DPS Supplier shall have in place and shall have implemented robust up-to-date procedures (including whistle-blowing policy and recruitment checks) for avoiding and responding to actual or suspected physical, sexual, psychological, financial or material abuse, discriminatory abuse, domestic abuse, organisational abuse, modern slavery, self neglect and acts of neglect or omission. Such procedures shall be reviewed at least once every year.

34. MODERN SLAVERY

- 34.1 The DPS Supplier undertakes, warrants and represents that it will ensure that its Personnel receive appropriate training in relation to the Modern Slavery Act 2015 and that:
- 34.1.1 neither the DPS Supplier nor any Personnel:
 - 34.1.1.1 has committed an MSA Offence; or

34.1.1.2 has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

34.1.1.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

34.1.2 it shall comply with the Modern Slavery Act 2015 and the Participating Authority's Modern Slavery Statement;

34.1.3 it shall notify the Participating Authority immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or Sub-Contractors have, breached or potentially breached any of the DPS Supplier's obligations under this clause. Such notice to set out full details of the circumstances concerning the breach or potential breach of the DPS Supplier's obligations.

35. CONSEQUENCES OF EXPIRY OR TERMINATION

35.1 Termination shall be without prejudice to the rights and remedies of the DPS Supplier and the Participating Authority accrued before termination and nothing in the Call-Off Contract shall prejudice the right of either Party to recover any amount outstanding as at the date of termination.

35.2 Upon the expiry or termination (for whatever reason) the Supplier shall:

35.2.1 forthwith cease to provide the DPS Services;

35.2.2 be liable immediately to compensate the Participating Authority for any loss or damage it has sustained in consequence of any breaches of this Call-Off Contract by the DPS Supplier;

35.2.3 where the Call-Off Contract is terminated due to the DPS Supplier's breach, fully and promptly indemnify and compensate the Participating Authority against all loss and damage suffered by the Participating Authority by reason of such termination and without prejudice to the generality of this clause shall fully and promptly indemnify and compensate the Participating Authority in respect of the cost of obtaining such replacement services as would have been performed by the DPS Supplier during the remainder of the Call-Off Contract Period to the extent that such cost exceeds the sums that would have been lawfully payable to the DPS Supplier for providing such DPS Services (such costs to include but not be limited to all costs of closing out this Call-Off Contract and entering into new agreements with Replacement Suppliers). The Participating Authority shall be at liberty to have such DPS Services provided by any persons (whether or not servants of the Participating Authority) as the Participating Authority in its entire discretion thinks fit and shall act reasonably but shall be under no obligation to employ the least expensive method of having such DPS Services provided;

35.2.4 not be entitled to any further payment under the Call-Off Contract and the Participating Authority shall be entitled to retain any payment which may have fallen due to the DPS Supplier before termination until the DPS Supplier has paid in full to the Participating Authority all sums due under

this (including any sums paid to the DPS Supplier in advance) or any other agreement or to deduct such sums from any sum due from the DPS Supplier to the Participating Authority under this or any other agreement.

- 35.3 Where the Participating Authority considers it appropriate for the DPS Services, on the expiry of the Call-Off Contract Period or if this Call-Off Contract is terminated for any reason, the DPS Supplier shall prepare an Exit Management Plan which shall be agreed by the Participating Authority and shall come into effect upon Approval. The DPS Supplier shall co-operate fully with the Participating Authority to ensure an orderly migration of the DPS Services to the Participating Authority or, at the Participating Authority's request, a Replacement Supplier.
- 35.4 If no Exit Management Plan is requested in accordance with clause 35.3, on termination or expiry of this Call-Off Contract the DPS Supplier shall procure that any Call-Off Contract Charges paid by the Participating Authority to the DPS Supplier in advance will be returned where the DPS Services have yet to be undertaken, all equipment, data and other material belonging to the Participating Authority (and all media of any nature containing information and data belonging to the Participating Authority or relating to the DPS Services), shall be delivered to the Participating Authority forthwith and the DPS Supplier's Representative shall certify full compliance with this clause.
- 35.5 Any provision of this Call-Off Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry, including clause 6.6 (provision of records), clause 21 (Liability and Indemnity), clause 22 (Insurance), clause 23 (Freedom of Information), clause 24 (Data Processing), clause 25 (Confidentiality and Transparency), clause 26 (Audit) and this clause 35 (Consequences of Expiry or termination), shall remain in full force and effect.
- 35.6 Termination or expiry of this Call-Off Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Call-Off Contract which existed at or before the termination date.

36. WAIVER

- 36.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 36.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

37. RIGHTS AND REMEDIES

- 37.1 The rights and remedies provided under this Call-Off Contract are in addition to, and not exclusive of, any rights or remedies provided by Law.

38. SEVERANCE

- 38.1 If any provision of this Call-Off Contract (or part of any provision) is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Call-Off Contract.

38.2 If any provision of this Call-Off Contract (or part of any provision) is deemed deleted under clause 38.1, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

39. NO PARTNERSHIP OR AGENCY

39.1 Nothing in this Call-Off Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any party the agent or another party, or authorise either Party to make or enter into any commitments for or on behalf of any other Party.

39.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

40. THIRD PARTY RIGHTS

40.1 Unless it expressly states otherwise, this Call-Off Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Call-Off Contract.

40.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Call-Off Contract are not subject to the consent of any other person.

41. ASSIGNMENT AND OTHER DEALINGS

41.1 The Participating Authority may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Call-Off Contract, provided that it gives prior written notice of such dealing to the DPS Supplier.

41.2 The DPS Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Call-Off Contract without the prior written consent of the Participating Authority (such consent not to be unreasonably withheld or delayed).

41.3 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 Participating Authority may agree to the novation of this Call-Off Contract to the new supplier, such agreement to be in writing, PROVIDED THAT:

41.4 the new supplier fulfils the criteria for qualitative selection initially established during the procurement of this DPS/Call-Off Contract;

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

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

41.7 The Participating Authority reserves the right to seek reimbursement of its reasonable costs in effecting any novation/Sub-Contract arrangement requested by the DPS Supplier.

42. PUBLICITY AND BRANDING

42.1 The DPS Supplier shall not:

42.1.1 make any press announcements or publicise this Call-Off Contract in any way; or

42.1.2 use the Participating Authority's name, brand or logo in any promotion or marketing or announcement of orders,

except as required by Law, any government or regulatory authority, any court or other authority of competent jurisdiction without the prior written consent of the Participating Authority, which shall not be unreasonably withheld or delayed).

42.2 Each Party acknowledges to the other that nothing in this Call-Off Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the DPS Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

43. NOTICES

43.1 Except as otherwise expressly provided within this Call-Off Contract, any notices given to a Party under or in connection with this Call-Off Contract shall be in writing marked for the attention of the party's Representative and shall be:

43.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service to the address specified in the Order Form; or

43.1.2 sent by email to the email address specified in the Order Form.

43.2 Any notice shall be deemed to have been received:

43.2.1 if delivered by hand, at the time the notice is left at the proper address;

43.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; or

43.2.3 if sent by email, at the time of transmission, or if this time falls outside Working Hours in the place of receipt, when Working Hours resume.

43.3 Clause 43 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

44. ENTIRE AGREEMENT

44.1 This Call-Off Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersede and extinguish all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

44.2 Neither Party has been given, nor entered into this Call-Off Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Call-Off Contract.

44.3 Nothing in this clause shall exclude any liability in respect of misrepresentations made fraudulently.

45. GOVERNING LAW AND JURISDICTION

- 45.1 This Call-Off Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 45.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Call-Off Contract or its subject matter or formation (including non-contractual disputes or claims).

CALL-OFF CONTRACT SCHEDULE 1: DEFINITIONS

In accordance with clause 1 (Definitions and Interpretation) of this Call-Off Contract including its recitals the following expressions shall have the following meanings:

“Achieved KPI”	means in respect of any DPS Service in any measurement period, the standard of performance actually achieved by the DPS Supplier in the provision of that DPS Service in the measurement period in question (calculated and expressed in the same way as the KPI for that DPS Service the Order Form.
"Affected Party"	shall have the meaning given to it in clause 31.1;
"Affiliates"	has the meaning given to it in DPS Schedule 1 (Definitions);
"Approval"	means the prior written consent of the Participating Authority and "Approve" and "Approved" shall be construed accordingly;
"Business Continuity Plan"	means the DPS Supplier’s business continuity plan required by clause 8 (Business Continuity)
"Call-Off Contract "	means this contract between the Participating Authority and the DPS Supplier (entered into pursuant to the provisions of the DPS Agreement), which consists of the terms set out in the Order Form and the Call-Off Contract Terms;
"Call-Off Contract Charges"	means the prices (exclusive of any applicable VAT), payable to the DPS Supplier by the Participating Authority under this Call-Off Contract, as set out in Call-Off Contract Schedule 3 (<i>Charges and Payment</i>), for the full and proper performance by the DPS Supplier of its obligations under this Call-Off Contract less any deductions;
"Call-Off Contract Commencement Date"	means the date of commencement of this Call-Off Contract set out in the Order Form;
"Call-Off Contract Extension Period"	means such period or periods up to a maximum of the number of years in total as may be specified by the Participating Authority, pursuant to clause 2.2 and in the Order Form;
"Call-Off Contract Period"	means the term of this Contract from the Call-Off Contract Commencement Date until the Call-Off Contract Expiry Date;
“Call-Off Contract Tender”	means the tender submitted by the DPS Supplier in response to the Participating Authority’s Services Requirements following a Call-Off Order Procedure and set out in the Order Form;
“Call-Off Contract Terms”	means the terms applicable to and set out in this Call-Off Contract;

"Change in Law"	means any change in Law which impacts on the supply of the DPS Services and performance of the Call-Off Contract which comes into force after the Call-Off Contract Commencement Date;
"Call-Off Contract Expiry Date"	means the last day of the Call-Off Contract Period or the date of termination of the Call-Off Contract, whichever is earlier;
"Contract Year"	means a consecutive period of twelve (12) Months commencing on the Call-Off Contract Commencement Date or each anniversary thereof;
"Order Form"	means a document setting out the details of the relevant Call-Off Contract;
"Controller, Processor, Data Subject, Personal Data, Special Category Data, Personal Data Breach, Data Protection Officer"	shall take the meaning given in the UK GDPR;
"Data Loss Event"	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;
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Legislation"	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;
"Data Subject Access Request"	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;
"Default"	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 Call-Off Contract and in respect of which the DPS Supplier is liable to the Participating Authority;

"Delivery"	means delivery in accordance with the terms of this Call-Off Contract and accepted by the Participating Authority and "Deliver" and "Delivered" shall be construed accordingly;
"Dispute"	shall have the meaning given to it in clause 18.1;
"Dispute Notice"	shall have the meaning given to it in clause 18.1.1;
"Documentation"	means all documentation as: <ul style="list-style-type: none"> a) is required to be supplied by the DPS Supplier to the Participating Authority under this Call-Off Contract; b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Participating Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the DPS Services; c) is required by the DPS Supplier in order to provide the DPS Services; and/or d) has been or shall be generated for the purpose of providing the DPS Services;
"DPS"	as defined in Recital A of the DPS Agreement;
"DPS Agreement "	means the DPS Agreement between the Council and the DPS Supplier;
"DPS Services"	means the services to be provided by the DPS Supplier to the Participating Authority as referred to in Call-Off Contract Schedule 2 (<i>DPS Services Specification</i>);
"DPS Supplier Background IPR"	means <ul style="list-style-type: none"> a) Intellectual Property Rights owned by the DPS Supplier before the Call-Off Contract Commencement Date, for example those subsisting in the DPS Suppliers standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the DPS Suppliers Know-How or generic business methodologies; and/or b) Intellectual Property Rights created by the DPS Supplier independently of this Call-OFF Contract,
"DPS Supplier's Representatives"	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;
“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;
"Due Diligence Information"	means any information supplied to the DPS Supplier by or on behalf of the Participating Authority prior to the Call-Off Contract Commencement Date;
“DVLA”	means the Driver and Vehicle Licensing Agency;
"Environmental Information Regulations or EIRs"	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;
“Exit Management Plan”	means the plan produced by the DPS Supplier (if requested by the Participating Authority in accordance with clause 35.3) to deal with the cessation or transfer of the DPS Services to the Participating Authority or an alternative Replacement Supplier following expiry or termination of this Call-Off Contract;
“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 “Flags” 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"	means any circumstance affecting a Party’s performance of its obligations under this Call-Off Contract not within a Party’s reasonable control including, without limitation: <ul style="list-style-type: none"> a) acts of God, flood, drought, earthquake or other natural disaster; b) epidemic or pandemic (excluding Covid-19); c) 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;

- d) nuclear, chemical or biological contamination or sonic boom;
- e) 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;
- f) collapse of buildings, fire, explosion or accident; and
- g) any labour or trade dispute, strikes, industrial action or lockouts; and
- h) 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

"General Change in Law"

means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the DPS Supplier) or which affects or relates to a Comparable Supply;

"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;

"Information"

has the meaning given under section 84 of the FOIA;

"Initial Call-Off Contract Period"

means the initial term of this Call-Off Contract from the Call-Off Contract Commencement Date to the end date of the initial term stated in the Order Form;

"Insolvency Event"

in relation to the DPS Supplier, means:

- a) 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);
- b) 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 Supplier's assets;

- c) 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;
- d) the DPS Supplier ceasing or threatening to cease to carry 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;
- e) 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;

"Intellectual Property Rights" or "IPR"

means

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;
- b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- c) all other rights having equivalent or similar effect in any country or jurisdiction;

"Key Performance Indicators" or "KPIs"

means the performance measurements and targets in respect of the DPS Suppliers performance of the Call-Off Contract as set out in the Order Form;

"Know-How"

means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the DPS Services but excluding know-how already in the other Party's possession before the Call-Off Contract Commencement Date;

"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 Call-Off Contract Specification;
"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 “Loss” shall be interpreted accordingly;
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;
“MSA Offence”	means an offence committed under the Modern Slavery Act 2015;
“Modern Slavery Statement”	means the Participating Authority’s Modern Slavery Statement provided to the DPS Supplier upon request;
“Operator’s Licence”	means the licence the DPS Supplier is required to hold that permits the undertaking of transporting passenger services for ‘Hire and Reward’;
“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 Supplier(s)"	means any supplier to the Participating Authority (other than the DPS Supplier) which is notified to the DPS Supplier from time to time and/or of which the DPS Supplier should have been aware;
“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 Participating Authority ordering the DPS Services under this Call-Off Contract;
"Participating Authority’s Representative"	means the representative appointed by the Participating Authority from time to time in relation to this Call-Off Contract and identified on the Order Form;
"Participating Authority’s Confidential Information"	means: <ul style="list-style-type: none"> a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-

How and IPR of the Participating Authority (including all Participating Authority Background IPR and Project Specific IPR);

- b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Participating Authority's attention or into the Participating Authority's possession in connection with this Call-Off Contract; and

information derived from any of the above;

"Party" means the Participating Authority or the DPS Supplier and **"Parties"** shall mean both of them;

"Passengers" means any person using the DPS Services;

"PCV" means a Passenger Carrying Vehicle;

"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;

"Prevent Duty" means the Participating Authority's duty under the Counter Terrorism & Security Act 2015 to have due regard to prevent people being drawn into terrorism;

"Prohibited Act" means any of the following:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Participating Authority a financial or other advantage to:
 - i) induce that person to perform improperly a relevant function or activity; or
 - ii) reward that person for improper performance of a relevant function or activity;
- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Call-Off Contract;
- c) committing any offence:
 - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
 - ii) under legislation or common law concerning fraudulent acts; or

- iii) at common law concerning fraudulent acts relating to this Call-Off Contract or any other agreement with the Participating Authority; or
- iv) defrauding, attempting to defraud or conspiring to defraud the Participating Authority; or
- v) committing an offence under sub-section (2) of section 117 of the Local government Act 1972;

"Project Specific IPR"

means:

- a) Intellectual Property Rights in items created by the DPS Supplier (or by a third party on behalf of the DPS Supplier) specifically for the purposes of this Call-Off Contract and updates and amendments of these items including (but not limited to) database schema; and/or
- b) IPR in or arising as a result of the performance of the DPS Suppliers obligations under this Call-Off Contract and all updates and amendments to the same;

but shall not include the Supplier Background IPR;

"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;

"PSV"

means a Public Service Vehicle;

"Regulated Activity"

means in relation to children as defined in Part 1 of Schedule 4, and in relation to vulnerable adults, as defined in Part 2 of Schedule 4, of the Safeguarding Vulnerable Groups Act 2006

"Regulated Activity Provider"

shall have the same meaning as set out in section 6 of the Vulnerable Groups Act 2006 as amended.

"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 Call-Off Contract or any other affairs of the Participating Authority and "**Regulatory Body**" shall be construed accordingly;

"Relevant Requirements"

means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance

	issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
“Remediation Notice”	shall have the meaning given to it in clause 28.2;
“Remediation Plan”	means the plan agreed in accordance with clause 28.6 for the resolution of either any outstanding issues or the DPS Supplier’s Default;
“Remediation Plan Process”	means the process for resolving certain of the DPS Supplier’s Defaults as set out in clause 28;
"Replacement DPS Services"	means any services that are fundamentally the same as any of the DPS Services and which the Participating Authority receives in substitution for any of the DPS Services following the termination or expiry of this Call-Off Contract, whether those services are provided by the Participating Authority internally or by any Replacement Supplier;
"Replacement Supplier"	means any third party provider of Replacement DPS Services appointed by or at the direction of the Participating Authority from time to time or where the Participating Authority is providing Replacement DPS Services for its own account, shall also include the Participating Authority;
“Representative(s)”	means the Participating Authority’s Representative and the DPS Supplier’s Representative;
"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 Call-Off Contract and “Requests for Information” shall be construed accordingly;
“Required Insurances”	as defined in clause 2222.1;
"Service Credits"	means any service credits payable by the DPS Supplier to the Participating Authority in respect of any failure by the DPS Supplier to meet one or more KPI;
“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;
“Specifications”	means the description of the DPS Services to be supplied under this Call-Off Contract as set out in Schedule 2 (DPS Services) and as further detailed in the Order Form Specification.

"Sub-Contract"	means any contract or agreement (or proposed contract or agreement), other than this Call-Off Contract or the DPS Agreement, pursuant to which a third party: <ul style="list-style-type: none"> a) provides the DPS Services (or any part of them); b) provides facilities or services necessary for the provision of the DPS Services (or any part of them); and/or c) 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 Call-Off Contract;
"DPS Supplier Background IPR"	means <ul style="list-style-type: none"> a) Intellectual Property Rights owned by the DPS Supplier before the Call-Off Contract Commencement Date, for example those subsisting in the DPS Suppliers standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the DPS Suppliers Know-How or generic business methodologies; and/or b) Intellectual Property Rights created by the DPS Supplier independently of this Call-OFF Contract,
"Target KPI"	means the minimum level of performance for a KPI which is required by the Participating Authority as set out against the relevant KPI in the Order Form.
"Termination Notice"	means any notice to terminate this Call-Off Contact which is given by either Party.
"Third Party IPR"	means Intellectual Property Rights owned by a third party which is or will be used by the DPS Supplier for the purpose of providing the DPS Services;
"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"

means any change or variation to the Call-Off Contract undertaken in accordance with DPS Schedule 5 (DPS Variation Procedure);

"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.

CALL-OFF CONTRACT SCHEDULE 2: DPS SERVICES SPECIFICATION

CALL-OFF CONTRACT SCHEDULE 3: CHARGES AND PAYMENT

1. INTERPRETATION/GENERAL PAYMENT TERMS

- 1.1. The definitions and rules of interpretation in this paragraph 1 apply in this Schedule.

“HTST Contract Charges” means the annual cost for providing the Home to School Transport Services for a complete academic year.

- 1.2. The DPS Supplier shall, unless specified otherwise below or an alternative arrangement is agreed between the Parties, submit to the Participating Authority at the end of each calendar month, an invoice for that month’s accounting period.
- 1.3. A separate invoice is required for every Call-Off Contract, and all relevant information as provided by the Participating Authority, must be shown on the invoice.
- 1.4. Unless otherwise advised in the Order Form, invoices must be submitted to: VIMEnquiries@hants.gov.uk
- 1.5. All amounts due and payable by the Participating Authority shall be paid to the DPS Supplier’s bank account.
- 1.6. It is the DPS Supplier’s responsibility to ensure their details, including bank account details, are correct and up to date on the Supplier Self Service Portal: [Supplier Self Service | Business and economy | Hampshire County Council \(hants.gov.uk\)](https://www.hants.gov.uk/business-and-economy)
- 1.7. No additional payments (enhanced rates) will be made for Call-Off Contracts that are required to operate on weekends or public holidays.
- 1.8. If a journey is cancelled at short notice due to unforeseen circumstances such as severe weather conditions making it unsafe to travel or short notice passenger cancellations the Participating Authority will pay the DPS Supplier for any journey(s) that have been attempted prior to notification of the cancellation (i.e., the outward journey on the first day), but no payment will be made for the remaining duration of the cancellation.

2. HOME TO SCHOOL TRANSPORT CONTRACTS (INCLUDING SEN AND MAIN-STREAM HOME TO SCHOOL TRANSPORT SERVICES)

Payment Calculation of Annual Call-Off Contract Charges

- 2.1. An academic year will start in September of each year and end in the following July. Schools will usually open for 190 (one hundred and ninety) days in each academic year. An annual HTST Contract Charges should be calculated on the basis of providing the DPS Services for 190 days unless otherwise stated in the Specifications. It is the responsibility of the school to give reasonable notice to the DPS Supplier of any additional closure dates. Where reasonable notice is

given, no payment will be made to the DPS Supplier in respect of the days that the school is closed.

- 2.2. Where the Call-Off Contract operates for a complete academic year (190 days) the sum payable per calendar month will be 1/11th of the HTST Contract Charges.
- 2.3. Where the Call-Off Contract start date or end date is part way through an academic year i.e. the Call-Off Contract starts or ends between the first school day in September and the last school day in July, the monthly sum payable will be adjusted to take account of the part year effect. The adjustment will be calculated in accordance with the following examples:

For the purpose of these examples 1st September represents the first day of the academic year and 31st July represents the last day of the academic year. This applies based on the school working days and not calendar year:

Example 1:

Contract starts on 20th November and the annual HTST Contract Charges is £10,000

Payments (in year 1 only) will be calculated on the following basis:

Actual number of school days from 1st Sept to 19th Nov = 50 days

Payment due for period 20th November until 31st July is 190 less 50 = 140 days

$140/190 \times £10,000 = £7,368.42$

$£7,368.42$ divided by 9 = £818.71

Thus £818.71 will be the monthly payment for November to July during the first part year of the contract.

In year 2 onwards the monthly payments will be 1/11th of the annual HTST Contract Charges.

Example 2:

Contract ends on 6th April and the annual HTST Contract Charges is £10,000 and monthly sum payable is £909.09

Actual number of school days operated from 1st Sept to 6th April = 135 days

Payment due 1st Sept to 6th April is $135/190 \times £10,000 = £7,105.26$

Amount paid Sep to March is 6 months @ £909.09 = £6,363.63

Final payment in April is $£7,107.26$ less $£6,363.63 = £743.63$

- 2.4. Any variation to the HTST Contract Charges that becomes effective from a date that is part-way through an academic year will be calculated on the same basis as Examples 1 and 2 above.
- 2.5. Where the Call-Off Contract Period is less than an academic year the HTST Contract Charges may be expressed as a daily rate. For daily rated contracts the sum payable each month will be the daily rate multiplied by the number of days operated during the month.
- 2.6. At the end of each calendar month invoices should be submitted in accordance with the instructions received from the Children's Services Home to School Transport team.
- 2.7. Each invoice submitted must include the following information:
- Your company name, address and telephone number
 - Our name and address
 - The date
 - A unique, sequential invoice number
 - The month for which you are charging.
 - The purchase order number as shown on your contract award letter. This is a 10-digit number beginning EN followed by the numeric part of the contract number then a zero and then your unique 2 letter company code. I.e., EN421110AB. Please contact us if you require your company code.
 - Description of the service provided, including the school name.
 - The rate charged and, for daily rated contracts, the number of days.
 - The total amount invoiced
 - VAT rate and amount if applicable
 - Total inclusive of VAT (if applicable).
- 2.8. In the September following the first anniversary of the Call-Off Contract, and every subsequent September throughout the Call-Off Contract Period, the Participating Authority may agree to an adjustment to the annual Call-Off Contract Charges in line with inflation. Any such adjustment will usually be calculated by reference to the change in the Consumer Price Index (CPI).
- 2.9. Call-Off Contracts for Children's Social Care and Educational Inclusion Service (EIS) are subject to clause 29.4 which states that the Participating Authority may terminate this Call-Off Contract with a minimum of 24 hours' notice. Where an individual journey is not required (but a Call-Off Contract remains in place), this

may also be cancelled with a minimum of 24 hours' notice and no cost will be incurred by the Participating Authority.

3. PUBLIC BUS CONTRACTS

- 3.1. The Participating Authority may agree to an adjustment to the Call-Off Contract Charges in line with inflation from 1st April on a yearly basis unless specified otherwise. In such an event, the inflationary adjustment will usually be calculated by reference to the Consumer Price Index (or other inflation measure as deemed applicable by the Service Purchaser). Where a contract has commenced between 1st October-31st March inflation will not be applied until the April following the first anniversary of the contract.

4. TAXISHARE AND CARSHARE CONTRACTS

- 4.1. When operating a Taxishare or Carshare service, the DPS Supplier will charge the agreed price from the furthest destination from which a pickup was made.
- 4.2. The DPS Supplier will keep the fares collected from the Passengers. The DPS Supplier will then invoice the Participating Authority for the cost of the journey minus the fares collected. For example, if the cost of the journey is £10 and the supplier collects £2 in fares, the Participating Authority will be invoiced £8.
- 4.3. Payment will be for size of Vehicle appropriate to the number of seats actually booked. For example, if one to four people travel, payment will be for a 4-seater vehicle even if a larger vehicle is used. If five to eight people travel, payment will be for an 8-seater vehicle even if two smaller vehicles are used.
- 4.4. The supplier will be required to send a monthly return form in with their invoice every month detailing each journey that takes place. Without the monthly return form, the invoice will not be paid. The monthly return must not include passenger names and full address, however, must include street name, town and/or postcode.
- 4.5. Monthly returns and invoices should be submitted to the Participating Authority by 15th of each calendar month.
- 4.6. The Participating Authority may agree to an adjustment to the Call-Off Contract Charges in line with inflation from 1st April on a yearly basis unless specified otherwise. In such an event, the inflationary adjustment will usually be calculated by reference to the Consumer Price Index (or other inflation measure as deemed applicable by the Participating Authority). Where a Call-Off Contract has commenced between 1st October-31st March, inflation will not be applied until the April following the first anniversary of the Call-Off Contract.

5. ADULT SERVICE SOCIAL CARE CONTRACTS

- 5.1. One invoice per route is required and each invoice should quote the above route number, the date of each trip, the destination name, the initials of the Passengers, the price per trip and the purchase order number.

- 5.2. Call-Off Contracts for Adult Social Care are subject to clause 29.4 which states that the Participating Authority may terminate this Call-Off Contract with a minimum of 24 hours' notice. Where an individual journey is not required (but a Call-Off Contract remains in place), this may also be cancelled with a minimum of 24 hours' notice and no cost will be incurred by the Participating Authority.
- 5.3. The Participating Authority will pay a maximum of £0.40 per minute for waiting times or the DPS Supplier's standard waiting charge (whichever is the lower), up to a maximum of £6 per passenger trip, unless additional payment is agreed by the Participating Authority. This must be agreed for each occurrence where this limit is exceeded.
- 5.4. Agreement for one payment in excess of the maximum additional payment, is not to be understood as agreement for other similar occurrences.
- 5.5. For door-to-door pick-ups, the DPS Supplier should wait a minimum of 5 minutes when a Passenger is a 'no show' (no contact with the passenger) and then report the no show to the Participating Authority prior to leaving the pre-agreed pickup point.

6. COMMUNITY TRANSPORT CONTRACTS

- 6.1. Each invoice will be for 1/12th of the annual Call-Off Contract Charges. A separate invoice is required for every Call-Off Contract, and all relevant information provided by the Participating Authority must be shown on the invoice.
- 6.2. On 1st April each year, the Participating Authority may agree to an adjustment to the Call-Off Contract Charges in line with inflation. The adjustment will usually be calculated by reference to the Consumer Prices Index annual rate of inflation published by the Office for National Statistics. Where the Call-Off Contract has been in operation for less than one year the inflation increase may be reduced proportionately.

CALL-OFF CONTRACT SCHEDULE 4: PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The DPS Supplier shall comply with any further written instructions with respect to processing by the Participating Authority.
2. 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 Call-Off Contract 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 Call-Off Contract including the performance of functions required or requested by the Participating Authority.

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 Participating Authority.

CALL-OFF CONTRACT SCHEDULE 5 – STAFF TRANSFER AND TUPE

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this paragraph 1 apply in this Schedule.

“Acquired Rights Directive” means Directive 77/187/EEC as amended and updated.

“Effective Date” means the date(s) on which the DPS Services (or any part of the DPS Services), transfer from the Third Party Employer to the DPS Supplier or Sub-Contractor and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the DPS Supplier or Sub-Contractor. The first Effective Date shall occur on the date specified in the Order Form;

“Employed In Connection With” means employed by the DPS Supplier (or its Sub-Contractor(s) if relevant) solely or mainly (i.e. more than 50% of their working time) in the delivery of the provision of the DPS Services under this Call-Off Contract;

“Employee Liability Information” means the information that a Transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

- (a) the identity and age of the employee;
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applies, within the previous two (2) years;
- (d) information about any court or tribunal case, claim or action either brought by the employee against the Transferor within the previous two (2) years or where the Transferor has reasonable grounds to believe that such action may be brought against the DPS Supplier arising out of the employee's employment with the transferor; and
- (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

“Employment Liabilities” means all claims, including without limitation claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any

claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses;

“Redundancy Costs” means statutory redundancy payments, contractual redundancy payments and contractual notice pay payable by the DPS Supplier in respect of any Third Party Employees or its own Staff;

“Relevant Employees” means those employees who are Employed in Connection With the DPS Services and whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement DPS Supplier by virtue of the application of TUPE;

“Relevant Transfer” means a relevant transfer of the DPS Services for the purposes of TUPE, including upon or as a result of expiry or termination of this Agreement;

“Replacement DPS Services” means any services that are fundamentally the same as any of the DPS Services and which the Council receives in substitution for any of the DPS Services following the termination or expiry of this Agreement, whether those services are provided by the Council internally or by any Replacement DPS Supplier;

“Replacement DPS Supplier” means any third party supplier of Replacement DPS Services appointed by the Participating Authority from time to time;

“Service Transfer Date” means the date on which the DPS Services (or any part of the DPS Services), transfer from the DPS Supplier or Sub-contractor to the Participating Authority or any Replacement DPS Supplier;

“Staffing Information” means in relation to all persons detailed on the DPS Supplier’s Provisional Staff List, in an anonymised format, such information as the Participating Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the DPS Services;

“Subsequent Transfer” means, following the commencement of this Agreement, circumstances whereby the identity of the supplier/provider of the DPS Services (or any part of the DPS Services) changes (whether as a result of termination of this Agreement, or part or otherwise) resulting in a transfer of the DPS Services in whole or in part from the DPS Supplier to the Participating Authority or Replacement DPS Supplier;

“DPS Supplier’s Final Staff List” means the list of all the DPS Supplier’s and Sub-Contractor’s personnel engaged in, or wholly or mainly assigned to, the

provision of the DPS Services or any part of the DPS Services at the Service Transfer Date;

“DPS Supplier’s Provisional Staff List” means the list prepared and updated by the DPS Supplier of all the DPS Supplier’s and Sub-Contractor’s personnel engaged in, or wholly or mainly assigned to, the provision of the DPS Services or any part of the DPS Services at the date of the preparation of the list, and in the format requested by the Participating Authority;

“Third Party Employee” means employees of Third Party Employers whose contracts of employment transfer with effect from the Effective Date to the DPS Supplier or Sub-contractor by virtue of the application of TUPE. An indicative list of the Third Party Employees, as at the date of execution of the Agreement, is attached at Appendix 1 of this Schedule.

“Third Party Employer” means a former supplier engaged by the Participating Authority to provide some or all of the DPS Services to the Participating Authority before the Effective Date and whose employees will transfer to the DPS Supplier on the Effective Date;

“Transferor” and **“Transferee”** has the meaning given in TUPE;

“TUPE” means the Transfer or Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended.

“TUPE Information” has the meaning given in paragraph 3.5;

- 1.2 All other words, terms and expressions used in this Schedule shall have the meanings given to them in Call-Off Contract Schedule 1 (*Definitions*) of this Call-Off Contract.
- 1.3 Where a provision in this Schedule imposes an obligation on the DPS Supplier to provide an indemnity, undertaking or warranty, the DPS Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Participating Authority, Third Party Employer, Replacement DPS Supplier or Replacement Sub-contractor, as the case may be.
- 1.4 Notwithstanding any other provisions of this Schedule, where in this Schedule the Participating Authority accepts an obligation to procure that a Third Party Employer does or does not do something, such obligation shall be limited so that it extends only to the extent that the Participating Authority’s contract with the Third Party Employer contains a contractual right in that regard which the Participating Authority may enforce, or otherwise so that it requires only that the Participating Authority must use reasonable endeavours to procure that the Third Party Employer does or does not act accordingly.

2. TRANSFER OF EMPLOYEES TO THE DPS SUPPLIER ON THE SERVICE TRANSFER DATE

- 2.1 The Participating Authority and the DPS Supplier agree that where the identity of the provider of any of the DPS Services changes, this shall constitute a

Relevant Transfer and the contracts of employment, other than in relation to any benefits in respect of old age, invalidity or survivors under any occupational pension scheme, of any Third Party Employee(s) shall transfer to the DPS Supplier or Sub-contractor. The DPS Supplier shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE. The first Relevant Transfer shall occur on the Call-Off Contract Commencement Date.

- 2.2 The Participating Authority shall procure that the Third Party Employer(s) shall provide the Employee Liability Information for the Third Party Employee(s) to the DPS Supplier, and, where necessary, update such information, as required by TUPE. The Participating Authority shall give no warranty as to the accuracy or completeness of the Employee Liability Information supplied by any Third Party Employer(s).
- 2.3 The DPS Supplier shall be liable for and indemnify and keep indemnified the Participating Authority and any Third Party Employer against any Employment Liabilities arising from or as a consequence of:
 - 2.3.1 any proposed changes to terms and conditions of employment the DPS Supplier or Sub-Contractor may consider making on or after the Effective Date;
 - 2.3.2 any of the employees informing the Participating Authority and/or any Third Party Employer they object to being employed by the DPS Supplier or Sub-Contractor pursuant to Regulation 4(7) of TUPE; and
 - 2.3.3 any change in identity of the Third Party Employees' employer as a result of the operation of TUPE; or
 - 2.3.4 as a result of any proposed measures the DPS Supplier or Sub-Contractor may consider taking on or after the Effective Date.
- 2.4 The DPS Supplier shall, and shall procure that any relevant Sub-Contractor shall, be liable for and indemnify and keep indemnified the Participating Authority and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Third Party Employees, and any other person who is or will be employed or engaged by the DPS Supplier or any Sub-Contractor in connection with the provision of the DPS Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, termination costs, and otherwise from and including the Effective Date.
- 2.5 The DPS Supplier shall immediately on request by the Participating Authority and/or the Third Party Employer provide details of any measures that the DPS Supplier or any Sub-Contractor of the DPS Supplier envisages it will take in relation to any Third Party Employees, including any proposed changes to terms and conditions of employment. If there are no such measures, the DPS Supplier will give confirmation of that fact, and shall indemnify and keep indemnified the Participating Authority and any Third Party Employer against all

Employment Liabilities resulting from any failure by it to comply with this obligation.

- 2.6 The DPS Supplier shall and shall procure that each and every Sub-Contractor shall in accordance with Regulation 6 of TUPE recognise the trade unions representing the Third Party Employees.
- 2.7 The DPS Supplier shall ensure that any Sub-Contract entered into pursuant to this Agreement contains equivalent provisions to those set out in this Schedule.
- 2.8 If as at the Call-Off Contract Commencement Date, the number of Third Party Employees that actually transfer to the DPS Supplier pursuant to TUPE is less than the number of Third Party Employees contained within the Third Party Employers Staffing Information supplied during the procurement process and upon which the DPS Supplier prepared its Tender, resulting in a reduction in the actual employment costs payable by the DPS Supplier, the DPS Supplier shall make a corresponding reduction to the Call-Off Contract Charges. The DPS Supplier shall, upon request, provide such information as the Participating Authority reasonably requires to evidence and verify the DPS Supplier's staffing costs.

3. EMPLOYMENT EXIT PROVISIONS

- 3.1 This Call-Off Contract envisages that subsequent to its commencement, the identity of the supplier of the DPS Services (or any part of the DPS Services) may change (whether as a result of expiry or termination of this Call-Off Contract or otherwise) resulting in a transfer of the DPS Services in whole or in part (a "Subsequent Transfer").
- 3.2 Where a Subsequent Transfer constitutes a Relevant Transfer then the Participating Authority or Replacement DPS Supplier will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.3 The DPS Supplier shall and shall procure that any Sub-Contractor shall:
 - 3.3.1 on request from the Participating Authority on a date not more than twelve (12) Months immediately preceding the expiry of this Agreement and/or any review date; and/or
 - 3.3.2 on receiving notice of termination of this Call-Off Contract (on whatever grounds and in whatever circumstances) or otherwise; and/or
 - 3.3.3 at such times as required by TUPE

provide promptly (and in any event within ten (10) calendar days of request) and at no cost to the Participating Authority, in respect of any person engaged or employed by the DPS Supplier or any Sub-Contractor in the provision of the DPS Services, the DPS Supplier's Provisional Staff List and the Staffing Information together with any additional information required by the Participating Authority (notwithstanding this may be beyond the information required to be provided under TUPE), including information as to the application

of TUPE to the employees. The DPS Supplier shall notify the Participating Authority, within ten (10) calendar days of the event (and in any event before the Service Transfer Date), of any material changes to the information supplied, discovery of further relevant information or on receipt of a request for or clarification or amplification by the Participating Authority.

- 3.4 At least twenty eight (28) calendar days prior to the Service Transfer Date, the DPS Supplier shall and shall procure that any Sub-Contractor shall prepare and provide to the Participating Authority and/or, at the direction of the Participating Authority, to the Replacement DPS Supplier, the DPS Supplier's Final Staff List, which shall be complete and accurate in all material respects. The DPS Supplier's Final Staff List shall identify which of the DPS Supplier's and Sub-Contractor's staff/personnel named are Relevant Employees.
- 3.5 The Participating Authority shall be permitted to use and disclose the DPS Supplier's Provisional Staff List, the DPS Supplier's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement DPS Supplier for any services that are substantially the same type of services as (or any part of) the DPS Services.
- 3.6 The DPS Supplier warrants to the Participating Authority and the Replacement DPS Supplier that the DPS Supplier's Provisional Staff List, the DPS Supplier's Final Staff List, the Employee Liability Information and the Staffing Information (the "TUPE Information") will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the DPS Services other than those included on the DPS Supplier's Final Staff List.
- 3.7 The DPS Supplier shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information to the Participating Authority (including, but not limited to, for the purposes the Participating Authority managing this Call-Off Contract with the DPS Supplier, monitoring the delivery of the DPS Services and in relation to exit/succession planning and/or re-procurement of the DPS Services on the expiry or termination of this Call-Off Contract (in whole or in part)) and any Replacement DPS Supplier under the Data Protection Legislation.
- 3.8 The Participating Authority regards compliance with this paragraph 3 as fundamental to this Call-Off Contract. In particular, failure to comply with paragraphs 3.3 and 3.4 in respect of the provision of accurate information about the Relevant Employees shall entitle the Participating Authority to suspend payment of the Call-Off Contract Charges until such information is provided.
- 3.9 Any change to the TUPE Information which would increase the total employment costs of the staff in the six (6) Months prior to expiry or termination of this Agreement shall not (so far as reasonably practicable) take place without the Participating Authority's prior written consent, unless such changes are required by Law. The DPS Supplier shall and shall procure that any Sub-Contractor shall supply to the Participating Authority full particulars of such proposed changes and the Participating Authority shall be afforded reasonable time to consider them.

- 3.10 In the six (6) Months prior to expiry or termination of this Call-Off Contract or from the date of service of a termination notice of this Call-Off Contract (whichever is the longer), the DPS Supplier shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff/personnel listed on the DPS Supplier's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees or transfer or remove from the performance of the DPS Services any supervisory or managerial staff/personnel without the Participating Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 3.11 The DPS Supplier shall indemnify and keep indemnified in full the Participating Authority and each and every Replacement DPS Supplier against all Employment Liabilities arising from or connected with:
- 3.11.1 any person who is or has been employed or engaged by the DPS Supplier or any Sub-Contractor in connection with the provision of any of the DPS Services;
 - 3.11.2 any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the DPS Supplier and/or any Sub-Contractor);
 - 3.11.3 any failure by the DPS Supplier and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
 - 3.11.4 any failure by the DPS Supplier or any Sub-Contractor to supply or delay in supplying the Staffing Information, the DPS Supplier's Provisional Staff List, the DPS Supplier's Final Staff List and the Employee Liability Information and any other information herein required (or inaccuracy or incompleteness of the same) or to inform and consult in accordance with TUPE;
 - 3.11.5 any failure on the part of the DPS Supplier or any Sub-Contractor to provide the Relevant Employees with any benefit of any nature including any pension provision or failure to make all due payments to the Relevant Employees or applicable pension fund;
 - 3.11.6 any failure or omission of any legal or statutory obligation on the DPS Supplier;
 - 3.11.7 any claim by any Relevant Employee arising out of any personal injury or injury at work of whatever nature prior to the termination of this Call-Off Contract; and
 - 3.11.8 any other obligations of or arising under this Call-Off Contract,

whether any such claim arises on or after the Service Transfer Date if it has its origins before such date.

- 3.12 The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 3.13 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraphs 3.3 to 3.12, to the extent necessary to ensure that any Replacement DPS Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement DPS Supplier by the DPS Supplier or the Participating Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.14 Notwithstanding paragraph 3.13, it is expressly agreed that the Parties may by agreement rescind or vary any terms of this Call-Off Contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.
- 3.15 The Participating Authority shall not be liable to the DPS Supplier (or any Sub-Contractor) in respect of any Redundancy Costs either upon the Commencement Date or the expiry or termination of this Call-Off Contract (in whole or in part).

Appendix 1 - EMPLOYEE LISTS

List of Third Party Employees

The anonymised list of Third Party Employees anticipated to be in scope to TUPE transfer to the DPS Supplier on the Call-Off Commencement Date (as at the date of entering into this Call-Off Contract) shall be included in the Order Form where applicable.