



**LANCASHIRE COUNTY COUNCIL**

and

**SERVICE PROVIDER**

Dynamic Purchasing System Agreement  
for the  
Provision of Passenger Transport Services

Lancashire County Council  
PO Box 78  
County Hall  
Preston  
Lancashire  
PR1 8XJ

Ref: AP/CORP/LCC/18/844/  
240519

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**THIS AGREEMENT** is dated as at the date when the Service Provider is accepted onto the Authority's DPS for passenger transport services.

#### **PARTIES**

- (1) **LANCASHIRE COUNTY COUNCIL** whose principal place of business is at PO Box 78, County Hall, Preston, Lancashire PR1 8XJ (the **Authority**); and
- (2) the entity which as a sole trader, partnership or with another trading status has its principal place of business (or as a limited company has its company number and registered office) as set out in Part 1 of the standard selection questionnaire submitted to the Authority and selected by the Authority to be an eligible service provider to join the Authority's DPS for passenger transport services (the **Service Provider**).

#### **BACKGROUND**

- (A) The Authority placed a contract notice with the Authority reference AP/CORP/LCC/18/844 in the Official Journal of the European Union seeking expressions of interest from potential service providers for the provision of Services (divided into Categories) to itself under a DPS.
- (B) The Authority shall seek the appointment of eligible service providers, known as DPS Providers (of which the Service Provider is one), to perform transport services (as an element of the Services) for each of a series of separate requirements known as Route Instructions which may be awarded by the Authority following a mini-competition (between eligible service providers appointed to the Authority's DPS) or in limited circumstances by direct award (to an eligible service provider appointed to the Authority's DPS). Each Route Instruction, which the Authority anticipates to award following an electronic procedure, shall specify the Authority's transport services requirement in an Individual Specification and invite a Tender including a Price from each DPS Provider invited to tender. Where the Service Provider is selected to perform the Route Instruction and notified through an Authority's Notification of Award then the Route Instruction, Price, the Call-off Terms and Conditions and this Agreement shall describe the terms and conditions applicable to the Service Provider in its Contract for a Route Instruction.
- (C) The Service Provider represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the Invitation to Participate and, in particular, the Service Provider made representations to the Authority in the Request to Participate in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.

- (D) On the basis of the Service Provider's Request to Participate, the Authority selected the Service Provider to enter an Agreement along with a number of other DPS Providers appointed to the DPS in parallel to provide Services to the Authority from time to time on a call-off basis.
- (E) This Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Service Provider under this Agreement.
- (F) The Services shall include the provision of transport services to Service Users in Lancashire.
- (G) This Agreement does not contain pricing information. Each Route Instruction shall be awarded to an eligible DPS Provider at the Price set out in its tendered pricing schedule within its Tender.
- (H) It is the Parties' intention that the Authority has no obligation to place Route Instructions with the Service Provider under this Agreement or at all.

## **AGREED TERMS**

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

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

**ADR Notice:** means as defined in Clause 21.1 (Dispute Resolution).

**Agreement:** means this agreement and all schedules to this agreement.

**Agreement Variation Procedure:** means the procedure set out in Schedule 6 (Variation Procedure).

**Approval:** means the prior written approval of the Authority.

**Audit:** means an audit carried out pursuant to Clause 10 (Records and audit access).

**Auditor:** means the National Audit Office or an auditor appointed by the Authority as the context requires.

**Authorised Representative:** means the persons respectively designated as such by the Authority and the Service Provider, the first such persons being set out in Clause 30 (Notices).

**Award Criteria:** means the award criteria to be applied to Tenders received through mini-competitions held for the award of Contracts for Services as set out in the relevant Invitation to Tender.

**Call-off Terms and Conditions:** means the terms and conditions in Schedule 5 (Call-off Terms and Conditions).

**Categories:** means the Services divided into categories as referred to in the OJEU Notice and set out in Part 3 of Schedule 1 (Services and Categories).

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

**Code:** means as defined in Clause 14.4 (Freedom of information).

**Commencement Date:** means the date when the Service Provider is accepted onto the Authority's DPS for passenger transport services.

**Complaint:** means any formal complaint raised by the Authority or any third party in relation to the Service Provider's performance under the Agreement or any Contract in accordance with Clause 20 (Complaints handling and resolution).

**Confidential Information:** means any information which has been designated as confidential by either Party in writing (including by the Service Provider as "Commercially Sensitive Information") or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the Data Protection Legislation.

**Contract:** means a legally binding agreement (made pursuant to the provisions of this Agreement) for the provision of Services made between the Authority and the Service Provider comprising a Route Instruction Form, its appendices and the Call-off Terms and Conditions (as may be amended pursuant to Clause 4.3 (Award procedures)).

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

connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

**Data Controller:** means as defined in the Data Protection Legislation.

**Data Processor:** means as defined in the Data Protection Legislation.

**Data Protection Legislation:** means the DPA, the GDPR, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable Laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

**Dispute:** means as defined in Clause 21.1 (Dispute resolution).

**Dispute Notice:** means as defined in Clause 21.1 (Dispute resolution).

**DPA:** means the Data Protection Act 2018.

**DPS:** means dynamic purchasing system, an electronic system being used to select DPS Providers to deliver the Authority's transport services set out in this Agreement and in accordance with the procedure set out at Regulation 34 of the Regulations.

**DPS Providers:** means the Service Provider and other service providers appointed as providers under agreements similar to this Agreement through the Authority's DPS for passenger transport services.

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

**Exit Strategy:** means, as a minimum, notification by the Service Provider to the Authority that it wishes to leave the Authority's DPS for passenger transport services with immediate effect in accordance with Clause 17.7 (Termination) (or where the Authority notifies the eligible service providers, including the Service Provider, that the Authority is terminating its DPS for passenger transport services in accordance with Clause 17.5 (Termination)).

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

**GDPR:** means the General Data Protection Regulation (GDPR) (EU) 2016/679.

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

**Holding Company:** shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

**Individual Specification:** means the Route Instruction-specific information (to complement the specification information included in the ITP and Request to Participate which applies for all mini-competitions and any direct awards of Route Instructions under the DPS).

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

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

**Invitation to Participate or ITP:** means the Authority's request to participate in the Authority's DPS for passenger transport services.

**Invitation to Tender:** means the Authority's invitation to tender to eligible DPS Providers to compete in a mini-competition for the award of Services and a Contract for a Route Instruction.

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

**Month:** means a calendar month.



**Notice of Variation:** means as defined in paragraph 2.2 of Schedule 6 (Variation Procedure).

**Notification of Award:** means the Authority's electronic notification to the DPS Provider selected following a mini-competition to deliver Services;

**OJEU Notice:** means the contract notice published in the Official Journal of the European Union.

**Parent Company:** means any company which is the ultimate Holding Company of the Service Provider and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged in the same or similar business to the Service Provider.

**Party:** means the Authority and/or the Service Provider.

**Personal Data:** means as defined in the Data Protection Legislation.

**Price:** means the price for Services applicable to a Route Instruction established by the award of a Contract for a Route Instruction following a mini-competition between DPS Providers (or in limited circumstances a direct award to a DPS Provider).

**Prohibited Act:** the following constitute Prohibited Acts:

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

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

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

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

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

**Request to Participate or RTP:** means the most recent selection questionnaire submitted by the Service Provider electronically via the Authority's tendering system seeking to participate as a DPS Provider in response to the Authority's ITP in the Authority's DPS for passenger transport services.

**Required Insurances:** means as defined in Clause 12.1 (Insurance).

**Route Instruction:** means an order for Services sent by the Authority to the Service Provider in accordance with the award procedures in Clause 4 (Award Procedures).

**Route Instruction Form:** means a document setting out details of a Route Instruction in the form set out in Schedule 4 (Route Instruction Form) or as otherwise agreed in accordance with Clause 4.7 (Award Procedures).

**Service Provider's Categories:** means the lots to which the Service Provider has been appointed under this Agreement as set out in Part 2 of Schedule 1 (Services and Categories).

**Service Users:** means service users accessing Services including, but not limited to, through the Authority's Special Education Needs and Disabilities (SEND), Adult Services, Mainstream Home to School Taxi Services and/or Pupil Referral Units (PRUs).

**Services:** means the services detailed in Part 1 of Schedule 1 (Services and Categories).

**Specification:** means the specification for the Services referred to in Part 2 of Schedule 1 (Services and Categories).

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

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

**Sub-Contractor:** means the contractors or service providers that enter into a Subcontract with the Service Provider.

**Tender:** means the documents submitted to the Authority by a DPS Provider in response to the Authority's Invitation to Tender issued to eligible DPS Providers for formal offers to supply it with Services under a mini-competition.

**Term:** means the period commencing on the Commencement Date and ending on the date specified in Clause 2 (Term of Agreement) of this Agreement or on earlier termination of this Agreement.

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

**Transport Services:** means as defined in Part 1 of Schedule 1 (Services and Categories).

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

**Year:** means a calendar year.

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

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) the words "**include**", "**includes**" and "**including**" are to be construed as if they were immediately followed by the words "**without limitation**";

- (d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- (g) the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement shall include the Schedules;
- (h) references in this Agreement to any Clause or sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or sub-Clause or Schedule to this Agreement so numbered;
- (i) references in this Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Agreement so numbered; and
- (j) reference to a Clause is a reference to the whole of that Clause unless stated otherwise.

1.3 This Agreement will supplement and complement the provisions of any Contract. In the event of a conflict or discrepancy between this Agreement and the Contract, the Parties will have full regard to the principles set out in Clause 1.4 with a view to resolving that conflict or discrepancy. Where a conflict or discrepancy between this Agreement and any Contract cannot be resolved by reference to those principles the order of priority shall be as set out in Clause 5.2 (Contract performance and precedence of documents).

1.4 This Agreement provides a mechanism for the Services to be called off from the Service Provider by the Authority and a supplemental set of provisions designed to encourage the Authority and the Service Provider to work with each other in an open, co-operative and collaborative manner and in a spirit of mutual trust and respect. The Parties will at all times endorse and support collaborative behaviour which is not collaborative.

## **2. TERM OF AGREEMENT**

- 2.1 This Agreement shall take effect on the Commencement Date and shall expire automatically at midnight on 30 June 2029, unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated.
- 2.2 The Service Provider shall bear the cost of ensuring that the Services shall comply with all applicable Law.

## **3. SCOPE OF AGREEMENT**

- 3.1 This Agreement governs the relationship between the Authority and the Service Provider in respect of the provision of the Services by the Service Provider to the Authority.
- 3.2 The Authority appoints the Service Provider as a DPS Provider of the Services and the Service Provider shall be eligible to receive Route Instructions for such Services from the Authority during the Term.
- 3.3 The Service Provider acknowledges and agrees that (where all DPS Providers have mutually agreed by completing their own agreement similar to this Agreement including equivalent terms to this Clause 3.3) pursuant to Regulations 34(11) and 34(12) of the Regulations it agrees that the time limit for receipt of Tenders shall not be at least ten (10) days and that the Authority may set a time limit for receipt of Tenders when conducting a mini-competition for the award of Services. The Authority shall notify all DPS Providers as soon as reasonably practicable should any DPS Provider not provide its agreement to the Authority being able to set the time limit for receipt of a Tender as being less than ten (10) days in which case Regulation 34(11) of the Regulations shall apply.
- 3.4 The Authority may in its absolute discretion and from time to time during the Term order Services from the Service Provider in accordance with the ordering and award procedure set out in Clause 4 (Award Procedures). Subject to Clause 3.3, if there is a conflict between Clause 4 (Award Procedures) and the Regulations, the Regulations shall take precedence.
- 3.5 If and to the extent that any Services under this Agreement are required the Authority shall:
- (a) enter into a Contract with the Service Provider for these Services whose terms are materially in accordance with the Call-off Terms and Conditions; and

(b) comply with the ordering procedure in Clause 4 (Award Procedures).

3.6 The Service Provider acknowledges that, in entering this Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for the Services and that the Authority is at all times entitled to:

(a) enter into other contracts and arrangements with other DPS Providers for the provision of any or all of the Services; or

(b) enter into other contracts and arrangements with other service providers for the provision of services which are the same as or similar to the Services.

#### **4. AWARD PROCEDURES**

4.1 If the Authority decides to source Services through the Agreement then it must satisfy its requirements for the Services by awarding a Contract in accordance with the terms laid down in this Agreement and particularly in accordance with the relevant Invitation to Tender and Schedule 2 (Award Criteria) to this Agreement.

4.2 The Parties acknowledge that the Authority's award of any Services to the Service Provider shall be as Services by mini-competition between DPS Providers and where the Service Provider is successful according to Clause 4.3, provided always that the Authority may make a direct award of Services pursuant to Clause 4.4.

4.3 Subject to Clause 4.4, the Authority, when ordering Services under the Agreement using a mini-competition, shall:

(a) identify the relevant Category(s) and geographic area that its Services requirements fall into;

(b) identify the DPS Providers capable of performing the Contract for the Services requirements;

(c) conduct a mini-competition seeking a Tender from eligible, invited DPS Providers by issuing an Invitation to Tender document setting out the Authority's requirements, a copy of the proposed Contract (being a Route Instruction which incorporates by reference the Call-off Terms and Conditions) and also a deadline by which the Tender must be submitted;

(d) evaluate all Tender submissions received by the Invitation to Tender deadline in accordance with the Award Criteria set out in the Authority's Invitation to Tender;

- (e) (on conclusion of the Tender submission evaluation process) award a Contract to the DPS Provider submitting the most economically advantageous Tender on the basis of the Award Criteria specified in the Authority's Invitation to Tender;
- (f) prepare and send to the successful DPS Provider an electronic Notification of Award following which the DPS Provider is required within two (2) Working Days of receipt to respond electronically to the Authority to either:
  - (i) accept the invitation to deliver the specification set out in the Authority's Invitation to Tender and offer to enter into the Contract with the Authority; or
  - (ii) notify the Authority that it declines to deliver the specification set out in the Authority's Invitation to Tender and shall not enter into the Contract (whereby the Contract offer from the Service Provider shall lapse and the Authority may then send the Contract to the next DPS Provider that has submitted the next most economically advantageous Tender (and so on until all DPS Providers decline and the Authority has to reprocure such Services)),

provided that if a DPS Provider does not respond to the Authority's electronic Notification of Award and commences performance of the Services then the DPS Provider is deemed to have accepted the invitation and offered to enter into the Contract; and

- (g) where:
  - (i) on receipt of the DPS Provider's response to the Authority's electronic Notification of Award (where the DPS Provider has accepted the invitation and offered to enter into the Contract); or
  - (ii) the DPS Provider does not respond to the Authority's electronic Notification of Award within two (2) Working Days of receipt and commences performance of the Services,

the Authority is deemed to have accepted the DPS Provider's offer to enter into the Contract; and

- (h) the DPS Provider shall provide the Services (being the Route Instruction) in accordance with the terms of the Contract.

4.4 The Authority may make a direct award of Services (bypassing the mini-competition and submission of a Tender by the Service Provider when it is an invited DPS Provider) where:

- (a) a DPS Provider (within the relevant Category) is the only DPS Provider who satisfied the selection criteria to join the DPS; or
- (b) only one (1) DPS Provider within the Category is capable of performing the Services for the Authority (for example due to Service User safeguarding criteria constraints or the other DPS Providers within a Category being ineligible to perform the Services as they are suspended or have no valid insurance or appropriate Vehicle(s) to meet the Specification),

provided that (where required by the Authority) the Service Provider is required to provide detailed evidence of value for money (including benchmarked costs, where relevant in the reasonable opinion of the Authority) and a value for money report to evidence how best value will be delivered to the Authority.

4.5 The Service Provider agrees that each Tender submitted by the Service Provider in relation to a mini-competition for Services held pursuant to this Clause 4 shall remain open for acceptance for thirty (30) days from the specified commencement date for such Services (or such other period specified in the Invitation to Tender issued by the Authority in accordance with this Clause 4).

4.6 Notwithstanding the fact that the Authority has followed the procedure set out above in this Clause 4 for Services, the Authority may cancel, postpone, delay or end the procedure without placing a Route Instruction for Services or awarding a Contract. Nothing in this Agreement shall oblige the Authority to place any Route Instruction for Services and (subject to Clause 4.4) no DPS Provider shall be entitled to any exclusive arrangement for the delivery of Services to the Authority.

4.7 Subject to Clauses 4.1 to 4.6 above, the Authority may place a Route Instruction with the Service Provider by serving a Route Instruction in writing in substantially the form described in Schedule 4 (Route Instruction Form) or such similar or analogous form agreed with the Service Provider including systems of ordering involving fax, e-mail or other online solutions.

4.8 If the Service Provider modifies or imposes conditions on the fulfilment of a Contract (or Route Instruction) the Authority may either:

- (a) reissue the Contract incorporating the modifications or conditions in a new Invitation to Tender; or



- (b) treat the Service Provider's response as notification of its inability to fulfil the specification and the provisions of Clause 4.3(f)(ii) shall apply.

4.9 The Parties acknowledge and agree that the issue of an Invitation to Tender is an "invitation to treat" by the Authority. Accordingly, the DPS Provider shall electronically submit its Tender as its offer to the Authority on the terms of the Contract (being the Route Instruction and Call-off Terms and Conditions including the Specification). The Authority shall signal its acceptance of the DPS Provider's offer and the formation of a Contract by electronically issuing a Notification of Award to the Service Provider.

## **5. CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS**

5.1 The Service Provider shall perform all Contracts entered into the Authority in accordance with:

- (a) the requirements of this Agreement; and
- (b) the terms and conditions of the respective Contracts.

5.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of a Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the Clauses of the Contract;
- (b) the Route Instruction Form (except any appended (Service Provider's Request to Participate and/or Tender) (where applicable));
- (c) the Invitation to Tender requiring a Tender (where applicable);
- (d) the Tender (where applicable);
- (e) the terms of the Agreement, the Schedules to the Agreement and the appendices to the Route Instruction Form, except Part 4 of Schedule 1 (Services and Categories);
- (f) the Invitation to Participate;
- (g) the Request to Participate;

- (h) any other document referred to in the Clauses of the Contract; and
- (i) any other document referred to in the Clauses of the Agreement.

## **6. PRICES FOR SERVICES**

- 6.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this Agreement, the Authority shall pay the charges to the Service Provider in accordance with the provisions set out in the relevant Contract. The charges applicable for the Services will be determined at Contract award stage.
- 6.2 The Service Provider shall invoice the Authority for payment of the charges in accordance with the relevant Contract. All invoices shall be directed to the Authority's Authorised Representative.
- 6.3 (Unless otherwise specified in the Contract) the Authority shall pay the charges which have become payable to the Service Provider in accordance with clause 11 (Payment) of the Call-off Terms and Conditions.
- 6.4 The prices offered by the Service Provider for Contracts to the Authority for Services shall, subject to Clause 4.4 (Award Procedures), be tendered in accordance with the requirements of the mini-competition held pursuant to Clause 4 (Award Procedures) and Schedule 2 (Award Criteria).

## **7. WARRANTIES AND REPRESENTATIONS**

- 7.1 The Service Provider warrants and represents to the Authority that:
  - (a) it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Agreement and any Contract;
  - (b) this Agreement is executed by a duly authorised representative of the Service Provider;
  - (c) in entering into this Agreement or any Contract it has not committed any Prohibited Act;
  - (d) as at the Commencement Date, all information, statements and representations contained in the Request to Participate are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority before the execution of this Agreement and it will promptly advise

the Authority of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;

- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Agreement and any Contract which may be entered into with the Authority;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement and any Contract; and
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider 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 Service Provider's assets or revenue.

## **8. SERVICE PRE-REQUISITES**

- 8.1 The Service Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Agreement and any Contract.
- 8.2 As at the date of this Agreement the Authority and the Service Provider do not envisage that a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) will apply in relation to the provision of the Services under any Contract. However, where a relevant transfer applies then the terms of Schedule 8 of the relevant Contract shall apply.

## **9. MEETINGS AND REPRESENTATIVES**

- 9.1 The Authority's initial Authorised Representative is:

Brian Derbyshire  
Compliance Manager  
Integrated Transport Services  
Lancashire County Council  
Gate 1, Dewhurst Row (off Lostock Lane)  
Bamber Bridge  
Lancashire  
PR5 6BB

Telephone 01772 538 446  
brian.derbyshire@lancashire.gov.uk

9.2 The Service Provider's initial Authorised Representative is the person whose contact details are as shown in the "Contact Details" box as set out in Part 1 of the Request to Participate.

9.3 The Authority's e-mail contact details for each of its Business Support teams split by area are:

[ITSFyldeWyre@lancashire.gov.uk](mailto:ITSFyldeWyre@lancashire.gov.uk)

[ITSChorleyWestLancs@lancashire.gov.uk](mailto:ITSChorleyWestLancs@lancashire.gov.uk)

[ITSPrestonSouthRibble@lancashire.gov.uk](mailto:ITSPrestonSouthRibble@lancashire.gov.uk)

[ITSLancasterMorecambe@lancashire.gov.uk](mailto:ITSLancasterMorecambe@lancashire.gov.uk)

[ITSEast@lancashire.gov.uk](mailto:ITSEast@lancashire.gov.uk)

9.4 The Authority may require the Service Provider to attend (at its own cost) a performance review meeting no more frequently than once in every rolling period of twelve (12) months from the Service Provider's date of joining the Authority's DPS for passenger transport services. Any such meeting shall be requested on reasonable notice and to be held at a reasonable time, to be attended by key representatives from the Authority and Service Provider including the Authorised Representatives.

## **10. RECORDS AND AUDIT ACCESS**

10.1 The Service Provider shall keep and maintain until seven (7) years after the date of termination or expiry (whichever is the earlier) of this Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Agreement including the Services provided under it, the Contracts entered into with Authority and the amounts paid by the Authority.

10.2 The Service Provider shall keep the records and accounts referred to in Clause 10.1 above in accordance with good accountancy practice.

10.3 The Service Provider shall afford the Authority or the Auditor (or both) such access to such records and accounts as may be required from time to time.

- 10.4 The Service Provider shall provide such records and accounts (together with copies of the Service Provider's published accounts) during the Term and for a period of seven (7) years after expiry of the Term to the Authority and the Auditor.
- 10.5 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Service Provider or delay the provision of the Services pursuant to the Contracts, save insofar as the Service Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Authority.
- 10.6 Subject to the Authority's rights of confidentiality, the Service Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
- (a) all information requested by the Auditor within the scope of the Audit;
  - (b) reasonable access to sites controlled by the Service Provider and to equipment used in the provision of the Services; and
  - (c) access to the Staff.
- 10.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 10, unless the Audit reveals a material default by the Service Provider in which case the Service Provider shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.

## **11. CONFIDENTIALITY**

- 11.1 Subject to Clause 11.2, the Parties shall keep confidential the Confidential Information of the other Party all matters relating to this Agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 11.2 Clause 11.1 shall not apply to any disclosure of information:
- (a) required by any applicable Law, provided that Clause 14.1 (Freedom of information) shall apply to any disclosures required under the FOIA or the Environmental Information Regulations;
  - (b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Agreement;

- (c) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of Clause 11.1;
- (d) by the Authority of any document to which it is a party and which the Parties to this Agreement have agreed contains no Confidential Information;
- (e) to enable a determination to be made under Clause 21 (Dispute resolution);
- (f) which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party, and the disclosing Party is not under any obligation of confidence in respect of that information;
- (g) by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the information; and
- (h) by the Authority relating to this Agreement and in respect of which the Service Provider has given its prior written consent to disclosure.

## **12. INSURANCE**

12.1 The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum these levels of cover when performing the Services:

- (a) public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one (1) claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one (1) claim or series of claims;
- (c) (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 Services) professional indemnity insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one (1) claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover,

- (d) any other insurance required by Law (including but not limited to motor insurance); and
- (e) any other risks which the Authority may reasonably require,

(the **Required Insurances**) in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss.

- 12.2 The Service Provider shall give the Authority, on request, copies of all insurance policies referred to in this Clause 12 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.
- 12.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 12.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Agreement.
- 12.5 The Service Provider shall not do or permit anything to be done which makes void or voidable any insurance policy.
- 12.6 The Service Provider shall promptly pay all premiums and do all other things necessary to keep all of its insurance in force.
- 12.7 The Service Provider may be required to provide additional insurance cover to meet the requirements of any Contracts awarded. Any additional insurance requirements will be detailed within the Contract.

### **13. DATA PROTECTION**

- 13.1 The Service Provider shall (and shall procure that any of its Service Provider's Personnel involved in the provision of the Agreement shall) comply with any notification requirements under the Data Protection Legislation and both Parties shall duly observe all their obligations under the Data Protection Legislation which arise in connection with the Agreement.
- 13.2 Notwithstanding the general obligation in Clause 13.1, where the Service Provider is processing Personal Data as a Data Processor for the Authority, the Service Provider shall ensure that it has in place appropriate technical and contractual measures to

ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Data Protection Legislation; and

- (a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the DPA;
- (b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to Clause 13.2; and
- (c) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the Data Protection Legislation.

13.3 The Authority and Service Provider shall comply with Schedule 3 (Processing, Personal Data and Data Subjects) in respect of Personal Data processing obligations. The Service Provider is processing Personal Data as a Data Processor for the Authority which acts as Data Controller.

#### **14. FREEDOM OF INFORMATION**

14.1 The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority (at the Service Provider's expense) to enable the Authority to comply with these information disclosure requirements.

14.2 The Service Provider shall and shall procure that its Sub-Contractors shall:

- (a) transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
- (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
- (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.



14.3 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.

14.4 The Service Provider acknowledges that the Authority may (acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004) (**Code**)) be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

(a) without consulting with the Service Provider; or

(b) following consultation with the Service Provider and having taken its views into account,

provided always that where Clause 14.4(a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advance notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

14.5 The Service Provider shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

14.6 The Service Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 14.3.

## **15. PUBLICITY**

15.1 Unless otherwise directed by the Authority, the Service Provider shall not make any press announcements or publicise this Agreement in any way without the Authority's prior written consent.

15.2 The Authority shall be entitled to publicise this Agreement in accordance with any legal obligation on the Authority, including any examination of this Agreement by the Auditor or otherwise.

15.3 The Service Provider shall not do anything that may damage the reputation of the Authority or bring the Authority into disrepute.

**16. GUARANTEE/PERFORMANCE BOND/COLLATERAL WARRANTIES**

Any parent company guarantee, performance bond, collateral warranty or third party rights notice requirements in favour of the Authority or any other beneficiary shall be detailed in the relevant Contract.

**17. TERMINATION**

**Termination on Default**

17.1 The Authority may terminate this Agreement by serving written notice on the Service Provider with effect from the date specified in such notice:

(a) where the Service Provider commits a material breach of this Agreement and:

(i) the Service Provider has not remedied the material breach to the satisfaction of the Authority within ten (10) Working Days, or such other longer period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or

(ii) the material breach is not, in the reasonable opinion of the Authority, capable of remedy; or

(b) where the Authority terminates a Contract awarded to the Service Provider under this Agreement as a consequence of Default by the Service Provider.

17.2 For the purposes of Clause 17.1(a), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

(a) a substantial portion of this Agreement; or

(b) any of the obligations set out in Clauses 7.1(c) and 7.1(d) (Warranties and Representations), 10 (Records and Audit Access), 12 (Insurance), 13 (Data Protection), 14 (Freedom of Information), 22 (Prevention of Bribery) and 23 (Subcontracting and assignment),

over the Term of this Agreement. In deciding whether any breach is material no regard shall be had to whether such breach occurs by some accident, mishap, mistake or misunderstanding.

## Termination on insolvency and Change of Control

17.3 Without affecting any other right or remedy available to it, the Authority may terminate this Agreement with immediate effect by giving written notice to the Service Provider if:

- (a) the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Service Provider with one (1) or more other companies or the solvent reconstruction of the Service Provider;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Service Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of the Service Provider;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Service Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;
- (g) the Service Provider (being an individual) is the subject of a bankruptcy petition or order;

- (h) a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Service Provider's assets and such attachment or process is not discharged within fourteen (14) days;
- (i) any event occurs, or proceeding is taken, with respect to the Service Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 17.3(a) to Clause 17.3(h) (inclusive);
- (j) the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (k) any warranty given by the Service Provider in Clause 7 of this Agreement is found to be untrue or misleading.

17.4 The Service Provider, not being an individual, shall notify the Authority immediately if the Service Provider undergoes a Change of Control. The Service Provider, being an individual, shall notify the Authority immediately if the Service Provider's business is acquired by a third party. The Authority may terminate the Agreement by giving notice in writing to the Service Provider with immediate effect within six (6) Months of:

- (a) (where the Service Provider is not an individual) being notified that a Change of Control has occurred;
- (b) (where the Service Provider is not an individual) where no notification has been made, the date that the Authority becomes aware of the Change of Control;
- (c) (where the Service Provider is an individual) being notified that the Service Provider's business has been acquired by a third party; or
- (d) (where the Service Provider is an individual) where no notification has been made, the date that the Authority becomes aware of the Service Provider's business being acquired by a third party,

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

**Termination by Authority for convenience**

- 17.5 The Authority shall have the right to terminate this Agreement, or to terminate the provision of any part of the Agreement at any time by giving written notice to the Service Provider and all other DPS Providers having similar agreements to this Agreement with the Authority. The Parties acknowledge that if the Authority exercises its rights under this Clause 17.5 it shall exercise its equivalent rights under all agreements with the DPS Providers.

#### **Termination on mandatory grounds**

- 17.6 The Authority is required by virtue of Regulation 73 of the Regulations to ensure that all contracts which it awards contain provisions enabling the Authority to terminate those contracts under certain circumstances. The Authority will terminate the whole of this Agreement with immediate effect by the service of a written notice on the Service Provider in the following circumstances:

- (a) where the Agreement has been subject to a substantial modification which will include any change in the Agreement irrespective of the monetary value and which meets one (1) or more of the following conditions:
  - (i) materially alters the character of the Agreement;
  - (ii) would have allowed other potential service providers to participate in the procurement procedure other than those initially selected or allowed for the acceptance of a tender other than that originally accepted;
  - (iii) attracted additional service providers in the procurement procedure;  
or
  - (iv) the modification changes the economic balance of the Agreement in favour of the Service Provider in a manner which was not provided for in the original agreement;
  - (v) the modification extends the scope of the Agreement considerably;  
or
  - (vi) a new service provider replaces the Service Provider other than where the change arises from a clear and precise unequivocal review clause or the exercising of an option which outlines the scope and nature of the possible modification as well as the conditions under which the option can be exercised and that the option exercised does not alter the overall nature of the Agreement or following a universal or partial succession into the position of the

Service Provider following corporate restructuring such as a takeover, merger, acquisition or insolvency and provided that this does not entail other substantial modifications and where the purpose of the modification is not aimed at circumventing procurement Law;

- (b) where post-award of the Agreement it is discovered that the Service Provider should have been excluded from the procurement procedure on certain mandatory exclusion grounds for a breach of Regulation 57 of the Regulations. These exclusion grounds are where the Service Provider has been convicted of any of the offences that are detailed in Regulation 57 of the Regulations; or
- (c) where the Court of Justice of the European Union has declared the Agreement was awarded in “serious infringement” of the Authority’s obligations under European Union law and Directive 2014/24/EU in infringement proceedings brought by the European Commission against the Member State concerned under Article 258 TFEU.

#### **Termination by the Service Provider for convenience**

- 17.7 The Service Provider shall have the right to terminate this Agreement immediately at any time by giving written notice to the Authority.

#### **18. SUSPENSION OF SERVICE PROVIDER'S APPOINTMENT**

Without prejudice to the Authority's rights to terminate the Agreement in Clause 17 (Termination) above, if a right to terminate this Agreement arises in accordance with Clause 17 (Termination), the Authority may suspend the Service Provider's right to receive Route Instructions from the Authority in any or all Service Provider's Categories by giving notice in writing to the Service Provider. If the Authority provides notice to the Service Provider in accordance with this Clause 18, the Service Provider's appointment shall be suspended immediately for the period set out in the notice or such other period notified to the Service Provider by the Authority in writing from time to time.

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

- 19.1 Notwithstanding the service of a notice to terminate the Agreement, the Service Provider shall continue to fulfil its obligations under the Agreement until the date of expiry or termination of the Agreement or such other date as required under this Clause 19.
- 19.2 Unless expressly stated to the contrary, the service of a notice to terminate the Agreement shall not operate as a notice to terminate any Contract made under the

Agreement. Termination or expiry of the Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

- 19.3 Within thirty (30) Working Days of the date of termination or expiry of the Agreement, the Service Provider shall return or destroy at the request of the Authority any data, personal information relating to the Authority or its personnel or Confidential Information belonging to the Authority in the Service Provider's possession, power or control, either in its then current format or in a format nominated by the Authority (in which event the Authority will reimburse the Service Provider's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Authority, save that it may keep one (1) copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Agreement, or such period as is necessary for such compliance.
- 19.4 Termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Agreement before termination or expiry.
- 19.5 The provisions of Clauses 7 (Warranties and Representations), 10 (Records and Audit Access), 11 (Confidentiality), 12 (Insurance), 13 (Data Protection), 14 (Freedom of Information), 15 (Publicity), 17 (Termination), 19 (Consequences of Termination and Expiry), 22 (Prevention of Bribery), 23 (Subcontracting and assignment) and 31 (Governing Law and Jurisdiction), shall survive the termination or expiry of the Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

## **20. COMPLAINTS HANDLING AND RESOLUTION**

- 20.1 The Service Provider shall notify the Authority of any Complaint within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Service Provider's plans to resolve such Complaint.
- 20.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Agreement or a Contract, and without prejudice to any obligation of the Service Provider to take remedial action under the provisions of the Agreement or a Contract, the Service Provider shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing shall deal with the Complaint fully, expeditiously and fairly.

## 21. DISPUTE RESOLUTION

21.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (a **Dispute**) then except as expressly provided in this Agreement or in the Call-off Terms and Conditions, the Parties shall follow the procedure set out in this Clause 21:

- (a) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives of the Authority and the Service Provider shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives of the Authority and the Service Provider are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the Integrated Transport Services Manager: Transport Services of the Authority and a more senior representative of the Service Provider than the Service Provider's Authorised Representative who shall attempt in good faith to resolve it; and
- (c) if the Integrated Transport Services Manager: Transport Services of the Authority and the more senior representative of the Service Provider are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, where relevant 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 Solve. 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 Solve.

21.2 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under Clause 31 (Governing law and jurisdiction) which Clause 31 shall apply at all times.

## 22. PREVENTION OF BRIBERY

22.1 The Service Provider:

- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Agreement and any Contract made under it commit a Prohibited Act; and



- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Agreement or any Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Agreement.

22.2 The Service Provider shall:

- (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- (b) within thirty (30) days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Service Provider) compliance with this Clause 22 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Service Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.

22.3 The Service Provider shall comply with the Authority's anti-bribery policy (which shall be disclosed to the Service Provider) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

22.4 If any breach of Clause 22.1 is suspected or known, the Service Provider must notify the Authority immediately.

22.5 If the Service Provider notifies the Authority that it suspects or knows that there may be a breach of Clause 22, the Service Provider must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documents. This obligation shall continue for seven (7) years following the expiry or termination of this Agreement.

22.6 The Authority may terminate this Agreement by written notice with immediate effect if the Service Provider, its Staff or Sub-Contractors (in all cases whether or not acting with the Service Provider's knowledge) breaches Clause 22.1.

22.7 Any notice of termination under Clause 22.6 must specify:

- (a) the nature of the Prohibited Act;

- (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
- (c) the date on which this Agreement will terminate.

22.8 Notwithstanding Clause 21 (Dispute resolution), any dispute relating to:

- (a) the interpretation of this Clause 22; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Authority and its decision shall be final and conclusive.

22.9 Any termination under this Clause 22 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

### **23. SUBCONTRACTING AND ASSIGNMENT**

23.1 Subject to Clause 23.2, neither Party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other Party, neither may the Service Provider sub-contract the whole or any part of its obligations under this Agreement except with the express prior written consent of the Authority.

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

### **24. VARIATIONS TO AGREEMENT**

Any variations to the Agreement must be made only in accordance with the Agreement Variation Procedure set out in Schedule 6 (Variation Procedure) and the Regulations.

### **25. THIRD PARTY RIGHTS**

25.1 Except as provided in this Agreement, a person who is not a Party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

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

## **26. SEVERANCE**

26.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 26.1 shall not affect the validity and enforceability of the rest of this Agreement.

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

## **27. RIGHTS AND REMEDIES**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by Law.

## **28. WAIVER**

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

## **29. ENTIRE AGREEMENT**

29.1 This Agreement, the schedules and the documents annexed to it or otherwise referred to in it and the ITP and all schedules and the documents annexed to it and otherwise referred to in it contain the whole agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the Parties relating to that subject matter, provided that nothing in this Clause 29 shall operate to exclude any liability for fraud.

29.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent

or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

### **30. NOTICES**

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

30.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by fax or e-mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 30.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of e-mail or fax or sooner where the other Party acknowledges receipt of such letters, or fax or e-mail.

30.3 For the purposes of Clause 30.2, the address of each Party shall be:

(a) for the Authority:

Authority's Authorised Representative:

Address: Lancashire County Council, Business Support, Integrated Transport Services, Gate 1, Dewhurst Row, off Lostock Lane, Bamber Bridge PR5 6BB

For the attention of: Compliance Manager (Business Support team)

Tel: 01772 532370

E-mail: [itsoperatorclaimform@lancashire.gov.uk](mailto:itsoperatorclaimform@lancashire.gov.uk)

(b) for the Service Provider the person whose contact details are as shown in the "Contact Details" box as set out in Part 1 of the Request to Participate.

30.4 Either Party may change its address for service by serving a notice in accordance with this Clause 30.

**31. GOVERNING LAW AND JURISDICTION**

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

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

This Agreement has been entered into on the date when the Service Provider is accepted onto the Authority's DPS for passenger transport services.

**Part 1: Categories**

The Authority's Integrated Transport Service co-ordinates a range of transport services for children and vulnerable adults (Service Users) to and from various establishments within Lancashire and outside of the county of Lancashire (the **Transport Services**). Transport Services include Service Users accessing various educational establishments in taxis or minibuses. This includes Special Education Needs and Disabilities (SEND) pupils, mainstream home to school pupils in transport other than large buses and coaches, students attending Pupil Referral Units (PRUs), medical facilities, discretionary transport and children being looked after by the Authority. In addition, Service Users may be adults attending day care etc.

Invitations to Tender will be organised in Categories or "lots" depending upon the type of Service, location and vehicle required. **The location will be based on the end destination of the journey** and not on the pickup point for the Service User. This means that DPS Providers may wish to bid for locations outside their normal area of operation as a journey may start locally with a destination being in another area.

*For example, a Service User may live in Hyndburn (east) but go to a school/centre in Lancaster (north). If a DPS Provider only indicates they are interested in Contracts in the east of the county they will miss the opportunity to bid for such a Contract.*

Please note that, where possible, the Authority will give DPS Providers a period of ten (10) Working Days to submit a bid for a journey. However, there will be a large number of journeys where transport has to be set up at short notice and the period for DPS Providers to submit a bid will be less than ten (10) Working Days.

**Category 1: Wheelchair Accessible Vehicle (WAV)**

- i. North (Fylde, Wyre, Blackpool, Lancaster and Morecambe)
- ii. South and Central (Chorley, West Lancashire, Preston and South Ribble)
- iii. East (Blackburn with Darwen, Hyndburn, Burnley, Pendle, Rossendale, Ribble Valley)
- iv. Out of county.

**Category 2: Vehicles with between 4 and 8 passenger seats**

- i. North (Fylde, Wyre, Blackpool, Lancaster and Morecambe)

- ii. South and Central (Chorley, West Lancashire, Preston and South Ribble)
- iii. East (Blackburn with Darwen, Hyndburn, Burnley, Pendle, Rossendale, Ribble Valley)
- iv. Out of county.

**Category 3: Vehicles with more than 8 passenger seats (PSV buses)**

- i. North (Fylde, Wyre, Blackpool, Lancaster and Morecambe)
- ii. South and Central (Chorley, West Lancashire, Preston and South Ribble)
- iii. East (Blackburn with Darwen, Hyndburn, Burnley, Pendle, Rossendale, Ribble Valley)
- iv. Out of county.

**Category 4: Ambulance**

## **Part 2: Specification**

Please see separate document (which also forms Schedule 1 (General Specification) to the Call-off Terms and Conditions).



### **Part 3: DPS Provider and Categories**

The awarded Categories are as notified by the Authority to the Service Provider following the Authority's evaluation of the Request to Participate.

## **Part 4**

### **Service Provider's Request to Participate**

(Part 4 (Service Provider's Request to Participate) of Schedule 1 (Services and Categories) is a separate document to be incorporated by reference from the Request to Participate).

**Categories 1 to 4 – for awards after mini-competition**

Any Contract awarded will be awarded on the basis of the offer that is the most economically advantageous to the Authority from the DPS Providers' Tenders, evaluated according to the evaluation methodology described in the Authority's relevant Invitation to Tender.

The evaluation, award criteria and weighting **may** be based on the evaluation of two (2) themes:

- Price only; or
- Price and responses to project specific questions.

The total weighting for Price and any project specific questions (if used) will be one hundred per cent (100%).

Examples of weighting criteria, which may be used by the Authority and published in the relevant Invitation to Tender issued by the Authority, are shown below. Mini-competition weightings may include pass/fail questions or (where pass/fail questions are not used) weightings within declared ranges of forty per cent (40%) up to sixty per cent (60%) for project specific questions and sixty per cent (60%) down to forty per cent (40%) for Price:

Criterion	Weighting example (1)	Weighting example (2)	Weighting example (3)	Weighting example (4)
Project specific questions	Not used	Pass/Fail	60%	40%
Price	100%	100%	40%	60%
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

The weighting criteria to be used will be determined by the Specification requirements, and shall be set out in any Authority Invitation to Tender seeking submission of Tenders from DPS Providers and may vary from the indicative criteria listed in the table above.

The weighting criteria to be used in Invitation to Tender documents for mini-competitions to award a Contract for a Route Instruction shall automatically follow "Weighting example (1)" i.e. evaluation based entirely on Price with no project specific questions unless otherwise specified in the Invitation to Tender.

The award of any Contract to a DPS Provider under this DPS will not imply any representation by the Authority as to their financial stability, technical competence or ability in any way to carry

out the Services. The right to return to these matters as part of the formal tender evaluation process is hereby reserved to the Authority. DPS Providers may therefore be required to certify that the information contained within their Request to Participate (and any Tender) is still accurate when bidding for Contracts.

**Schedule 3  
Data Subjects**

**Processing, personal Data and**

**1. The contact details of the Authority's Data Protection Officer are:**

Ian Wilkin, Integrated Transport Services Manager c/o Lancashire County Council, Business Support, Integrated Transport Services, Gate 1, Dewhurst Row, off Lostock Lane, Bamber Bridge PR5 6BB.

**2. The contact details of the DPS Provider's Data Protection Officer are:**

Person whose contact details are as shown in the "Contact Details" box as set out in Part 1 of the Request to Participate.

**3. The Data Processor shall comply with any further written instructions with respect to processing by the Data Controller.**

**4. Any such further instructions shall be incorporated into this Schedule.**

Description	Details
<b>Subject matter of the processing</b>	Transport services including students/pupils/adults accessing various educational establishments/day care provision in taxis, private hire vehicles, minibuses or ambulances.
<b>Duration of the processing</b>	1 July 2019 to 30 June 2029.
<b>Nature and purposes of the processing</b>	<p>Passenger schedules containing passengers/staff details in order to enable the DPS Provider to provide the required transport.</p> <p>Specific passenger risk assessments for individual passengers to enable the Service Provider to ensure that provide suitable service is provided.</p>
<b>Type of Personal Data</b>	<ul style="list-style-type: none"> <li>• Name and address of passenger, Authority agent e.g. nurse/medical assistant</li> <li>• Name and address of passenger</li> <li>• Date of birth of passenger</li> <li>• Name and address of parent/guardian/carer</li> <li>• Telephone numbers of the above</li> <li>• Times of collection of passengers</li> <li>• Risk assessments of the passenger including information concerning any disability/medication.</li> </ul>

Description	Details
<b>Categories of Data Subject</b>	<ul style="list-style-type: none"> <li>• Staff (including passenger assistants, agents and temporary workers)</li> <li>• Passengers</li> <li>• Parents/guardians/carers.</li> </ul>
<b>Plan for return and destruction of the data once the processing is complete UNLESS requirement under European Union or member state law to preserve that type of data</b>	<ul style="list-style-type: none"> <li>• Transport files destroyed seven (7) years from close date, i.e. end of service use</li> <li>• Risk assessments are destroyed at the end of service or when superseded by new risk assessment.</li> </ul>

**Schedule 4**

**Route Instruction Form**

The Route Instruction Form issued by the Authority will consist of an electronic order form comprising the following (and any additional information reasonably included or requested by the Authority):

CARTR134		Lancashire County Council Route Tender Document		10:41:00 20/03/2019 Page 1			
Contract Period: 23-APR-19 To 21-DEC-19		Contract Number: [REDACTED]					
Main Destination: [REDACTED]		PA Required: Y		Passenger Assistant Details:			
		PA Post Code: [REDACTED]					
		LCC CRB Enhanced Driver: N					
		Capacity Required: Vehicle - 06 seats including 2 wheelchairs					
Arrive / Depart: 08:50 15:15							
Contract Comments: Option to extend 12 months + 12 months. Please note Wednesday finish at 14.45							
Travels: Mon In & Home, Tue In & Home, Wed In & Home, Thu In & Home, Fri In & Home							
Name:	Address:	Post Code:	PA:	RA:	WC:	Equipment:	Destination / Journey Comments:
Passenger 1	[REDACTED]	[REDACTED]	Y	SRA	WC		
Passenger 2	[REDACTED]	[REDACTED]	Y	SRA		Booster Seat	
Passenger 3	[REDACTED]	[REDACTED]	Y	SRA			
Passenger 4	[REDACTED]	[REDACTED]	Y	SRA	WC	Booster Seat & Harness	
Passenger 5	[REDACTED]	[REDACTED]	Y	SRA		Booster Seat	

The Route Instruction Form shall also include the following clarification (and if omitted shall be deemed to include the following clarification):

*Please note if you are selected to deliver this Route Instruction that the Contract between the Authority and the Service Provider is made up of the Route Instruction Form and any additional Specification requirements for this particular Route Instruction (both as set out in this Invitation to Tender) and the Call-off Terms and Conditions (for the Provision of Passenger Transport Services).*

*The Call-off Terms and Conditions are set out in the Dynamic Purchasing Agreement for Passenger Transport Services which you agreed to when joining the Dynamic Purchasing System.*

*A copy of the Dynamic Purchasing Agreement for Passenger Transport Services and Call-off Terms and Conditions (for the Provision of Passenger Transport Services) can be located by clicking on the Passenger Transport Services – Dynamic Purchasing System link on [www.lancashire.gov.uk/business/tenders-and-procurement/tenders/](http://www.lancashire.gov.uk/business/tenders-and-procurement/tenders/)*

**Schedule 5**

**Call-off Terms and Conditions**

Please see separate document.



**1. INTRODUCTION**

- 1.1 This Schedule 6 (Variation Procedure) details the scope of the variations permitted and the process to be followed where the Authority proposes a variation to this Agreement.
- 1.2 The Authority may propose a variation to the Agreement under this Schedule 6 (Variation Procedure) only where the variation does not amount to a material change in the Agreement or the Services which would breach the Law.

**2. PROCEDURE FOR PROPOSING A VARIATION**

- 2.1 Except where paragraph 4 applies, the Authority may propose a variation using the procedure contained in this paragraph 2.
- 2.2 (Except where the Authority or Service Provider propose minor amendments or rectifications specific to the Service Provider and/or this Agreement which may be agreed between the Parties and implemented) in order to propose a variation which affects this Agreement and every other corresponding agreement made between the Authority and any other DPS Provider, the Authority shall electronically serve each DPS Provider with written notice of the proposal to vary the Agreement (**Notice of Variation**).
- 2.3 The Notice of Variation shall:
  - (a) contain details of the proposed variation providing sufficient information to allow each DPS Provider to assess the variation; and
  - (b) require each DPS Provider to notify the Authority within fourteen (14) days of any proposed changes.
- 2.4 On receipt of the Notice of Variation, each DPS Provider has fourteen (14) days to electronically respond to the Authority in writing with any objections to the variation.
- 2.5 Where the Authority does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Authority may then electronically serve each DPS Provider with a written statement detailing the variation to be electronically signed (or acknowledged) and notified by each DPS Provider to the Authority within fourteen (14) days of receipt.
- 2.6 On receipt of an electronically signed confirmation from each DPS Provider, the Authority shall notify all DPS Providers in writing of the commencement date of the variation.

**3. OBJECTIONS TO A VARIATION**

In the event that the Authority receives one (1) or more written objections to a variation, the Authority may:

- (a) withdraw the proposed variation; or
- (b) propose an amendment to the variation.

**4. VARIATIONS THAT ARE NOT PERMITTED**

In addition to the provisions contained in paragraph 1.2, the Authority may not propose any variation that:

- (a) may prevent one (1) or more of the DPS Providers from performing its obligations under the Agreement; or
- (b) is in contravention of any Law.