

## **UK-Shrewsbury: Hire of passenger transport vehicles with driver.**

UK-Shrewsbury: Hire of passenger transport vehicles with driver.

### Section I: Contracting Authority

#### I.1) Name and addresses

Shropshire Council  
Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom  
Tel. +44 1743252992, Fax. +44 1743253910, Email: [procurement@shropshire.gov.uk](mailto:procurement@shropshire.gov.uk)  
Contact: Procurement  
Main Address: [www.shropshire.gov.uk](http://www.shropshire.gov.uk)  
NUTS Code: UKG22

#### I.2) Joint procurement

The contract involves joint procurement: No.

In the case of joint procurement involving different countries, state applicable national procurement law: Not provided

The contract is awarded by a central purchasing body: No.

#### I.3) Communication

The procurement documents are available for unrestricted and full direct access, free of charge, at: <http://www.delta-esourcing.com/tenders/UK-UK-Shrewsbury:-Hire-of-passenger-transport-vehicles-with-driver./GE43574MJX>

Additional information can be obtained from: the abovementioned address

Tenders or requests to participate must be sent electronically via <http://www.delta-esourcing.com/tenders/UK-title/GE43574MJX> to the abovementioned address

Electronic communication requires the use of tools and devices that are not generally available.

Unrestricted and full direct access to these tools and devices is possible, free of charge, at: <http://www.delta-esourcing.com/tenders/UK-title/GE43574MJX>

#### I.4) Type of the contracting authority

Regional or local authority

#### I.5) Main activity

General public services

### Section II: Object

#### II.1) Scope of the procurement

II.1.1) Title: DMCT 229 - Passenger Transport Dynamic Purchasing System

Reference Number: DMCT 229

II.1.2) Main CPV Code:

60170000 - Hire of passenger transport vehicles with driver.

II.1.3) Type of contract: SERVICES

II.1.4) Short description: Shropshire Council is establishing a Dynamic Purchasing System for the provision of a range of passenger transport services to Shropshire Council.

Please note the Council reserves the right to award certain routes under this framework arrangement by the use of electronic auctions.

II.1.5) Estimated total value:

Value excluding VAT: 75,000,000

Currency: GBP

II.1.6) Information about lots:

This contract is divided into lots: No

#### II.2) Description

II.2.2) Additional CPV codes:

Not Provided

II.2.3) Place of performance:

UKG22 Shropshire CC

II.2.4) Description of procurement: Shropshire Council is establishing a Dynamic Purchasing System for the provision of a range of passenger transport services to Shropshire Council. This will include passenger transport for pupils to and from school, local bus services for the general public, Social Services transport to homes and centres, community/voluntary groups transport and the transport of hot meals and catering equipment to schools and other passenger transport services

required by the Council and its partners.

A variety of vehicles will be used and the framework will be made up of providers with the following vehicle types:

1. Non PCV vehicles (ie vehicles of 8 passenger seats or below)
2. Passenger carrying vehicles (PCV) (ie vehicles of 9 - 16 passenger seats and above)
3. Passenger carrying vehicles (PCV) (ie vehicles of 17 passenger seats and above)
4. Small vans

The DPS will consist of the following categories and Tenderers may apply for admission on to one or all of them:

- Public Transport
- School Transport
- Adult Social Care Transport (Social Services)
- SEN Transport (Special Educational Needs)
- Community Transport

Please note the Council reserves the right to award certain routes under this framework arrangement by the use of electronic auctions.

II.2.5) Award criteria:

Price is not the only award criterion and all criteria are stated only in the procurement documents

II.2.6) Estimated value:

Value excluding VAT: 75,000,000

Currency: GBP

II.2.7) Duration of the contract, framework agreement or dynamic purchasing system:

Start: 01/11/2018 / End: 31/10/2023

This contract is subject to renewal: Yes

Description of renewals: It is the intention for the DPS to be open for 5 years with the option to extend for a further 2 years.

II.2.9) Information about the limits on the number of candidates to be invited:

Envisaged minimum number: 100

/ Maximum number: 250

Objective criteria for choosing the limited number of candidates: Not provided

II.2.10) Information about variants:

Variants will be accepted: No

II.2.11) Information about options:

Options: No

Description of options: Not provided

II.2.12) Information about electronic catalogues:

Tenders must be presented in the form of electronic catalogues or include an electronic catalogue: No

II.2.13) Information about European Union funds:

The procurement is related to a project and/or programme financed by European Union funds: No

Identification of the project: Not provided

II.2.14) Additional information: Not provided

### Section III: Legal, Economic, Financial And Technical Information

III.1) Conditions for participation

III.1.1) Suitability to pursue the professional activity, including requirements relating to enrolment on professional or trade registers

List and brief description of conditions:

See DPS documentation.

III.1.2) Economic and financial standing

List and brief description of selection criteria:

See DPS documentation.

Minimum level(s) of standards possibly required (if applicable) :

See DPS documentation.

III.1.3) Technical and professional ability

List and brief description of selection criteria:

See DPS documentation.

Minimum level(s) of standards possibly required (if applicable) :

See DPS documentation.

III.1.5) Information about reserved contracts (if applicable)

The contract is reserved to sheltered workshops and economic operators aiming at the social and professional integration of disabled or disadvantaged persons: No

The execution of the contract is restricted to the framework of sheltered employment programmes:  
No

III.2) Conditions related to the contract

III.2.1) Information about a particular profession

Execution of the service is reserved to a particular profession

Reference to the relevant law, regulation or administrative provision:

See DPS documentation.

III.2.2) Contract performance conditions

See DPS documentation.

III.2.3) Information about staff responsible for the performance of the contract

Obligation to indicate the names and professional qualifications of the staff assigned to performing the contract: Yes

Section IV: Procedure

IV.1) Description RESTRICTED

IV.1.1) Type of procedure: Restricted

IV.1.3) Information about a framework agreement or a dynamic purchasing system

The procurement involves the establishment of a framework agreement - NO

The procurement involves the setting up of a dynamic purchasing system

In the case of framework agreements justification for any duration exceeding 4 years: Not Provided

IV.1.6) Information about electronic auction:

An electronic auction will be used: Yes

Additional information about electronic auction: The Council reserves the right to award certain routes under this Dynamic Purchasing System by the use of electronic auctions.

IV.1.8) Information about the Government Procurement Agreement (GPA)

The procurement is covered by the Government Procurement Agreement: No

IV.2) Administrative information

IV.2.1) Previous publication concerning this procedure:

Notice number in the OJ S: Not provided

IV.2.2) Time limit for receipt of tenders or requests to participate

Date: 04/10/2018 Time: 12:00

IV.2.3) Estimated date of dispatch of invitations to tender or to participate to selected candidates:  
Not Provided

IV.2.4) Languages in which tenders or requests to participate may be submitted: English,

IV.2.6) Minimum time frame during which the tenderer must maintain the tender:

Duration in month(s): 3

Section VI: Complementary Information

VI.1) Information about recurrence

This is a recurrent procurement: Yes

Estimated timing for further notices to be published: It is the intention for the DPS to be open for 5 years with the option to extend for a further 2 years.

VI.2) Information about electronic workflows

Electronic ordering will be used No

Electronic invoicing will be accepted No

Electronic payment will be used No

VI.3) Additional Information: For more information about this opportunity, please visit the Delta eSourcing portal at:

<https://www.delta-esourcing.com/tenders/UK-UK-Shrewsbury:-Hire-of-passenger-transport-vehicles-with-driver./GE43574MJX>

To respond to this opportunity, please click here:

<https://www.delta-esourcing.com/respond/GE43574MJX>

VI.4) Procedures for review

VI.4.1) Review body:

Shropshire Council

Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom

Tel. +44 1743252993, Email: [procurement@shropshire.gov.uk](mailto:procurement@shropshire.gov.uk)

VI.4.2) Body responsible for mediation procedures:

Not provided

VI.4.3) Review procedure

Precise information on deadline(s) for review procedures:

Not Provided

VI.4.4) Service from which information about the lodging of appeals may be obtained:

Shropshire Council

Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom

Tel. +44 1743252993, Email: [procurement@shropshire.gov.uk](mailto:procurement@shropshire.gov.uk)

VI.5) Date Of Dispatch Of This Notice: 04/09/2018

personal info

**Commissioning Development & Procurement  
Finance, Governance and Assurance**  
Shirehall, Abbey Foregate  
Shrewsbury, SY2 6ND



**Tel:** (01743) 252337

**Fax:** (01743) 255901

Please ask for: [REDACTED]

Email: [procurement@shropshire.gov.uk](mailto:procurement@shropshire.gov.uk)

Dear Bidder

## **DMCT 229 - PASSENGER TRANSPORT DYNAMIC PURCHASING SYSTEM**

### **SHROPSHIRE COUNCIL**

You have been invited to apply for the above system. With this letter please find copies of the following documents:

- Guidance on the Operation of the DPS
- Selection Questionnaire for entry on to the Passenger Transport Dynamic Purchasing System (for completion and return)
- DPS Passenger Transport terms and conditions 2018-19

Your Selection Questionnaire for entry on to the Passenger Transport Dynamic Purchasing System must be completed, signed and returned through our Delta E-Tendering system. You are recommended to keep a copy of all documents and supporting documents for your own records.

Please pay particular attention to the points below concerning the returning of questionnaires.

#### Returning of Selection Questionnaire

The deadline for returning the Selection Questionnaire is **noon on 4<sup>th</sup> October 2018**

Selection Questionnaire are to be submitted through Delta, our electronic tender portal

Please ensure that you allow yourself at least two hours when responding prior to the closing date and time, especially if you have been asked to upload documents. If you are uploading multiple documents you will have to individually load one document at a time or you can opt to zip all documents in an application like WinZip. Failure to submit by the time and date or by the method requested will not be accepted.

**Once you upload documentation ensure you follow through to stage three and click the 'response submit' button. Failure to do so, will mean the documents won't be viewable by the Council.**

Tenders **cannot** be accepted if:

- Tenders are received by post, facsimile or email

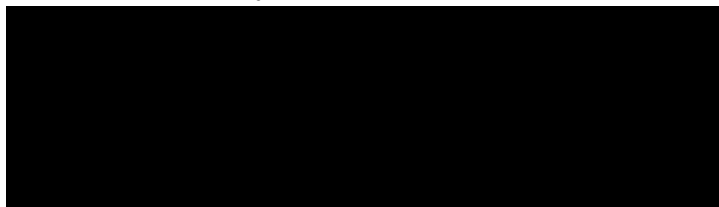
personal info

- Tenders are received after **12 noon on the given deadline**

Please read the Guidance on the Operation of the DPS for further information about this Dynamic Purchasing System.

If you have any queries relating to this invitation to tender, please contact us through the Delta e-tendering portal.

Yours faithfully



Commissioning Development and Procurement Manager  
Commissioning Development and Procurement  
Finance, Governance and Assurance  
Shropshire Council



Shropshire  
Council

**GUIDANCE ON THE OPERATION  
OF THE PASSENGER  
TRANSPORT SERVICES  
DYNAMIC PURCHASING SYSTEM**

<b><u>Section</u></b>	<b><u>Description</u></b>	<b><u>Page</u></b>
1.	Purpose	3
2.	Applications	3
3.	Communication	3
4	Other Documents or Supporting Evidence	4
5.	Applying to Enter the Dynamic Purchase System	4
6.	Evaluation and Selection	5
7.	Evaluation and Selection Criteria	6
8.	Procurement Timetable: Establishment of the DPS [Round 1]	6
9.	Invitation to Tender for Call Off Contracts	6
10.	Contract Terms and Conditions	7



## 1. Purpose

The purpose of this document is to provide instructions on applying for entrance (“application”) into a Dynamic Purchasing System (“DPS”). The Application enables Shropshire Council to receive sufficient information from Organisations interested in providing the required services and to allow the assessment of their capacity and suitability, for appointment on to the DPS. Only organisations that successfully enter the DPS will receive “Invitations to Tender” (“ITT”) for specific contracts (routes). This application process has been issued by Shropshire Council in connection with a competitive procurement in accordance with the Public Contract Regulations 2015 (“the Regulations”).

Shropshire Council is establishing a Dynamic Purchasing System for the provision of a range of passenger transport services to Shropshire Council. This will include passenger transport for pupils to and from school, local bus services for the general public, Social Services transport to homes and centres, community/voluntary groups transport and the transport of hot meals and catering equipment to schools and other passenger transport services required by the Council and its partners.

A variety of vehicles will be used and the framework will be made up of providers with the following vehicle types:

1. Non PCV vehicles (ie vehicles of 8 passenger seats or below)
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3. Passenger carrying vehicles (PCV) (ie vehicles of 17 passenger seats and above)
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The DPS will consist of the following categories and Tenderers may apply for admission on to one or all of them:

- Public Transport
- School Transport
- Adult Social Care Transport (Social Services)
- SEN Transport (Special Educational Needs)
- Community Transport

Please note the Council reserves the right to award certain routes under this framework arrangement by the use of electronic auctions.

## 2. Applications

Organisations that submit an application using the Selection Questionnaire, which meets the minimum selection criteria, shall be admitted on to the Dynamic Purchasing System and shall be invited to submit Tenders [Invitation to Tender] for specific services when these requirements are identified.

DPS Period: It is the intention for the DPS to be open for 5 years with the option to extend for a further 2 years.

## 3. Communication

All contact during this procurement should be submitted in writing through the e-tender system (Delta). Organisations should seek to clarify any points of doubt or difficulty via the e-tender system. It is not acceptable for Organisations to seek clarifications via telephone or e-mail outside of the e-tender system.

Where the Council considers any question or request for clarification to be of material significance it may communicate both the query and the response, in a suitably anonymous form, to all interested parties. Organisations should therefore not include within the question placed their organisation's name and any potential commercially sensitive information.

#### **4. Other Documents or Supporting Evidence**

As instructed to do so within the e-tender system, the Organisations must complete and upload other documentation that may be provided with this application process, or upload evidence to support their submission.

#### **5. Applying to Enter the Dynamic Purchasing System**

##### **The Application (Selection Questionnaire)**

Organisations may apply to enter the Dynamic Purchasing System by submitting an Application which comprises of the following:

Selection Criteria questions regarding minimum entrance criteria [questions within the Selection Questionnaire]

##### **Applying for Admission at Initial Creation of the Dynamic Purchasing System**

This is where the Dynamic Purchasing System is being established for the first time as part of a fully EU compliant tender process.

Organisations are required to submit their Application within the e-tender system by noon on 4th October 2018.

Organisations must complete the Selection Questionnaire and upload this and any supporting documentation to the e-tender system, where requested to do so. It is the Organisation's responsibility to ensure that the Application is submitted within the e-tender system by the closing date and time.

Failure to answer and complete the Application within the e-tender system will result in the Council rejecting the Application as a Fail / Non-compliant submission.

Failure to complete and upload any required documentation within the e-tender system will result in the Council rejecting the Application as a Fail / Non-compliant submission.

**Late or Partial Tender Submissions:** Applications received after the closing date will not be considered. The Council is under no obligation to consider partial or late submissions.

The information supplied in the Application will be checked for completeness and compliance before responses are evaluated. The Council expressly reserves the right to require an Organisation to provide additional information supplementing or clarifying any of the information provided in response to the requests set out in the Application process. However, the Council is not obliged to make such requests.

## **Applying for Admission into an already Established Dynamic Purchasing System**

This is where the Dynamic Purchasing System has already been established but Organisations wish to apply to enter for the first time, or to re-apply, or to improve existing Application.

Organisations may submit their Application within the e-tender system at any time in the duration of the Dynamic Purchasing System and shall be evaluated for entrance.

Organisations to complete questions and upload documentation to the e-tender system, where requested to do so.

**Failure** to answer and complete the Application within the e-tender system will result in the Council rejecting the Application as a Fail / Non-compliant submission.

**Failure** to complete and upload any required documentation within the e-tender system will result in the Council rejecting the Application as a Fail / Non-compliant Submission.

The information supplied in the Application will be checked for completeness and compliance before responses are evaluated. The Council expressly reserves the right to require an Organisation to provide additional information supplementing or clarifying any of the information provided in response to the requests set out in the application process. However, the Council is not obliged to make such requests.

## **6. Evaluation and Selection**

Evaluation of Applications will be undertaken by officers of the Council who will follow a systematic and comprehensive process using the selection criteria.

### **Selection Process**

The Council expects to make a decision on initial selection to enter the Dynamic Purchasing System within 30 working days of the closing date for the submission of Applications being 4th October 2018 thus by the 1st November 2018.

For any subsequent applications received after 1st November 2018 the Council expects to make a decision on selection to enter the Dynamic Purchasing System within 15 working days.

The decision will be based on the evaluation criteria as outlined under Evaluation and Selection Section 7.

Organisations selected by the Council to enter into the Dynamic Purchasing System shall be notified in writing (by email).

Organisations that have not been successful in entering into the Dynamic Purchasing System shall also be notified in writing (by email).

Admission on to the Dynamic Purchasing System shall not:

- be a guarantee for any award of Contract for Services. There is no obligation on the Council to purchase any Services via the Dynamic Purchasing System;

- provide any guarantee of business;
- constitute a Contract nor the authorisation to provide Services to the Council nor carry out any Work on behalf of the Council.

Organisations should note that the Council reserves the right to terminate this procedure without any invitation to tender.

They should also note that, should they be successful in being selected to enter into the Dynamic Purchasing System, the Council reserves the right to terminate the selection, if at any time it is discovered that the Organisation made any material misrepresentation and/or have not notified to the Council about any material changes in relation to the information provided in the application process **or if they no longer are able to meet the mandatory selection criteria.**

## 7. Evaluation and Selection Criteria

An Organisation's completion of the Selection Questionnaire will give the selection outcome. The following requirements are essential criteria to enter the DPS:

- The holding of the relevant licence applicable to the category applied for
- The operation of the appropriate vehicles.
- The holding of relevant insurances
- Suitable technical and professional expertise to undertake the required services as evidenced by responses to Section 6 Operators Performance within the Selection Questionnaire
- A designated nominated individual to counter sign DBS declaration (except local bus services).

## 8. Procurement Timetable: Establishment of the DPS [Round 1]

The indicative timetable for the procurement to initially establish the Dynamic Purchasing System is set out below. This is intended as a guide and, whilst the Council does not intend to depart from the timetable, it reserves the right to do so at any time.

<b>Table: Procurement Timetable Date or Target Date</b>	<b>Activity</b>
<b>Round 1</b>	
4 <sup>th</sup> October 2018	Establishment of DPS [Round 1] – Return Date
19 <sup>th</sup> October 2018	Successful Applicants – Notified
19 <sup>th</sup> October 2018	Unsuccessful Applicants - Notified

## 9. Invitation to Tender for Call-Off Contracts

### Invitation to Tender

If the Council decides to conduct a tender competition through the DPS in respect of individual call-off contracts (specific routes), only those Organisations that have

successfully entered the DPS for a particular lot shall receive an Invitation to Tender. The basis of the Contract Terms and Conditions, selection criteria, and any overarching general service specification shall not be substantially changed.

### **Price Only**

The Council will conduct an Invitation to Tender based on evaluation of 100% price where it is seeking the best price from Organisations, or the Council is offering to Organisations set funding or claim charge, to meet the particular circumstances of the individual requirement. Whilst no element of quality (other than financial checks) is to be evaluated the Organisation is required to state acceptance to the declared contract specific specification to be delivered.

Responses will also be analysed and evaluated by the Authority's Audit sections and will include checks via an independent agency (currently Equifax) as appropriate.

If the financial analysis of the Applicant (please note financial information provided by consortium members will be evaluated to assess the Applicant consortium as a whole) gives cause for concern as to its ability to deliver the specific Contract(s) (routes), the Application will be rejected.

### **Invitation to Tender Response Time**

The response time for submission of tenders for call-off contracts may vary to meet the particular circumstances of the individual requirement and shall be declared within the Invitation to Tender but shall be a minimum of 10 calendar days unless operational circumstances determine otherwise.

## **10. Contract Terms and Conditions**

### **Terms and Conditions**

The contract documentation provides the terms and conditions that will apply to all contracts agreed pursuant to the Dynamic Purchasing System which will run for a maximum of five plus two years.

These terms may not be qualified or amended with the submission of an application for selection to the Dynamic Purchasing System.

Where an invitation to tender from the Dynamic Purchasing System makes reference to these terms and conditions they will be wholly incorporated in the contract as defined in the Contract Terms and Conditions document, unless otherwise amended by Shropshire Council in the invitation to tender.

Further conditions may be incorporated within specific contracts by Shropshire Council. Where this is the case, details of those further conditions will be included with the invitation to tender. It is a requirement that all tenders are submitted based on all incorporated conditions communicated in the Invitation to Tender.



# **PROVISION OF PASSENGER TRANSPORT**

## **CONTRACT**

## **CONTRACT**

THIS CONTRACT is made First November Two Thousand and Eighteen

## **PARTIES**

- (1) **SHROPSHIRE COUNCIL** of Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND (hereinafter called “the Council”) of the one part  
and
- (2) **Company Name:**  
(hereinafter called “the Contractor”).

## **RECITALS**

- (a) The Council has agreed to engage the Contractor to provide Services to the Council as set out in this contract;
- (b) In consideration of the payments to be made by the Council to the Contractor in accordance with the provisions of this Contract the Contractor has agreed to enter into this Contract for the provision of the Services.

NOW IT IS HEREBY AGREED as follows:-

## **DEFINITIONS AND INTERPRETATIONS**

“Best Value “	means those principles consistent with s3 of the Local Government Act 1999 which ensures arrangements are consistent with the securing of continuous improvement having regard to a combination of economy, efficiency and effectiveness.
“Contract”	means this agreement including its Schedules, Appendices and any valid variations hereto
“Contract Price”	means the sum payable for the Service.
“Commercially Sensitive Information”	Comprises the information of a commercially sensitive nature relating to the Contractor, it’s Intellectual Property Rights or its business which the Contractor has indicated to the Council in writing that, if disclosed by the Council, would cause the Contractor significant commercial disadvantage or material financial loss;
“Council Data”	the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

	(a) supplied to the Contractor by or on behalf of the Council; or which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Council is the Data Controller
“Council’s Transport Officer”	means the officer nominated from time to time by the Council to be responsible for the running and management of this Contract
“Council’s Vehicle Inspector”	means the person appointed by the Council from time to time to carry out Vehicle inspections
“Data Controller”	shall have the same meaning as set out in the Data Protection Legislation
“Data Protection Legislation”	the Data Protection Act 1998, 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 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy of 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.
“Defect Notice”	means a notice served in accordance with clause 4.1 hereof
“Driver”	means the driver of any Vehicle
“EIR”	means the Environmental Information Regulations 2004 (as may be amended from time to time)
“Exempt Information”	means any information or class of information (including but not limited to any document, report, contract, or other material containing information) relating to this contract or otherwise relating to the parties to this Contract which potentially falls within an exemption to FOIA (as set out therein)
“FOIA”	means the Freedom of Information Act 2000 and all regulations made thereunder from time to time or any superseding or amending enactment and



	regulations, and words and expressions defined in the FOIA shall have the same meaning in this clause
“FOIA Notice”	means a decision notice, enforcement notice and/or an information notice issued by the Information Commissioner.
“Hackney Carriage”	a taxicab allowed to ply the streets looking for passengers and licenced by the Local Authority
“Local Bus Service Contracts”	means Shropshire Council subsidised public transport contracts
“Operator’s License”	an Operator’s License or “O” License is the main instrument of regulation used by the regulatory bodies of The Office of The Traffic Commissioner & Driver Vehicle Standards Agency (DVSA) and its purpose is to ensure the safe and proper use of vehicles which fall the Operator Licensing regulations and are used for commercial purpose.
“Passenger”	means any person using the Services
“Passenger Assistant”	means an assistant to a passenger or passengers where applicable
“PCV”	means Passenger Carrying Vehicle
“Personal Data”	shall have the same meaning as set out in the Data Protection Act 1998;
“Plate”	means identification plate issued by a local authority to a Hackney Carriage or Private Hire Vehicle authorising its use
“Private Hire”	a private hire vehicle is a motor vehicle constructed or adapted to seat fewer than 9 passengers (other than Hackney Carriage, Public Service Vehicle or London Cab) which is provided for the hire with the service of a driver for the purpose of carrying passengers
“Prohibition Notice”	A notice specifying activities that, in the opinion of an inspector, involve a risk of serious personal injury and prohibiting them until specified safeguards have been adopted.
“PSV”	means Public Service Vehicle

“Party and Parties”	means in the singular either the Council or the Contractor and in the plural means both the Council and the Contractor together
“Public Body“	as defined in the FOIA 2000
“Receiving Party“	means a party to this Contract to whom a Request for Information is made under FOIA, and who thereafter has overall conduct of the request and any response.
“Request for Information“	means a written request for information pursuant to the FOIA as defined by Section 8 of the FOIA.
“Services”	means the Services set out in Schedules 1 and 2 to this agreement
“Staff”	means the Driver and any Passenger Assistant or staff member paid or unpaid and used in the provision of the Services on behalf of the Contractor
“Tender”	means the written offer by the Contractor to provide the Services
“Traffic Commissioner”	Traffic Commissioners are responsible and regulating operators of heavy goods vehicles (HGVs), public service vehicles (PSVs) and local bus services.
“Vehicle”	means any vehicle used in the provision of the Services
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales.

In this Contract:

- a) Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended extended or re-enacted;
- b) Words importing the singular include the plural, words importing any gender include every gender and words importing persons including bodies corporate or unincorporate and (in each case) vice versa;
- c) Any reference to a Party to this Contract includes reference to their successors in title and permitted assigns;
- d) The headings to the clauses are for ease of reference only and shall

- not affect the interpretation or construction of this Contract;
- e) Where the Parties to this Contract comprise more than one person these persons will be jointly and severally liable for the performance and obligations under this Contract;
  - f) In the event of and only to the extent of any conflict between this Agreement and its Schedules the conflict shall be resolved in accordance with the following order of precedence:
    - i. Schedule 1;
    - ii. Schedule 2;
    - iii. The terms of this agreement

## **1 SCOPE OF CONTRACT**

- 1.1 The Contractor shall provide the Services in accordance with the provisions of this Contract and to the entire satisfaction of the Council.
- 1.2 The Contractor in performing its duties under this Contract shall take all action reasonably necessary to ensure the health, safety and convenience of Passengers and shall exercise maximum care and regard for the Passengers.
- 1.3 Where an obligation is expressed to be the responsibility of the Staff, then the Contractor will be contractually bound to ensure that the Staff carries out the obligation.

## **2 PERFORMANCE**

- 2.1 The Contractor undertakes with the Council to comply with the following in the provision of the Services:
  - (a) all terms and conditions set out in this Contract, and in the Schedules hereto and any variations thereof;
  - (b) the provisions of the Health and Safety at Work Act 1974 and provide evidence of doing so to the Council at any time upon request and in any event at least once in each year whether or not requested by the Council.
  - (c) the principles of Best Value;
  - (d) the Contractor where appropriate shall take account of the Human Rights Act 1998 and shall not do anything in breach of it and provide evidence of doing so to the Council at any time upon request and in any event at least once in each year whether or not requested by the Council.
  - (e) the exercise of all due care and diligence and the observance of all obligations and responsibilities placed upon the Contractor directly or indirectly in carrying out

the Services under the Contract.

- (f) the Contractor must permit the Council's Transport Officer to visit its operational base to undertake compliance audits. Information required to be provided and recorded from compliance audits is as follows.
- Original driving licences (including photo cards and their counterparts)
  - Private Hire & Hackney carriage documentation.
  - PCV Operating Licence documentation
  - Vehicle Maintenance records and defect reporting procedures.
  - Original vehicle insurance documentation.
  - Original Public Liability and Employers Liability insurance documentation.
  - Original MOT and PSV test certificates for all Vehicles used in the delivery of the Service.
  - Driving and Passenger Assistant training records, if applicable.
  - Any other documentation requested by the Council in relation to the operation of this Contract.
- (g) that any Public Carrying Vehicles (PCV) used in the performance of the Services are less than 20 years old during the period of the Contract.

2.2 If for any reason the Contractor is unable to comply with any of the obligations under this Contract they shall forthwith notify the Council in writing of their failure and reasons therefor.

### **3. CONTRACT PERFORMANCE**

3.1 For Local Bus Service Contracts, upon notification by the Council of the acceptance of the Tender the Contractor will, at their own expense, register the Service(s) detailed in Schedule 1 in accordance with Section 6 of the Transport Act 1985, with the Traffic Commissioner, and send a copy of the registration to the Council.

#### **Period of Contract**

3.2 The Contract shall commence on start date of the 'Schedule Period' as stated in Schedule 1/01 to this Contract and shall expire on the last date of the Schedule Period, unless terminated earlier in accordance with the terms of this Contract.

#### **Sub-Contracting**

3.3 The Contractor shall not without the written consent of the Council (such consent not to be unreasonably withheld) sub-let

the obligations and benefits of this Contract except in the case of an emergency arising from breakdown of the Contractor's Vehicles or unavoidable shortage of Staff in which event, the Contractor may for a maximum of one day arrange for the Services to be discharged by such other person or company (previously approved by the Council's Transport Officer) who shall perform all the Contractor's undertakings in every respect (notwithstanding that the Contractor shall remain liable to the Council for the performance thereof) and shall display a notice visible to intended Passengers that the vehicle is on hire to the Contractor.

- 3.4 Where sub-contracting is agreed by the Council, it shall be the responsibility of the Contractor to ensure that the sub-contractor complies with the terms of this contract in respect of the provision of the sub-contracted Services as if they were a party to the Contract.

### **Surveys and Monitoring**

- 3.5 The Contractor shall permit the Council's duly authorised representative to travel free of charge on any of the Contractor's Vehicles while being used on any of the journeys shown in Schedule 1 for the purpose of collecting information on Passenger journeys, ensuring the safety and good conduct of Passengers, to inspect the Contractor's Vehicles whether or not upon their premises and to ensure the Vehicles are being run in accordance with Schedule 1.

### **Complaints**

- 3.6 The Contractor shall reply promptly to all complaints about the Service and shall keep records of such complaints for a minimum period of 18 months. The Contractor shall within 10 days of receipt of the complaint or representation provide the Council with a copy of any written complaints or representations received relating to the operation of the Services together with a copy of any reply thereto.

### **Accidents & Vehicle Breakdowns**

- 3.7 The Contractor shall notify the Council immediately with the details of any accidents involving loss of life or injury to persons or serious damage to any property or vehicles during performance of the Services, and supply a written report within 24 hours of the incident and within 14 days will provide the Council with a copy of any report of any such incident to the Police or the Contractor's insurers.
- 3.8 The Contractor shall notify the Council within 24 hours of any minor accidents or incidents which do not result in injury or

damage or any minor accident or incidents which could have led to injury or damage and submit a written report of the incident to the Council within 48 hours.

- 3.9 The Contractor shall notify the Council immediately with the details of any vehicle breakdown that occurs during the performance of the Services and any impact on the performance of the Services, and supply a written report within 7 days of the breakdown detailing the reason for the breakdown and any remedial action taken by the Contractor in respect of the vehicle breakdown itself and action taken to assist in the prevention of a recurrence and the impact on the Services of any recurrence.

### **Passenger Injury & Illness**

- 3.10 In all but the most minor injuries or illnesses the Passenger must be referred or taken to hospital. The Council must be notified with the names of the Passengers as soon as possible.

### **Quality of Service Monitoring**

- 3.11 The Council operates a performance database in order to monitor the quality of service provided by contractors. The Contractor must ensure measures are taken to rectify any non-conformances.

In some cases the Council will monitor certain routes or operators for a period of time, issue warnings or meet with individual operators to discuss any performance concerns in order to try and work together to improve performance.

## **4. VEHICLE DEFECTS**

- 4.1 If any Vehicle is found to be defective and/or not in accordance with the Contract standard, the Council may serve on the Contractor a Defect Notice requiring the listed defects to be corrected within the timescales stated in the Defect Notice.
- 4.2 If the Contractor fails to comply with any Defect Notice then the Council may terminate this Contract in accordance with the provisions of Clause 16.
- 4.3 The Contractor must notify the Council without delay of any Immediate Prohibition Notice that has been or will be issued by the Department of Transport in respect of any vehicle owned or operated by the Contractor.
- 4.4 The Council may instruct the Contractor not to use any Vehicle which is found to have a defect which could affect the safety or well-being of the Passengers and in such circumstances the Contractor will be required to provide at his own expense an

alternative Vehicle for the performance of the Services under this Contract.

## **5 INDEMNITY AND INSURANCE**

- 5.1 The Contractor shall be liable for and shall indemnify the Council against any expense liability loss claim or proceedings whatever arising under any statute or at common law in respect of personal injury to or death of any person whomsoever (which shall be deemed to include any Passenger) or damage to any property real or personal arising out of or in the course of or caused by the provision of the Service in accordance with this Contract unless due to any act or neglect of the Council or any person for whom the Council is responsible.
- 5.2 Without prejudice to its liability to indemnify the Council as aforesaid the Contractor shall maintain such insurance's as are necessary to cover their aforementioned liabilities to include third party and passenger liability in respect of all vehicles used in the provision of the Service and public liability insurance (both to a minimum of £5m. for any one claim) together with compulsory insurance under the Employers Liability (Compulsory Insurance) Act 1969 or any subsequent amendment thereof (to a minimum of £10m for any one claim) and any other category of insurance which the Council may require from time to time.
- 5.3 The Contractor must send to the Council at its own expense copies of all insurance certificates and schedules, cover notes on renewal or where changes have occurred to the policy. Failure to comply with this requirement may result in termination of the Contract.
- 5.4 The Contractor shall immediately notify the Council in writing if for any reason whatsoever any policy of insurance is cancelled by its insurers or for any reason becomes inoperative. In entering into this Contract the Contractor authorises the Council to approach the Contractor's insurers to verify any information as to insurances held by the Contractor for the performance of this Contract.
- 5.5 The Council shall not be liable for any claim that may be made by the Contractor in respect of any damage that may be caused to the Vehicle(s) in performing the Services.

### **MOT & PSV Test certificates**

- 5.6. The Contractor must send to the Council at its own cost copies of all MOT & PSV Test Certificates on renewal for any vehicle used to operate the Services.

## **6 COMMUNICATIONS**

- 6.1 The Contractor shall ensure that its Staff shall have an appropriate means of communication available whilst operating the Service in case of emergency such as but not limited to radio or mobile phone devices.

## **7. CAPACITY**

Where the Contractor permits a Vehicle to be used, with capacity below that required for the performance of the Services as specified in this Contract, (unless previously agreed in writing by the Council) this will be considered as a breach of Contract. Notice of such a breach of Contract will be communicated to the Contractor in writing by the Council and if the Contractor either does not respond, in the reasonable opinion of the Council, fails to provide a satisfactory response within 30 days of the date of the communication from the Council, the breach will be presumed admitted. Three admitted breaches of this nature within any three month period during the term of this Contract shall be regarded as a persistent breach of contract pursuant to clause 16.1(a) and give us rise to the Council's rights of termination.

## **8. CONTRACTOR STAFF REQUIREMENTS**

- 8.1 The Contractor must ensure that any Driver or Passenger Assistant is registered with and approved by the Council prior to a Driver or Passenger Assistant being used to operate the Services under this Contract. Driver and Passenger Assistant registration forms are available upon request from the Council. The Driver and Passenger Assistant registration forms should be completed by the Contractor and not the individual driver or passenger assistant. The Driver and Passenger Assistant registration forms require the following information to be submitted to allow the Council to carry out their checks otherwise the form will not be accepted:

Full name

Address

Date of birth

Category of Vehicles authorised to drive



If driver registered as a Private Hire or Hackney Carriage Licence holder – Badge number & Expiry date

If a Disclosure and Barring Service (DBS) check has been carried out the disclosure number and issue date (*DBS must be enhanced, checked against the relevant workforce & job role and issued within the last 3 months*) and signature of Driver or Passenger Assistant

- 8.2 If requested, the Contractor at its own cost must ensure that copies of driving licences are forwarded to the Council for any Driver who may be employed in the operation of this Contract.
- 8.3 If requested, and upon 14 days' notice, the Contractor must ensure that original driving licences are available for inspection by the Council's Transport Officer.
- 8.4 Failure to comply with the Council's registration requirements as set out in clause 8.1 above for Staff may result in the termination of this Contract.
- 8.5 The Contractor must inform all Staff that this information will be passed to the Council and that the Council will only use the information in accordance with the current Data Protection Legislation.
- 8.6 The Contractor must have a suitable and appropriate recruitment policy and must obtain 2 independent satisfactory references for all Drivers and Passenger Assistants before confirming employment, one of which must be from the most recent employer. Any gaps in employment history must be explained. A copy of the Contractors recruitment policy is to be made available to the Council on request.
- 8.7 The Contractor must instruct Staff not to offer gifts to or accept gifts from Passengers. Where Staff do engage in any such behaviour, the Council may require the Contractor to remove the offending member of staff from the operation of the Contract.
- 8.8 The Contractor shall not, without first obtaining written consent from the Council, use a Driver or Passenger Assistant in the operation of this Contract where the Council has previously required that such a Driver or Passenger Assistant is removed from the provision of other services operated with or on behalf of the Council. The Contractor must ensure that it obtains written confirmation from every Driver or Passenger Assistant that he/she has not previously been removed from any Contract with or on behalf of the Council.

- 8.9 The Contractor should understand that Shropshire Council is committed to the highest possible standards of openness, probity and accountability, and it encourages the Contractor and the Staff to inform the Council if they have any concerns about transport provision (e.g. speeding, dangerous driving, problems with a vehicle, improper conduct and mismanagement) or any other unlawful acts.
- 8.10 The Contractor will ensure that all Staff used to provide the Service have access to copies of the Council's whistle blowing policy "Speaking up about wrongdoing" and that the policy content is fully explained to them.

## **9 SUPERVISION**

- 9.1 The Contractor's Staff shall take all reasonable steps to maintain order amongst Passengers during a journey. The Contractor must instruct Staff not to get involved in any personal, suggestive or intimate conversations with any Passengers, and neither must they touch, hold or make any other physical contact with Passengers other than may be reasonably required for the purpose of assisting Passengers to get into or out of a Vehicle if appropriate, or in the case of emergencies. Any disorder must be reported to the Council as soon as possible by telephone or in writing.
- 9.2 Contractors will ensure that all Staff have copies of, understand and will adhere to at all times to the Council's Code of Conduct for Operators, Drivers and Passenger Assistant's engaged in the provision of the Services for the Council.

## **10 ALCOHOL, DRUGS & SMOKING**

- 10.1 The Contractor and its Staff shall not smoke or permit smoking on any Vehicle and the Contractor shall at its own expense supply and fix "no smoking" notices in prominent positions within all Vehicles.
- 10.2 The Contractor shall ensure that all Staff and Passengers are prevented from drinking alcohol or taking any illegal substances whilst travelling on any Vehicle and that Staff do not carry out or attempt to carry out their duties whilst under the influence of alcohol or any drugs, including any prescribed drugs or medication which may affect their ability to perform their obligations under the Contract.
- 10.3 The Contractor shall use its reasonable endeavours to ensure that the provisions of Clause 10.1 - 10.2 are complied with.
- 10.4 The Contractor shall inform all Staff that if they have reasonable cause to believe that a Passenger is under the influence of

illegal substances, drugs or alcohol or is behaving in such a manner and to such an extent that it puts the Staff, other Passengers or road users at serious risk of physical harm they should refuse to transport that Passenger.

## **11 SUSPENSION BY THE COUNCIL**

11.1 In the event of a failure by the Contractor to comply with any of the terms of this Contract (including those listed in sub-clauses 11.2 and 11.3 below) or if the Council has reasonable grounds to question the Contractor's ability to perform the Services, the Council may by written notice suspend the Services (in whole or in part), the Contract or the Contractor for a reasonable period of time, whilst the future of the Services and the Contractor's ability to perform the Services and carry out the Contract is investigated by the Council. During the period of suspension the Council and Contractor agree that all payments under the Contract will cease. After due consideration the Council may at its sole discretion either reinstate the Contractor or reinstate the Contractor's performance of the suspended Services or, in the event that the failures by the Contractor to comply with the conditions of this Contract are proven and cannot be remedied or that the Contractor is unable to continue to perform the Contract, terminate the Contract without penalty. Reasons for the Council's decision will be communicated to the Contractor in writing within 14 days.

11.2 Where the Services involve the operation of a PCV, the suspension may occur in any one of (but not limited to) the following circumstances:

- (a) the Contractor's failure to possess a current valid Operator's Licence issued by the Traffic Commissioners;
- (b) the Contractor's failure to comply with the authorisation of the Operator's Licence;
- (c) the Contractor's failure to effect or provide evidence of suitable and adequate motor or public liability insurances;
- (d) service of a Prohibition Notice on any vehicle operated by the Contractor;
- (e) failure of a Driver to have the required licence to drive the Vehicle;
- (f) where any Vehicle is in the opinion of the Council's Vehicle Inspector unroadworthy;

- (g) any other reason which makes any journey under the Contract either unlawful or in the opinion of the Council's Vehicle Inspector unsafe;
- (h) the Contractor's failure to comply or maintain compliance with a Defect Notice;
- (i) the Contractor's failure, in the reasonable opinion of the Council, to provide appropriate or satisfactory customer care;
- (j) where, in the Council's reasonable opinion, the Contractor's non-compliance with the Contract may occur for whatever reason;

11.3 Where the Services involve the operation of a Hackney Carriage or Private Hire Vehicle, suspension may occur in any one of (but not limited to) the following circumstances:

- (a) the Contractor's failure to possess a current valid Hackney Carriage and/or Private Hire Licence issued by the Council;
- (b) the loss of entitlement for any Vehicle operated by the Contractor to carry a Plate;
- (c) the Contractor's failure to comply with the conditions of the Operator's Licence or Plate;
- (d) the Contractor's failure to effect or provide evidence of suitable and adequate motor or public liability insurances;
- (e) service of a Prohibition Notice on any Vehicle operated by the Contractor;
- (f) failure of a Driver to have the required licence to drive the Vehicle under the Contract;
- (g) where any Vehicle is in the opinion of the Council's Vehicle Inspector unroadworthy or any other reason which makes any journey in the Vehicle in the performance of the Contract either unlawful or, in the opinion of the Council's Vehicle Inspector, unsafe;
- (i) the Contractor's failure to comply with or maintain compliance with a Defect Notice;
- (j) the Contractor's failure to provide appropriate and satisfactory customer care;

- (k) where, in the Council's reasonable opinion, the Contractor's non-compliance with the Contract may occur for whatever reason;

11.4 The Contractor shall immediately notify the Council of any occasion or circumstance which falls within the matters contained in this Clause 11.

## **12 EQUALITIES**

12.1 The Contractor and any sub-contractor employed by the Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race or ethnic origin, disability, gender, sexual orientation, religion or belief, or age in the supply and provision of the Services under this Contract or in its employment practices

12.2 Without prejudice to the generality of the foregoing, the Contractor and any Sub-Contractor employed by the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant legislation, or any statutory modification or re-enactment thereof.

12.3 In addition, the Contractor and any Sub-Contractor employed by the Contractor in providing the Services to the Council will comply with the general duty imposed on local authorities by Section 149 of the Equality Act 2010 to eliminate discrimination, harassment and victimisation and promote equality of opportunity between persons who share a protected characteristic and those who do not share it and to foster good relations between persons who share a protected characteristic and those who do not share it .

12.4 The Contractor and any sub-contractor employed by the Contractor will take all reasonable steps to observe as far as possible the Codes of Practice produced by the Equalities and Human Rights Commission, which give practical guidance to employers on the elimination of discrimination.

12.5 In the event of any finding of unlawful discrimination being made against the Contractor or any sub-contractor employed by the Contractor during the Contract period, by any court or employment tribunal, or any adverse finding or formal investigation by the Equalities and Human Rights Commission over the same period, the Contractor shall inform the Council of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.

12.6 The Contractor and any sub-contractor employed by the Contractor will provide a copy of its policies to the Council at any time upon request and in any event at least once a year during

the duration of this Contract. In addition, the Council may reasonably request other information from time to time for the purpose of assessing the Contractor's compliance with the above conditions.

## **PAYMENT AND FINANCE**

### **Basis of Payment**

- 13.1 Payment to the Contractor shall be calculated by the application of the specified daily, weekly or yearly Contract Price per Service. This daily, weekly or yearly Contract Price shall be based on the price as specified in the Tender or quotation/estimate and no increase in price will be permitted during the first six months of the Contract. After this period a variation in price may be permitted entirely at the Council's discretion subject to a request being submitted to the Council in writing by the Contractor at least one month in advance of the proposed commencement of the variation in price.
- 13.2 In the case of severe weather conditions where the Service, or part of a Service cannot operate the Council will make the following payments to the Contractor:
- For the first day of severe weather – 100% payment of the daily Contract Price for the non-operational Service, as specified in 13.1; and
  - for second consecutive day of severe weather, and any subsequent consecutive day of severe weather after that – 50% payment of the daily Contract Price for the non-operational Service, as specified in 13.1
- 13.3 When a service is cancelled within 24 hours of the time the Service is due to be provided, the Contractor shall be paid the daily price of the route. If a Service is cancelled over 24 hours prior to the time the Service is due to be provided then payment shall not be made for that cancelled service. For the avoidance of doubt notification of cancellation is based on a 24 hour period and not 24 hours of a Working Day.
- 13.4 NOT USED
- 13.5 NOT USED
- 13.6 NOT USED
- 13.7 Contractors must operate within the needs of the contract. This may include Bank/Public Holidays where specified in the Contract.

### **Invoice Submission**

- 13.8 The Contractor shall within 28 days from the last day of each month or within 7 days from the last day of an accounting period specified by the Council, deliver to the Council an account or invoice, giving sufficient details and full particulars of the sum payable to them under the Contract for the preceding month/accounting period.
- 13.9 The Council will, within 30 days of receiving each correctly completed and authorised claim form/invoice, pay to the Contractor the sum calculated in accordance with the agreed Contract Price, provided that the Council is on each occasion satisfied as to the provision of the Service and to the accuracy of the information contained on the claim form.

Invoices should be forward to:  
Passenger Transport Commissioning Group  
Shropshire Council  
Shirehall  
Abbey Foregate  
SHREWSBURY  
SY2 6ND

### **Price Increases**

- 13.10 The Council will after the expiry of the first six months of the term of this Contract and upon written request from the Contractor review the Contract price in the following September and in September of each year of the duration of the Contract thereafter to determine any adjustments in the Contract Price that may be due to reflect any changes in the costs of operating the Service that may be applicable for the corresponding year.

### **Recovery of Money**

- 13.11 If at any time during the operation of this or any other Contract money becomes due from the Contractor to the Council then the Council reserves the right to deduct such sum or sums from any money then payable to the Contractor and due to the Council in settlement of any such sums outstanding to the Council.
- 13.12 Where any overpayment has been made by the Council in respect of the Services and there are insufficient funds to enable a deduction to be made in accordance with Clause 13.11 above, then the Contractor shall within 30 days of receiving a demand for such overpayment, make payment to the Council of such sum or sums as may be requested.

- 13.13 In the event of the Council sustaining losses as a result of the Contractor's unsatisfactory performance (such decision to be at the direction of the Council's Transport Officer or such other person approved by them) of the Contract the Council may recover (including by way of legal proceedings) any and all such losses from the Contractor.

### **Records**

- 13.14 All books, vouchers, accounts and records relating to the operation of this Contract shall be maintained by the Contractor at their place of business and shall be available for inspection by the Council's Transport Officer at all reasonable times during the term of this Contract and for three years after the making of the final payment by the Council, provided that, should the Contractor want to destroy any records within the three year period they may do so after obtaining the written permission of the Council's Transport Officer. The Contractor must at all times during normal working hours afford to the Council's Transport Officer access to all information which the Contractor may reasonably be expected to have or is required to retain under this Contract in order that the Council's Transport Officer may monitor the operation of the Contract or audit the claims for payment.
- 13.15 The Contractor will at its own expense supply to the Council annually, such information as the Council may reasonably require in connection with this Contract.

### **Deductions**

- 13.16 The Contractor must maintain a record of all mileage and journeys which are not completed in accordance with this Contract and all other failures to comply with the conditions of this Contract including details of the cause in each case and must make such records available to the Council upon request. For Local Bus Service Contracts Schedule 2 Clause 8.1 applies.
- 13.17 If in the reasonable opinion of the Council the Service is not being operated in an effective manner or if the Service has not been provided in accordance with the terms of the Contract, having taken full and reasonable account of the explanation provided by the Contractor, then the Council shall have the right to make deductions to the amount payable to the Contractor equivalent to the proportion of the Service lost as a pro-rata amount of the Contract Price.
- 13.18 The Council reserves the right to deduct appropriate sums from the amounts payable for the maintenance of the Service and in



the case of non operation of all or part of the Service in accordance with the terms set out in this Contract.

## **14 CONFIDENTIALITY AND DATA PROTECTION**

- 14.1 The Contractor will keep confidential any information it becomes aware of by reason of the operation of this Contract including Council Data and Personal Data and shall not use divulge or communicate the same to any third party, except as reasonably necessary for the proper performance of this Contract, without the express consent in writing of the Council.
- 14.2 The Contractor shall implement appropriate organisational and technical measures to ensure the integrity and security of information obtained including but not limited to ensuring that Council Data and Personal Data is not stored, copied, disclosed or used except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Council and in particular shall ensure that Council Data and Personal Data is not stored on any portable equipment or storage device or media unless encrypted to protect the Council Data and Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure.
- 14.3 The Contractor shall at all times comply with the provisions of the Data Protection Legislation and shall provide the Council with evidence of such measures upon request.
- 14.4 The Contractor shall use its reasonable endeavours to prevent the unauthorised publication or disclosure of any such information or documents.
- 14.5 The Contractor shall ensure that its Staff, employees and agents are aware of and comply with this clause and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of any breach of this clause.
- 14.6 The provisions of this clause shall survive the expiration or termination of this Contract.

## **15 TRANSPARENCY**

- 15.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract and any associated tender documentation provided by the Contractor (the Tender Submission) is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of this Contract or the Tender

Submission is exempt from disclosure in accordance with the provisions of the FOIA.

- 15.2 Notwithstanding any other term of this Contract the Contractor hereby gives his consent for the Council to publish this Contract and the Tender Submission in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 15.3 The Council may consult with the Contractor to inform its decision regarding any exemptions but the Council shall have the final decision in its absolute discretion.
- 15.4 The Contractor shall assist and cooperate with the Council to enable the Council to publish this Contract and the Tender Submission.

## **16. TERMINATION**

- 16.1 The Council shall be entitled to terminate this Contract or any of the Services specified in the Schedule or schedules under this Contract forthwith by notice in writing to the Contractor given at any time on one of the following grounds:
- (a) if the Contractor shall be in a (singular) breach or persistent breach or demonstrates persistent poor performance or fails to observe or perform any of their obligations under the Contract, which at the sole discretion of the Council are not capable of remedy in accordance with 16.1 (b) below;
  - (b) if the Contractor commits any breach of any of its obligations hereunder which is capable of being remedied, and following service of a written notice by the Council specifying the breach, the action to be taken to remedy the breach and the timescale for remedy (the Remedial Notice) the Contractor fails to remedy the breach in accordance with the Remedial Notice.
  - (c) If the Council has reasonable grounds for believing that the Contractor will be unable to fulfil the terms and conditions of this Contract;
  - (d) if the Contractor becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986 or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
  - (e) if the Contractor has a receiver, manager, administrator or administrative receiver appointed over all or any parts of its undertaking, assets or income;
  - (f) if the Contract has a petition presented to any court for;

- (g) if the Contractor ceases all threatens to cease to carry on all or part of its business or has passed a resolution for its winding up or an administration order;
- (h) if the Contractor has any distant, execution or other processes levied or enforced on any property and is not paid out, withdrawn or discharged with 14 days;
- (i) If the Contractor has fixed or adjusted the prices/discount offered by or under or in accordance with any agreement with any other person or company or the Contractor has communicated with any other person other than the Council the amount of the offer accept where disclosure of the approximate amount of the offer was necessary in order to obtain any insurance premium or the Contractor has entered into agreement with any other person or company that the person or company shall refrain from making an offer;
- (j) if at any time it becomes known to the Council that the Contractor or any person employed by the Contractor or acting on its behalf whether with or without the knowledge of the Contractor shall have
  - i) offered, paid or given or agreed to give directly or indirectly to any person any gift in money or any other form or any financial or other advantage to any member, employee or agent of the Council as an inducement or reward in relation to the obtaining or execution of this Contract or any other Agreement with the Council; or
  - ii) favoured or discriminated against any person in relation to this or any other Contract or Agreement with the Council; or
  - iii) committed an offence in relation to any Agreement with the Council under the Bribery Act 2010 or Section 117(2) Local Government Act 1972 (as amended).
- (k) If an Immediate Prohibition Notice is issued by the Department of Transport in respect of any vehicle owned or operated by the Contractor;
- (l) in the circumstances specified in clause 11 following the suspension of the Contractor or the suspension of the Services (in whole or in part).

16.2 This Contract may also be terminated by either Party in accordance with the provisions contained in Schedule 2 paragraph 9 of this Contract.

- 16.3 The Party giving notice in writing to terminate the Contract shall provide a full explanation of the reasons for termination.
- 16.4 The Contractor shall indemnify the Council against any loss or damage resulting from the termination of the Contract including (without prejudice to the generality of the foregoing) any additional cost arising from having the Services carried out by an alternative contractor as set out in Schedule 2 paragraph 7.2.
- 16.5 The Council shall, following notice of termination cease to be under any obligation to make any payments to the Contractor until all costs, loss and/or damages resulting from or arising out of the termination of the Contract have been calculated.
- 16.6 When the total costs, loss and/or damages resulting from or arising out of the termination of the Contract have been calculated and the Contractor is to receive a payment of money due then this will be made by the Council to the Contractor. If the calculation provides for a payment to be made by the Contractor to the Council then the Council may recover such sum in accordance with provisions of Clause 13 and where any funds that may be held by the Council prove insufficient to satisfy its claim against the Contractor then any outstanding sum shall become recoverable by the Council as a debt.
- 16.7 This Contract may be terminated immediately by notice in writing to the Contractor if the said Contractor is in material breach of this Agreement and shall have failed (where the breach is capable of remedy) to remedy the breach within 14 days of the receipt of a request in writing, such a request setting out the breach and indicating that failure to remedy the breach may result in termination of this agreement.

## **17 CONSEQUENCES OF TERMINATION OR EXPIRY**

The Contractor will on the expiry or termination of the Contract and at its own cost return (or at the request of the Council destroy) all information obtained in undertaking the performance of the Contract.

## **18 NOTICES**

Any notice to be served by either Party in respect of this Contract shall be in writing and sent to the address of the recipient set out in this Contract or such other address in England as the recipient may designate by notice given in accordance with the provisions of this clause. Any such notice may be delivered personally or by first class pre-paid letter or

facsimile transmission to 01743 254382 and shall be deemed to have been served by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when successfully transmitted.

## **19 MEDIATION/RESOLUTION OF DISPUTES**

If any significant dispute or difference shall arise between the Parties as to the construction of this Contract or any matter arising under it or in connection with it then the same shall be dealt with as follows:-

- 19.1 day to day issues will be dealt with by the Council's Transport Officer and the Contractors appointed representative who shall be notified to the Council, and both parties will act in good faith and use their best endeavours to resolve any dispute.
- 19.2 If the issue cannot be resolved pursuant to 19.1 above then the matter shall be referred to the Council's Transport Officer and where the Contractor is a limited company, one of its Directors or where the Contractor is a Partnership, one of its Partners authorised to act on behalf of the Partnership or where the Contractor is an individual, the Contracting person or such other person whom the Contractor may nominate to the Council for this purpose. The parties will act in good faith and use their best endeavours to resolve any dispute.
- 19.3 If the dispute cannot be resolved as in 19.1 and 19.2 above then such dispute may be referred by either party to the Centre for Dispute Resolution 7 St Katherine's Way London E1 9LB ("CEDR") and the Parties shall attempt to settle such dispute in accordance with "CEDR" Model Mediation Procedures and Agreement;
- 19.4 Neither Party may commence any court proceedings in relation to any dispute arising out of this Contract until the Parties have attempted to settle by mediation and that mediation procedure has terminated;
- 19.5 If the dispute is not settled by the Parties within 42 days from when the mediation procedure was instituted by a notice from either Party to the other then the Parties reserve the right to take whatever action is deemed appropriate including the instigation of legal proceedings to resolve the dispute.
- 19.6 None of these mediation clauses will apply where the Council considers that there has been a fundamental

breach of contract by the Contractor (which cannot be remedied) and in such circumstances the Council reserves the right to terminate this Contract with immediate effect.

## **20 VARIATIONS**

- 20.1 Without prejudice to any other provisions of this Contract no omission from, addition to or variation of this Contract shall be valid or of any effect unless it is agreed in writing and signed by the Council's Transport Officer or such other person nominated by the Council.
- 20.2 Where any variation or Schedule conflicts with this Contract it shall be at the discretion of the Council's Transport Manager to decide which shall have precedence.

## **21 INDEPENDENT CONTRACTOR**

The Contractor is independent and nothing in this Contract shall render it an agent or partner of the Council and the Contractor shall not hold itself out as such nor have the right or power to bind the Council to any obligations.

## **22 WHOLE CONTRACT**

This Contract and its Schedules contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals oral or written.

## **23 WAIVER**

Failure by the Council at any time to enforce any provision of this Contract or to require performance by the Contractor of any of the provisions of the Contract shall not affect the validity of the Contract or any part of it and shall not be a waiver of such provision or of the right at any time subsequently to enforce any provision in accordance with the terms.

## **24 SEVERANCE**

If any provision of the Contract shall become or shall be declared by any Court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

**24 NOT USED**

**25 FORCE MAJEURE**

25.1 Neither the Council nor the Contractor shall be in breach of this Contract nor liable for any failure or delay in performing their obligations under this Contract where it is directly caused, arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("Force Majeure Event"), provided that:-

25.1.1 any delay by a sub-contractor or supplier of the Party who is delayed will not relieve that Party from liability for delay except where the delay is beyond the reasonable control of the sub-contractor or supplier concerned; and

25.1.2 staff or material shortages or strikes or industrial action affecting only the Party who is delayed will not relieve that Party from liability for delay.

25.2 If a Party is subject to a Force Majeure Event it shall not be in breach of this Contract provided that:-

25.2.1 it promptly notified the other Party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and

25.2.2 it has used its reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible

in which case the performance of that Party's obligations will be suspended during the period that those circumstances persist and that Party will be granted a reasonable extension of time for performance up to a maximum equivalent to the period of the delay.

25.3 Save where that delay is caused by the act or failure to act of the other Party (in which event the rights, remedies and liabilities of the Parties will be those conferred by the other terms of this Contract and by law):-

25.3.1 any costs arising from that delay will be borne by the Party incurring the same; and

25.3.2 either Party may, if that delay continues for more than 5 weeks, terminate this Contract immediately on giving notice in writing to the other. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Contract occurring prior to such termination.

## **26 RIGHTS OF THIRD PARTIES**

The Parties to this Contract do not intend that any of its terms will be enforceable by any person not a party to it by virtue of the Contracts (Right of Third Parties) Act 1999.

## **27 LAW**

It is the responsibility of the Contractor to comply with all relevant European and English legislation. This Contract shall be governed by and construed in accordance with English Law and the Parties agree to submit to the exclusive jurisdiction of the English Courts.

## **28. SUSTAINABILITY**

The Contractor will at all times use its best endeavours to source all material used in the operation of the Services where applicable from sustainable and renewable resources.

## **29 FREEDOM OF INFORMATION ACT 2000**

29.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

29.2 The Contractor shall notify the Council of any Commercially Sensitive Information provided to the Council together with details of the reasons for its sensitivity and the Contractor acknowledges that any lists or schedules of Commercially Sensitive Information so provided are of indicative value only and that the Council may be obliged to disclose such information.

29.3 The Contractor shall and shall procure that its Sub-contractors shall:

29.3.1 transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;



29.3.2 provide the Council, at the Contractor's expense, with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and

29.3.3 provide, at the Contractor's expense, all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

29.4 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations and in considering any response to a Request for Information the Council may consult with the Contractor prior to making any decision or considering any exemption.

29.5 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.

29.6 The Contractor acknowledges that (notwithstanding the provisions of this Freedom of Information clause) the Council may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:

29.6.1 in certain circumstances without consulting the Contractor; or

29.6.2 following consultation with the Contractor and having taken their views into account;

provided always that where sub-clause 29.6.1 above applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

29.7 The Contractor shall ensure that all Information required to be produced or maintained under the terms of this Contract, or by law or professional practice or in relation to the Contract is retained for disclosure for at least the duration of the Contract plus one year together with such other time period as required

by the Contract, law or practice and shall permit the Council to inspect such records as requested from time to time.

- 29.8 The Council shall in no event be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA, or any other Law, of any information (including Exempt Information) whether relating to this Contract or otherwise relating to any other party.

### **30. RISK ASSESSMENT**

- 30.1 With immediate effect the Contractor will assess the risks associated with operating each transport route on an annual basis or following any changes made on the route (the Risk Assessment) and will submit these Risk Assessments to the Council.
- 30.2 In relation to the Vehicle and the route the Contractor will put in place all required safe operating practices and control measures. This process shall be included in the route Risk Assessment.
- 30.3 Any risk assessment forms for Passengers should be kept in a secure location at all times and only pertinent information should be held in the Vehicle.
- 30.4 The Contractor must permit the Council's Route Assessment Officer to travel free of charge on routes where necessary and capacity allows.

### **31. VEHICLE COMPLIANCE – SEATBELTS**

- 31.1 All Vehicles that perform the Service on educational routes must be fitted with appropriate seat belts to all passengers seats in accordance with the Road Vehicles (Construction & Use) Regulations 1986 (SI 1986/1078) (as amended) and Operators must also comply with the requirements of the Motor Vehicle (Wearing of Seat Belts) (Amendment) Regulations 2006.
- 31.2 Notwithstanding clause 31.1 above the Operator must support compliance with regard to the Council's policy on seatbelt wearing. A copy of this policy is available on request.

AGREED by the Parties through their authorised signatories:

For and on behalf of:

**SHROPSHIRE COUNCIL**

Signature:

Print name:

Job Title:

Date:

Signature:

Print name:

Job Title:

Date:

For and on behalf of:

**Company Name:**

Signature:

Print name:

Job Title:

Date:



**DMCT 229 – Selection Questionnaire for Inclusion on Shropshire Council’s  
Dynamic Purchasing System for Passenger Transport Services 1 November 2018  
to 31 October 2023**

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**SECTION 1 - Operator Details**

Name of Operator: .....

SC - CRD reference number: .....

Address of Registered Office: .....

.....  
.....  
.....

Post Code .....

Trading as (*as will appear on any invoice or contracts for the Council*).

.....

Names of Owners/Directors/Partners: (*please specify*)

.....

Name of Manager(s):

.....

Telephone Number .....

Telephone Number (2) .....

Emergency Number (*out of normal working hours*) .....

Mobile .....

Fax .....

Email Address .....

*It is a requirement that all registered operators are e-mail capable and use the Councils web-based electronic tendering system **Delta** (training provided where necessary). The Council also reserve the right to utilise e-Auctions for tenders submitted where deemed appropriate.*

**SECTION 2 - Licences**

**PSV Operator's Licence**

Name of CPC Holder

.....

Name and Address of Operators  
Licence Holder

.....  
.....  
.....  
.....  
.....

Licensing Authority(s) .....

Licence Number(s) .....

Licence Expiry Date(s): .....

Number of Vehicles Authorised .....

**Hackney Carriage/Private Hire**

Name and Address of Operators Licence Holder

.....  
.....  
.....  
.....  
.....

Licensing Authority .....

Operator Licence Number(s) .....

Operator Licence Expiry Date(s) .....

Number of Vehicles Authorised .....

**Section 19/22 Licences**

Name and Address of Operator's Licence Holder

.....  
.....  
.....  
.....  
.....

Licensing Authority .....

Licence Number(s) .....

Licence Expiry Date(s).....

Number of Vehicles Authorised .....

**SECTION 3 – which categories are you interested in tendering?**

- Public Transport YES/NO\*
  - School Transport YES/NO\*
  - Adult Social Care Transport (Social Services) YES/NO\*
  - SEN Transport (Special Educational Needs) YES/NO\*
  
  - Community Transport YES/NO\*
- \*delete as applicable*

**SECTION 4 – Current Fleet Details**

Size of vehicles you operate	Number of vehicles	Number of accessible vehicles
PCV (vehicles of 9 - 16 passenger seats)		
PCV (vehicles of 17 passenger seats & above)		
Non PCV (vehicles of 8 passenger seats & below)		
Small Vans		

**SECTION 5 - Insurance**

Operators shall indemnify the Council against the liability which may arise in connection with or in the course of carrying out any transport contracts and for this purpose be properly covered by insurance and comply with the provisions of the Transport Acts and their attendant Regulations.

Vehicle indemnity for death/injury must be unlimited. The minimum insurance cover for damage to property must be £5 million. Operators must be insured for Hire and Reward cover when carrying out contracts on behalf of Shropshire Council.

**Details of Insurance**

**Name and Address of Insurance Company**

.....  
 .....  
 .....  
 .....  
 .....

**Telephone Number:** .....

**E-mail Address:** .....

**Limit of Indemnity**

Death/Injury                   £.....                                   Property/Damage                   £.....

Policy Number                   .....

Renewal Date                   .....

***\*Please provide copies of your Insurance Certificates***

**SECTION 6 – Operator Performance**

During the last 12 months have you had contracts terminated by any Council you have provided work for due to poor performance or operating issues? YES/NO\*

During the last 12 months have you failed to operate on any services that are contracted or part funded by Shropshire Council? YES/NO\*

During the last 12 months have you been called to Public Inquiry by the Traffic Commissioner which resulted in your Licence being revoked or suspended? YES/NO\*

During the last 12 months have you been called before the Licensing Review Panel which resulted in your Licence being revoked or suspended? YES/NO\*

### **SECTION 7 – Relationship to Council Members or Employees**

Please give below the details of any elected member or employee of the Council to whom you are related

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

### **SECTION 8 – Disclosure and Barring Service Disclosure** ***(apart from Public Bus Services)***

Some contracts with the Council involve substantial dealings with children and vulnerable adults, and drivers and escorts must be prepared to permit a confidential check to be carried out with the Disclosure and Barring Service (DBS) on any previous criminal convictions or cautions. It is emphasised that any information provided will be treated by Shropshire Council on a strictly confidential basis. A nominated person must be designated by each company to countersign a DBS declaration for each employee working on Shropshire Council Contracts. This person must have an enhanced DBS clearance from the Council

Name: \_\_\_\_\_

Position  
in Company: \_\_\_\_\_

**Shropshire Council does not guarantee that it will enter into any contract for the provision of transport with any operator who submits this registration form.**

### **SECTION 9 – Declaration**

I certify that I will abide by the conditions set out by Shropshire Council in its standard contractual terms & Code of Contact for Operators, Drivers and Escorts engaged in Passenger Transport Provision (available on request). All operators on the current Dynamic Purchasing System must sign and complete a copy of the Council's new Terms and Conditions, which are available as an Appendix. Failure to sign and agree to the Council's Contract conditions will result in your application to go onto the Dynamic Purchasing System being refused.

I declare that the information given on this form is complete and correct, and if successful I understand that I will be included on the Shropshire Council Dynamic Purchasing System for the provision of passenger transport in relation to the category of vehicle(s) and the area(s) indicated by us.

I undertake to notify Shropshire Council of ANY changes to this information and any prohibitions or restrictions imposed by the licensing authority.

Signed: \_\_\_\_\_ Full Name (*please print*): \_\_\_\_\_

Position: \_\_\_\_\_ Date: \_\_\_\_\_

**Please return this completed form as instructed in the accompanying letter. *Please note that failure to supply any information on this tender may result in non-acceptance to the Council's Framework.***