

**(1) CAMBRIDGESHIRE COUNTY COUNCIL**

**(2) [ SUPPLIER ]**

**SUPPLY AND INSTALLATION OF SMART CARD READERS AGREEMENT relating  
to the Total Transport Pilot Scheme**



LGSS Law Limited  
Box No. OCT1001  
Shire Hall  
Cambridge  
CB3 0AP

THIS AGREEMENT is made [

] 2016

**BETWEEN**

- (1) **CAMBRIDGESHIRE COUNTY COUNCIL** of Shire Hall, Castle Hill, Cambridge CB3 0AP (the “Client”); and
- (2) [ ] (Company Registration No [ ]) whose registered office is [ ] (the “Supplier”).

**IT IS AGREED AS FOLLOWS**

**BACKGROUND:**

- 1.1. The Client sought bids for the supply and installation of smart card readers on school buses in the Cambridgeshire Total Transport Pilot Scheme
- 1.2. The Goods will be managed through existing Client contracts.
- 1.3. In response to an RFQ sent out by the Client, the Supplier has submitted a quote to supply, install and test the Goods , which the Client has accepted.
- 1.4. In reliance upon the skill, knowledge and experience of the Supplier, the Client wishes to appoint the Supplier to supply and install the Goods and the Supplier agrees to accept the appointment in accordance with the terms and conditions in the Agreement.
- 1.5. The Supplier shall fully co-operate and assist the Client and or its representatives during the supply of Goods.

**DEFINITIONS:**

- 2.1. In this Agreement unless the context otherwise requires the definitions set out below shall apply.

<b>“Agreement”</b>	this agreement, its terms and conditions and any other document attached;
<b>“Client’s Representative”</b>	namely [ ] officer responsible for the administration/ management of the Agreement, unless otherwise advised in writing by the Client;
<b>“Commencement Date”</b>	the date of this agreement;
<b>“Establishment”</b>	the delivery location is at the Supplier’s address and/or other establishments identified by the Client in writing from time to time and set out in Schedule 1;
<b>“Force Majeure Event”</b>	any cause materially affecting the supply of the Goods under the Agreement arising from any act, events, omissions, happenings or non-happenings beyond the parties reasonable control including,

	without limitation, acts of God, war, riot, fire, flood or any disaster affecting either of the parties but will not mean any labour dispute between the Supplier and the Supplier's employees, agents or sub-contractors;
<b>"Good Industry Practice"</b>	standards, practices, methods and procedures conforming to the Laws and with all due skill and care, diligence, prudence and foresight which would be expected from a skilled and appropriately experienced, qualified and trained person or body engaged in a similar type of undertaking under the same or similar circumstances;
<b>"Goods"</b>	the goods (or any part of them) pursuant to this Agreement and as specified in Schedule 1 which need to be compatible with the software contained in the Software Agreement dated [                      ] 2016;
<b>"Laws"</b>	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 of which the Supplier is bound to comply;
<b>"Local Safeguarding Policy and Procedures"</b>	the inter-agency safeguarding children and adults procedures of the county of <b>Cambridgeshire</b> ;
<b>"Price"</b>	<b>the fixed price of £ [                      ]</b> , exclusive of any applicable Tax, payable to the Supplier by the Client under the Agreement for the full and proper performance by the Supplier of its obligation;
<b>"Prohibited Act"</b>	<p>(a) offering, giving or agreeing to give to any servant of the Client any gift or consideration of any kind as an inducement or reward:</p> <p style="padding-left: 40px;">(i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Client; or</p> <p style="padding-left: 40px;">(ii) for showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Client;</p> <p>(b) committing any offence:</p>

- (i) the Prevention of Corruption Acts 1889 to 1916, the Local Government Act 1972 and or the Bribery Act 2010; or
- (ii) under legislation creating offences in respect of fraudulent acts; or
- (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Client; or
- (iv) defrauding or attempting to defraud or conspiring to defraud the Client;
- (v) any action that may reasonably be considered to be to the detriment of the Client and or its end user's welfare, either by positive action or by omission. Such action shall include but is not limited to; breach of the law, related to health, safety and or care, safeguarding, abuse, sexual allegations and or misconduct; financial malpractice or business continuity failure.

**“Regulated Activity” or  
“Regulated Activities”**

in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

**“Safety Legislation”**

the Health and Safety at Work Act 1974 and the Consumer Protection Act 1987 together with all regulations made under them including, but not limited to, the General Product Safety Regulations 1994, the Control of Substances Hazardous to Health Regulations 1999 and all other legislation, codes of practice and guidance from time to time amended (including subordinate legislation and European Community legislation to the effect that it has direct effect on member states) imposing legal requirements with respect to health and safety at work and/or the safety of any equipment used in the supply of Goods and the health and safety of the users of such equipment;

**“Schedules”**

the schedule(s) attached;

**“Services”**

means the Total Transport bus services which are

detailed in the Specification set out in Schedule 1.

**“Staff”**

all persons employed by the Supplier to perform its obligations under the Agreement together with the Supplier’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Agreement;

**“Term”**

from the Commencement Date, with the automatic expiry date being three years from the Commencement Date with no option to extend but subject always to review or such lesser period as a result of the Agreement being terminated earlier in accordance with the provisions of this Agreement;

**“Working Day”**

a day (other than Saturday, Sunday or a official public bank holiday).

2.2. The interpretation and construction of the Agreement shall be subject to the following provisions:

- 2.2.1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 2.2.2. words importing the masculine include the feminine and neuter;
- 2.2.3. reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 2.2.4. 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;
- 2.2.5. references to any party 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;
- 2.2.6. the words “include”, “included”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 2.2.7. headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

**DURATION**

3.1. The Agreement and the rights and obligations of the parties shall take effect on the Commencement Date and shall continue until the expiry of the Term or earlier termination of the Agreement.

## **NOTICES**

- 4.1. Any notice, request, demand, consent or approval given under or in connection with this Agreement must be given in writing. Any such notice, request, demand, consent or approval shall be sent to the registered office or principal business address of either party and, if sent by post, shall be deemed to have been received on the second Working Day following the date of posting.

## **THE SUPPLY OF GOODS**

- 5.1. In the supply of Goods, the Supplier shall ensure that throughout the Term of this Agreement that the Goods shall:
- 5.1.1. comply with the terms of this Agreement;
  - 5.1.2. correspond with their description and any applicable specifications or requirements included or referred to in the Agreement;
  - 5.1.3. be of satisfactory quality(within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Client, expressly or by implication, and in this respect the Client relies on the Suppliers skill and judgment;
  - 5.1.4. where applicable, be free from defects in design, materials and workmanship and remain so for twelve (12) months after delivery;
  - 5.1.5. operate and comply with all applicable Good Industry Practice and applicable Laws relating to the manufacture, labelling, packaging, storage, handling and the supply of Goods;
  - 5.1.6. carry out all reasonable directions of the Client's Representative;
  - 5.1.7. use its reasonable endeavours to secure and achieve continuous improvement in the supply of Goods during the Term;
  - 5.1.8. save as the Client may otherwise direct, the Supplier is deemed to have inspected the Establishments before commencing and during the supply of Goods and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Agreement and accordingly no claim by the Supplier for additional payment or extension of time will be allowed on the grounds of any matter relating to the Establishments;
  - 5.1.9. understand fully the risk potential of the type of Establishment in which it is supplying Goods. The Supplier must perform a thorough risk assessment exercise, and ensure that all of its operatives are particularly diligent and safety conscious;
  - 5.1.10. if given access to, or occupation of, an Establishment which may be granted to the Supplier from time to time shall be on a non-exclusive licence basis free of charge. The Supplier shall use the Establishments solely for the purpose of performing its obligations under the Agreement and shall limit access to the Establishment to such Staff as is necessary

for that purpose. The Supplier shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently at the Establishment as the Client may reasonably request.

- 5.1.11. be responsible for the accuracy of all information supplied to Client and shall pay the Client any extra costs occasioned by any discrepancies, errors or omissions therein; and
- 5.1.12. notify the Client in writing immediately on learning of any relationship or potential conflict of interest that might influence or be perceived to influence the supply of Goods.

## **DELIVERY AND INSTALLATION OF GOODS**

- 6.1. The Supplier shall ensure that:
  - 6.1.1. the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - 6.1.2. each delivery of the Goods is accompanied by a delivery note which shows the date of the order, the order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
  - 6.1.3. if the Supplier requires the Client to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier; and
  - 6.1.4. the Goods are installed efficiently and within a reasonable time to meet Client deadlines for the Service to be run.
- 6.2. The Supplier acknowledges and agrees that time of delivery is of the essence and shall deliver the Goods:
  - 6.2.1. on the date specified in the order;
  - 6.2.2. to the Client's premises or such other location as is set out in the order or as instructed by the Client before delivery to the Establishment;
  - 6.2.3. during the Client's normal hours of business, or as instructed by the Client.
- 6.3. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Establishment.
- 6.4. If the Supplier:
  - 6.4.1. delivers less than ninety five (95) per cent of the quantity of Goods ordered, the Client may reject the Goods; or

- 6.4.2. delivers more than one hundred and five (105) per cent of the quantity of Goods ordered, the Client may at its sole discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Client accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

- 6.5. The Supplier shall not deliver the Goods in instalments without the Client's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Client to the remedies set out in clause 19.
- 6.6. Title, ownership and risk in the Goods shall pass to the Client on completion of delivery.

### **PRICE AND PAYMENT**

- 7.1. In consideration of the supply of Goods, the Client shall pay the Price for the Goods in accordance with the Agreement and the Price shall be inclusive of the costs of packaging, insurance and carriage of the supply of Goods, unless otherwise agreed in writing by the Client. No extra charges shall be effective unless agreed in writing and signed by the Client.
- 7.2. The Client shall pay the undisputed sums due to the Supplier in within thirty (30) days of receipt of correctly rendered invoice, submitted on or at any time after completion of delivery and installation and to the reasonable satisfaction of the Client to a bank account nominated in writing by the Supplier. Each invoice shall include such supporting information required by the Client to verify the accuracy of the invoice, including but not limited to the relevant purchase order number;
- 7.3. The Client may reduce payment in respect of any Goods which the Supplier has either failed to supply or has provided inadequate Goods;
- 7.4. All amounts payable by the Client under the Agreement are exclusive of amounts in respect of valued added tax chargeable from time to time (the "VAT"). Where any taxable supply for VAT purposes is made under the Agreement by the Supplier to the Client, the Client shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.
- 7.5. If the Client fails to pay any amount properly due and payable by it under the Agreement, the Supplier shall have the right to charge interest on the overdue amount at the rate of one (1) per cent per annum above the base rate for the time being of BANK OF ENGLAND accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the Client disputes in good faith.



- 7.6. The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in supplying Goods, and the Supplier shall allow the Client to inspect such records at all reasonable times on request.
- 7.7. Payment by the Client shall be without prejudice to any claims or rights which the Client may have against the Supplier and shall not constitute any admission by the Client as to the performance by the Supplier of its obligation hereunder.
- 7.8. If either party owes the other money under the Agreement, then the party who is owed the money may set off any such sum against any money it subsequently owes to the other under the Agreement.

### **STATUTORY RIGHTS**

- 8.1. Nothing in these conditions shall affect in any way the statutory rights of the Client under the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 or any subsequent amending or consolidating legislation.
- 8.2. A party who is not a party to this Agreement is not entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 except where this Agreement expressly provides otherwise.
- 8.3. The Supplier shall comply in all respects with the law and all applicable rules and regulations in all matters arising in the performance of or in connection with the Agreement.

### **BRIBERY, CORRUPT GIFTS AND FRAUD**

- 9.1. As soon as either party becomes aware of or suspects the commission of any Prohibited Act in respect of the supply of Goods it will notify the other party.
- 9.2. In circumstances where a person employed by the Supplier is reasonably suspected of having committed a Prohibited Act the Supplier will provide to the Client such information as is reasonable to satisfy the Client that appropriate action has been taken to safeguard the Establishment and or its users and or the Client.

### **EQUALITIES**

- 10.1. The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Human Rights Act 1998 or, the Equality Act 2010 when implemented or other relevant legislation, or any statutory modification or re enactment thereof.
- 10.2. The Supplier shall take all reasonable steps to secure the observance of clause 10.1 by all servants, employees or agents of the Supplier and all suppliers and sub-contractors employed in the execution of the Agreement.

## **SAFEGUARDING**

- 11.1. Where the supply of Goods under this agreement is related to a Regulated Activity, the Supplier shall:
- 11.1.1. ensure that all individuals engaged in the provision of the Goods are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
  - 11.1.2. monitor the level and validity of the checks under this clause 11.1 for each member of Staff.
  - 11.1.3. operate policies and procedures on personnel matters for its Staff. These should include appropriate arrangements for recruitment, checks for suitability, levels of qualification and/or experience for specific posts, training and development, and supervisory, disciplinary and grievance procedures, having regard to the nature of the Agreement. Copies of policies and procedures must be made available to the Client on request;
  - 11.1.4. not employ any Staff to undertake Regulated Activities who appear unsuitable as a result of information received from the checks;
  - 11.1.5. comply with the Public Interest Disclosure Act 1998 and have a whistleblowing policy for its Staff and encourage them to report any incidents of malpractice within the provision of the Agreement;
  - 11.1.6. ensure that all Staff are aware of the Local Safeguarding Policy and Procedures and will ensure that an up to date copy of the Local Safeguarding Policy and Procedures;
  - 11.1.7. have an internal policy for safeguarding vulnerable adults and children which is compatible to the Local Safeguarding Policy and Procedures;
  - 11.1.8. ensure that allegations, suspicions and incidents of abuse be followed up promptly by the Supplier in accordance with the Local Safeguarding Policy and Procedures; and
  - 11.1.9. ensure there are robust procedures for responding to suspicion or evidence of abuse and ensure that they follow-up concerns and pass relevant details to the Client immediately.

## **HEALTH AND SAFETY**

- 12.1. The Supplier and its entire Staff (or persons, officer, agent, representative, or sub-contractor) employed by it will throughout the Term shall fully comply with the requirements of Safety Legislation;
- 12.2. The Supplier shall promptly notify the Client of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement.

- 12.3. While on the Establishment, the Supplier shall comply with any health and safety measures implemented by the Client and or the Establishment in respect of Staff and other persons working there.
- 12.4. The Supplier shall notify the Client immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Establishment where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 12.5. The Supplier shall comply with the requirements of Safety Legislation and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Establishment in the performance of its obligations under the Agreement.
- 12.6. The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Client on request.

#### **DATA PROTECTION ACT 1998 ("DPA")**

- 13.1. For the purposes of this clause 13, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA.
- 13.2. The Supplier shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both parties will duly observe all their obligations under the DPA which arise in connection with the Agreement.
- 13.3. Notwithstanding the general obligation in clause 13.2, where the Supplier is processing Personal Data (as defined by the DPA) as a Data Processor for the Client the Supplier shall:
  - 13.3.1. process the Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature) as set out in this Agreement or as otherwise notified by the Client;
  - 13.3.2. comply with all applicable Laws;
  - 13.3.3. process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Supplier's obligations under this Agreement or as is required by law or any regulatory body;
  - 13.3.4. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  - 13.3.5. take reasonable steps to ensure the reliability of its Staff and agents who may have access to the Personal Data;

- 13.3.6. obtain prior written consent from the Client in order to transfer the Personal Data to any sub-contractor for the supply of Goods;
  - 13.3.7. not cause or permit the Personal Data to be transferred outside the England and Wales without the prior consent of the Client;
  - 13.3.8. ensure that all Staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 13.3;
  - 13.3.9. ensure that none of the Staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Client;
  - 13.3.10. not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Client or in compliance with a legal obligation imposed upon the Client; and
  - 13.3.11. notify the Client within five (5) Working Days if it receives:
  - 13.3.12. a request from a Data Subject to have access to that person's Personal Data; or
  - 13.3.13. a complaint or request relating to the Client's obligations under the DPA.
- 13.4. The provision of this clause 13 shall apply during the Term and indefinitely after its expiry.

### **FREEDOM OF INFORMATION**

- 14.1. The Supplier recognises the Client's current and future obligations under the Freedom of Information Act 2000 and any codes of practice issued by the Government and the appropriate enforcement agencies. The Supplier will comply with this legislation in so far as it places obligations upon the Client in the performance of its obligations under any contractual arrangement entered into. The Supplier will provide such assistance and support which may be requested from time to time by the Client for the purposes of enabling or assisting the Client to comply with the legislation.
- 14.2. In the event of a request made on the Client for access to information under the FOIA or any notice, recommendation or complaint made to the Client in relation to the FOIA, the Supplier will provide to the Client in relation to an access request, any details in respect of the information as the Client may request and a copy of the relevant information where the Client requests such copy; and in relation to any notice, recommendation or complaint, any background details, supporting documentation and copy information which the Client may request in order to deal with such notice, recommendation or complaint within five (5) Working Days of the date of the request from the Client.
- 14.3. The Supplier acknowledges that the Client is obliged under the FOIA to disclose information, including information relating to its appointment under this agreement and the Agreement, to third parties, subject to certain exemptions. The Supplier further accepts and acknowledges that the decision to disclose information and the

application of any such exemptions under the FOIA will be at the Client's sole discretion PROVIDED THAT the Client shall act reasonably and proportionately in exercising its obligations under the FOIA as to whether any exemptions under section 43 of the FOIA may apply to protect the Supplier's legitimate commercial and trade secrets.

### **CONFIDENTIALITY**

- 15.1. Subject to clause 13 (Data Protection) and clause 14 (Freedom of Information) the Supplier shall not, without the prior written consent of the Client, during or after the termination or expiry of this Agreement disclose, directly or indirectly, to any person any information relating to the Agreement or the Client any information of whatever nature which is not in the public domain. The Supplier's obligations under this condition shall survive the expiry or termination of the Agreement for whatever reason.

### **INTELLECTUAL PROPERTY RIGHTS**

- 16.1. Unless otherwise agreed in writing between the parties, all copyright, design rights and other intellectual property rights in any work which is developed in the course of supplying Goods shall be vested in the Client and the Supplier shall do all things and render all such assistance as may be reasonably required by the Client in order to vest such rights in the Client.
- 16.2. Any database, program, plans, drawings, documents, handbooks, codes of practice or other information in whatever form (the "IPR Documents") provided by the Client pursuant to the Agreement shall at all times remain its property and the Supplier shall not use, reproduce, disseminate, adapt, transmit in any form or by any means the IPR Documents or any part thereof or permit the same to be so used, reproduced, disseminated, adapted or transmitted as aforesaid or published other than for the purposes of carrying out its obligations under the Agreement.
- 16.3. The Supplier hereby grants to the Client an irrevocable, non-exclusive, royalty-free licence to use for any purpose in connection with the supply of Goods all the Supplier's intellectual property which the Supplier has used or supplied in connection with the supply of Goods, provided that the Supplier shall have no liability for any use of such intellectual property other than for the purposes for which it is intended. The Client may grant sub-licences out of the said licence.
- 16.4. The Supplier shall indemnify the Client against all loss, damage, costs and expenses for which the Client is or becomes liable as a result of any infringement or alleged infringement by the Supplier of any third party's intellectual property rights.

## **INDEMNITY**

- 17.1. The Supplier will indemnify the Client in full in respect of all damage or injury to any person or to any property and against all actions, suits, claims, demands, costs, charges or expenses awarded against or incurred by the Client, whether criminal or civil, (including the costs of transport, labour, administration and legal costs on an indemnity basis to the Client) arising from:
- 17.1.1. any act, neglect or default on the part of the Supplier, its employees or agents;
  - 17.1.2. breaches in respect of any matter arising from the provision of the supply of Goods resulting in any successful claim by any third party.
- 17.2. Without prejudice to any other provision of this Agreement, the Supplier will fully indemnify the Client against any claims made against it as a result of any failure by the Supplier to comply with any statutory provision to be observed or performed in connection with the provision of the supply of Goods.
- 17.3. The Supplier's liability to indemnify the Client arising under this clause 17 will be without prejudice to any other right or remedy of the Client arising under this Agreement.

## **INSURANCE**

- 18.1. The Supplier will throughout the Term maintain with a reputable insurance company within the UK such policies of insurance (provided that such insurance is available in the market at commercially reasonable rates) as are necessary to cover any liability of the Supplier in respect of loss of or damage to property and personal injury to, or death of, any person arising out of or in the course of or caused by the Supplier's carrying out or failing to carry out its obligations under the Agreement or for which it may become liable to the Client under clause 17, all statutory required insurance(s) including:
- 18.1.1. employers liability insurance shall be in the minimum sum of £10,000,000.00 in respect of one incident and the number of incidents covered shall be unlimited;
  - 18.1.2. public liability insurance cover shall be in the minimum sum of £5,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited and should be adequate to cover all risks in the supply of Goods;
  - 18.1.3. directors and officers liability, trustee's liability, professional indemnity or similar as appropriate to the Suppliers circumstances shall be in the minimum sum of £5,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited which should also be in place for a 6 year period following the termination of the Agreement;
- 18.2. Upon request, the Supplier will provide the Client with details of the policies of insurance (by way of insurer's certificate) effected in accordance with clause 18.1, so as to demonstrate that clause 18.1 is being complied with.

- 18.3. The Supplier will immediately inform the Client of any failure or inability to maintain insurance in accordance with clause 18.1 and of any circumstances likely to render such insurance void or voidable in order that the Supplier and the Client can discuss the means of best protecting their respective positions in the absence of such insurance.
- 18.4. Any increased or additional premiums required by insurers by reason of the Supplier's own claims records or other acts or omissions particular to the Supplier will be deemed to be within commercially reasonable rates.

### **TERMINATION OF AGREEMENT**

- 19.1. The Agreement shall terminate automatically on the expiry of the Term.
- 19.2. In the event of:
- 19.2.1. the Supplier 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) 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;
  - 19.2.2. the Supplier 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;
  - 19.2.3. 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 Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
  - 19.2.4. the Supplier (being an individual) is the subject of a bankruptcy petition order;
  - 19.2.5. a creditor or encumbrancer of the Supplier 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 its assets and such attachment or process is not discharged within fourteen (14) days;
  - 19.2.6. 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 Supplier (being a company);
  - 19.2.7. a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;

- 19.2.8. a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- 19.2.9. any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 19.2.1 to clause 19.2.9 (inclusive);
- 19.2.10. the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
- 19.2.11. the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

the Client may, without prejudice to any other power of termination or to any rights or remedies it may have, terminate the Agreement forthwith by notice and the Supplier shall indemnify the Client against all costs, expenses and damages for which the Client becomes liable arising from such termination.

- 19.3. Without prejudice to the Client's other rights and remedies, the Client may forthwith terminate the Agreement by notice if the Supplier and or is Staff:
  - 19.3.1. commits or attempts a Prohibited Act;
  - 19.3.2. fails to adhere to the Local Safeguarding Policy and Procedures, CRB and or ISA;
  - 19.3.3. fails to comply with Good Industry Practice and or the Laws;
  - 19.3.4. commits any breach of the Agreement and fails to remedy such breach within seven (7) days of being given written notice to do so by the Client; or
  - 19.3.5. fails to perform its obligation under the Agreement with due diligence.

- 19.4. Notwithstanding the generality of clause 19 the Client shall have the right to terminate the Agreement, or to terminate the provision of any part of the Agreement with immediate effect by giving written notice to the Supplier, in which case the Client shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

## **TRANSPARENCY**

- 20.1. In order to comply with the Government's policy on transparency in the areas of procurement and contracts the Supplier agrees that the Agreement and the tender documents and any information including but not limited to requests for quotes, advertisement issued by the Client seeking expressions of interest, the pre qualification questionnaire and the invitation to tender (the "Procurement Documents") issued by the Client which led to its creation will be published by the Client on a designated web site.



- 20.2. The entire Agreement and all the Procurement Documents issued by the Client will be published on the designated web site save where to do so would disclose information the disclosure of which would:
- 20.2.1. contravene a binding confidentiality undertaking;
  - 20.2.2. be contrary to regulation 43 of the Public Contracts Regulations 2006 (as amended); or
  - 20.2.3. in the reasonable opinion of the Client be prevented by virtue of one or more of the exemptions in the FOIA or one or more of the exceptions in the Environmental Information Regulations 2004.
- 20.3. If any of the situations in clauses 20.2.1 to 20.2.3 apply the Supplier consents to the Agreement or Procurement Documents being redacted by the Client to the extent necessary to remove or obscure the relevant material and being published on the designated website subject to those redactions.

### **DISPUTES**

- 21.1. If the Client believes that the supply of Goods are deficient, the Supplier shall be formally notified in writing by the Client, inviting the Supplier at the earliest possible opportunity to discuss the matter and giving clear indications as to how the supply of Goods have not been satisfactory.
- 21.2. After such discussions, the Supplier shall remedy any agreed faults within an agreed, reasonable timescale. Once the Client has formally notified the Supplier of any such deficiencies, it shall be entitled to withhold payment of any invoices which the Supplier has submitted (or may submit) for the supply of Goods, or part-pay any such invoices as it sees fit.
- 21.3. If the Supplier is unable or unwilling to remedy the above faults, the Client may terminate this Agreement forthwith; if the Supplier feels that the supply of Goods are not at fault or that the Client is unfair in its judgment of the quality of the supply of Goods, and the parties are unable to agree the matter amicably between them, the matter may be resolved by reference to an independent mediator who is acceptable to both parties, and whose decision both parties agree shall be final. Both parties shall share the cost of mediation.

### **NO WAIVER**

- 22.1. No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement.

### **FORCE MAJEURE**

- 23.1. Neither party shall be liable for delay in performing or failing to perform its obligations under this Agreement if the delay or failure results from events of circumstances beyond its reasonable control. Such delay or failure shall not constitute a breach of this Agreement and the time for performance shall be extended by a period equivalent to that during which performance is prevented provided that if such delay or failure persists for more than one month nothing in

this clause shall be taken to limit or prevent the exercise of the right to terminate under clause 19.

#### **ACCRUED RIGHTS AND REMEDIES**

- 24.1. The termination of the Agreement will not prejudice or affect any claim, right, action or remedy that will have accrued or will thereafter accrue to either party.

#### **RIGHTS AND DUTIES RESERVED**

- 25.1. All rights, duties and powers which the Client has as a local authority or which the Client's officers have as local authority officers are expressly reserved.

#### **SURVIVAL OF TERMS**

- 26.1. The terms of the Agreement will (except in respect of any obligations fully performed prior to or at the completion of the supply of Goods) continue in force and effect after the completion of the supply of Goods by the Supplier.

#### **AUTHORITY TO ENTER INTO THE AGREEMENT**

- 27.1. Each of the parties warrants its power to enter into this Agreement and that it has obtained the necessary approvals to do so.

#### **ENTIRE AGREEMENT**

- 28.1. This Agreement contains the whole agreement between the parties and neither party has relied upon any oral or written representations made to it by the other or the others employees, representatives or agents and this Agreement supersedes any prior agreement between the parties.

#### **GOVERNING LAW**

- 29.1. This Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS of which this Agreement has been duly executed by the parties.

**Executed on behalf of CAMBRIDGESHIRE  
COUNTY COUNCIL by:**

.....  
SIGNATURE OF FIRST OFFICER

.....  
PRINT FULL NAME

.....  
POSITION

And

Executed on behalf of [                      ] by:

.....  
SIGNATURE OF FIRST DIRECTOR

.....  
PRINT FULL NAME

.....  
POSITION

.....  
SIGNATURE                      OF                      SECOND  
DIRECTOR

.....  
PRINT FULL NAME

.....  
POSITION

## **SCHEDULE 1**

### **Smart Card Readers for Total Transport Pilot**

#### **The Pilot**

Cambridgeshire's Total Transport Pilot, is one of 37 projects that are funded nationally by the Department for Transport. The aim of the Pilot is to deliver efficiencies and cost savings from integrating council funded transport. The Pilot area is the northern half of East Cambridgeshire District, centred on Ely and including both Littleport and Soham.

#### **Purpose**

The Council intends introducing Smart Cards for mainstream school transport (school buses) in the pilot area to:

- Manage bus loading;
- Collect timely and accurate data;
- Manage capacity (i.e. removing vehicles that are not needed).

Dialogue with schools and operators suggests that smart cards could play a useful role in managing pupils' behaviour (through "hot-listing", travel bans and by preventing "bus-hopping")

#### **Requirement**

- Supply install and test smart card readers / ETMs on (up to) 30 vehicles;
- Work with the Council's existing card and HOPS providers and school bus operators to test the readers / ETMs and integration with existing systems;
- Train operators / drivers to use the readers / ETMs.

Smart cards will be issued for the start of the 2016/17 school year in September 2016, to all pupils who are entitled to Council funded transport to Ely College, Soham Village College and Witchford Village College. The cards will be supplied and managed through existing Council contracts.

The Council wishes to contract for the supply, installation and testing of readers / ETMs on all of the secondary school buses that will operate in the Pilot area. Current thinking is that the readers / ETMs and associated kit will remain the property of the Council. Bus operators will also need to be supplied with infrastructure, peripherals and software to connect to the council HOPS (Host Operated Processing System) in order to transfer data and manage the cards (and readers / ETMs).

Initially the Council plans only to use basic card and reader / ETM functions. Cards and readers / ETMs will need to manage:

- Entitlement to travel &
- Bus loading

i.e. the reader / ETM should alert the driver if the pupil is not entitled to travel or is on the wrong bus (this will be supported by enforcing existing no pass, no travel rules). We do not currently propose putting additional products on the cards.

The system must be capable of transferring data to the Council / HOPS (we do not require a live link, we expect data transfer to be carried out at the end of the day using operators' existing internet connection).

## **Scope**

Current planning suggests that readers (and associated software, equipment and peripherals) will be required for up to 30 vehicles, operated by up to 10 different providers. Annual passenger and journey numbers (based this year's data) are estimated as:

- c.1,500 pupils;
- 580,000 one way trips (i.e. 290,000 return journeys).

The readers / ETMs will be installed, tested and operational in time for the start of the Autumn 2016 school term on Thursday 1 September.

This scheme must fit into the existing ITSO scheme that Cambridgeshire County Council already uses and all Suppliers need to be ITSO Registered Supplier/Members with Certified equipment.

The card readers / ETMs must be ITSO Certified and the Supplier must guarantee that their ETMs are at the latest version of the ITSO Specification for the next 7 years