



# Section 2

## 'Draft' Service Agreement

**Framework for the Provision of  
Local and School Bus Services in Lancashire**

## SECTION 2: 'DRAFT' SERVICE AGREEMENT

### Introduction/Background

Lancashire County Council is seeking tenders from Service Providers wishing to join a Framework Agreement for the provision of Local and School Bus Services in Lancashire. The transport services are arranged and fully funded by Lancashire County Council.

Under the terms of this Framework Agreement, an approved list of operators will be compiled, from which mini-competitions will be held for the provision of specific PSV/PCV transport services. Individual service specifications will be provided for each service to be contracted as part of the mini-competitions.

All Transport Services contracted via the mini-competitions must be operated in accordance with the conditions set out in this Service Agreement

The Services will include the provision of local bus services across the County and into adjoining local authority areas that are complimentary to bus services provided on a commercial basis and the provision of home to school journeys within Lancashire and surrounding areas, either on an exclusive basis or operating as a local bus service.

**THIS AGREEMENT** dated [DATE] is made

### **BETWEEN**

- (1) **LANCASHIRE COUNTY COUNCIL** of County Hall, PO Box 78, Preston, Lancashire, PR1 8XJ ("the Authority")
- (2) **TRADING NAME OF OPERATOR** ([Company Number]) whose registered office is at [ADDRESS OF REGISTERED OFFICE] ("the Service Provider")

This Agreement is an agreement setting out the terms on which the Authority may purchase and the Service Provider will supply to the Authority (or any other appropriate organisation) the Services (as hereinafter defined) as agreed by the parties (the "Supply")

## **1. Definitions and Interpretation**

1.1 In this Agreement the following terms shall have the following meanings:

**“Authorised Officer”** means the officer appointed by the Authority in accordance with Clause 4.

**“Authority”** means Lancashire County Council.

**“Claim Form”** means the Passenger Transport Services Operator's Invoice provided by the Authority to the Service Provider on a four weekly basis (period) in order to invoice the Authority for payment.

**“Confidential Information”** means all data and information supplied by the Authority to the Service Provider and/or the Personnel (or any of them) or the supply of which is procured by the Authority, whether in the form of written and/or printed documents (including facsimile transmissions), oral communication, data stored on magnetic or electronic media or data communicated over communication lines, but does not include:

- a) information which is or which subsequently becomes within the public domain other than by reason of a breach of this Agreement by the Service Provider;
- b) information which the Service Provider can reasonably demonstrate was known by it, under no obligation of confidence, prior to its receipt of such information; or
- c) information which becomes otherwise lawfully available to the Service Provider other than as a result of a breach of any duty of confidence owed to the Authority.

**“Contingency”** means any actual or potential industrial action or any other contingency of any kind that affects or might affect the Service Provider's ability at any time to fulfil its obligations under this Agreement including but not limited to Force Majeure.

**“Contract”** means the successful award of Services to be contracted as part of the mini-competitions.

**“Contract Variation”** means a document submitted in writing by the Authority for a change or addition to the Services:

- (a) the likely timescale for such change to be implemented;
- (b) details of any variation to be made to the charges payable under this Agreement or to any other aspect of this Agreement as a result of introducing such change or addition as part of the Services; and
- (c) details of the impact of the change or addition on any other aspect of the Services.

**“DBS”** means Disclosure and Barring Service.

**“DDA Low Floor tender”** means a tender to provide services with a low floor vehicle(s) with as a minimum the features described in the Public Service Vehicles Accessibility Regulations 2000. Step entry vehicles are not to be used.

**"DERV"** means diesel oil used in buses with diesel engines (Diesel Engine Road Vehicle)

**“Effective Date”** means 1 January 2016.

**“Force Majeure”** means, in relation to either party, any event or circumstance which is beyond the reasonable control of such party and which results in or causes the failure of that party to perform any of its obligations under this Agreement including act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, fault or failure of plant and equipment (which could not have been prevented by good industry practice), governmental restraint, Act of Parliament, other legislation, bye-law and or Directive provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of that party.

**“Intellectual Property Rights”** means patents, patent applications, know-how, trademarks, trade mark applications, trade names, registered designs, copyright or other similar intellectual or commercial rights

**"Loss"** includes losses, liabilities, claims, costs, charges and outgoings of every description (including legal expenses), compensation payable under contracts with suppliers and or customers, loss of normal operating profits, loss of opportunity, loss of goodwill, loss of revenue from related contracts and pure economic loss and the reasonable cost to the Authority for the time spent by its officers in terminating this Agreement and in making alternative arrangements for the provision of the Services.

**"NoWcard"** is a joint project between Cumbria and Lancashire County Councils, Blackburn with Darwen Borough Council and Blackpool Council. It is managed in conjunction with these councils, which are statutorily responsible for the provision of concessionary travel.

**"Operating Days"** Payments due to the contractor in respect of the Contract shall not be varied in respect of any adjustment of the number of schooldays operated within the range 182 to 200 days per annum (for Contracts serving schools) or 172 to 190 days per annum (for contracts serving colleges) unless the Contract is terminated in accordance with Clause 2.2.5.3, Clause 2.3.5, Clause 21.6.3 or Clause 22.3.

Details of the schooldays will be supplied by the Authority. Within these days the service may be withdrawn on up to 6 days to be advised and the afternoon journey (where this is operated) may be required to operate up to 4 hours earlier on up to 6 days per annum.

The Service Provider will receive 7 days advance notice of cancelled or amended operation.

If the number of days operated is less than 182 days or more than 200 days (for Contracts serving schools), or less than 172 days or more than 190 days per annum (for Contracts serving colleges) payments made by the Authority in respect of the Contract will be adjusted. The adjustment will only be made on the termination of the Contract and if the total days operated fall outside the range 182/200 x years of operation (for contracts serving schools) or 172/190 x years of operation (for contracts serving colleges). The price base for calculating any change to payments will be the weighted annual average price during the period of the Contract. Any change to payments due will be calculated as follows: Total Contract Price divided by [190 (for Schools) or 180 (for Colleges) days x years of operation] x total days operated-payments made.

**“Party or Parties”** means the Authority and the Service Provider.

**“PSV/PCV Regulations”** means regulations issued from time to time pursuant to the Public Passenger Vehicles Act 1981 or similar legislation.

**“Personal Data”** means as defined in the Data Protection Act 1998.

**“Personnel”** means all persons engaged by the Service Provider from time to time in connection with the provision of the Services whether such persons are operatives, passenger assistants, supervisors, directors or in any manner employed by the Service Provider or by other contractors of the Service Provider or are employed on their own account as independent contractors or the Service Provider’s subcontractors servants or agents.

**“Price”** means the sum specified in Pricing Schedule for the individual service specifications provided for each service contracted as part of the mini-competitions.

**“PTi”** means Passenger Transport Information Ltd, (Company number 4032513) (Registered Office Christ Church Precinct, County Hall, Preston, PR1 8XJ).

**“Remedy”** means a plan of action to resolve any breach of Contract, which may take the form of an Improvement Statement issued by the Authority;

**“Review”** means a review performed in accordance with Clause 19.

**“Review Meeting”** has the meaning given in Clause 19.2.

**“Services”** means the services described in the Specification.

**“Service Provider Representative”** means the person appointed by the Service Provider, in accordance with Clause 5.1, to be its prime contact point for managing and monitoring the provision of the Services under this Agreement and have the authority to contractually bind the Service Provider on all matters relating to the Supply.

**“Specification”** means the detailed specification prepared by the Authority, to be included within the information supplied for the mini-competitions.

**“ST11 Tenders for the Provision of School Transport Services (ST11 Passes)”** means the transport of students by purchasing groups of seats on Commercial Bus Services.

**“ST12 Quotes for the Provision of Individual Student Travelpasses on Commercial Bus Services (ST12 Passes)”** means the transport of students by purchasing individual seats on Commercial Bus Services.

**“Tender Document”** means the tender document dated [DATE] submitted by the Service Provider to the Authority.

**“TUPE Event”** means the transfer of an identifiable economic unit for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

1.2 As used in this Agreement:

1.2.1 The masculine includes the feminine and the neuter; and

1.2.2 The singular includes the plural and vice versa.

1.3 A reference 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 or consolidated by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

1.4 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

1.5 References to Clauses and Schedules are unless otherwise provided references to clauses of and schedules to this Agreement. The Schedules form part of the terms and conditions of this Agreement.

1.6 Reference to the Service Provider shall include the Service Provider's subcontractors unless expressly excluded.

1.7 Any Special Conditions attached to the Contract Specification shall form part of this Agreement. In case of conflict the Special Conditions shall prevail over this Agreement.

## **2. COMMENCEMENT AND DURATION**

### **2.1 Effective Date**

This Agreement shall take effect from the Effective Date and (unless terminated earlier pursuant to the terms of this Agreement) shall continue in force until the date set out in Clause 2.3.

### **2.2 Default**

- 2.2.1 The Service Provider will notify the Authority immediately of any breach of the Contract setting out the details and reasons for such a breach.
- 2.2.2 Where a breach of Contract is identified either by virtue of Clause 2.2.1 or by any other means the Authority will take the following action:
- 2.2.2.1 In instances of minor first breaches the Authorised Officer's representative will visit the Service Provider within 7 days, and discuss the breach and agree a plan of action with the Service Provider Representative to resolve the breach. The Authorised Officer's representative will complete a form detailing the breach and agreed action plan which both Parties will sign. A copy of this form will be left with the Service Provider. If it is not possible to agree an action plan the Service Provider Representative shall be required to a meeting at the Authority's offices to formally discuss the matter further with the Authorised Officer.
- 2.2.2.2 In instances of more serious breaches or breaches that have occurred previously which have not been remedied by the Service Provider, the Authority will write to the Service Provider within 7 days detailing the areas of concern and the Service Provider Representative shall be required to attend a meeting at the Authority's offices for a disciplinary meeting. The Service Provider should bring to that meeting a plan of corrective action ("Improvement Statement").
- 2.2.3 Performance in relation to the Improvement Statement will be reviewed at the Authority's discretion and a formal review meeting may be held within a time period specified by the Authority from the date of the agreed Improvement Statement. The review meeting may address more than one Improvement Statement.
- 2.2.4 If following a review meeting in relation to an Improvement Statement, if held, or during any other review the Service Provider satisfies the Authority that the areas of concern have been remedied then the Authority will discharge the Improvement Statement and take no further action.
- 2.2.5 If following a review meeting, or during any other review the Service Provider fails to satisfy the Authority that an identified breach of the Contract has been remedied, the Authority will:
- 2.2.5.1 specify a further period for the attainment of the targets set out in the Improvement statement; or
- 2.2.5.2 specify a revised Improvement Statement; or
- 2.2.5.3 treat the default as a material breach for the purposes of Clause 2.4.1 and terminate this Agreement or the specific Contract.

### 2.3 **Termination**

This Agreement shall terminate on the earlier of:

- 2.3.1 31<sup>st</sup> December 2019;

- 2.3.2 the service by the Authority on the Service Provider of an appropriate notice on the happening of any of the events referred to in Clause 2.4;
- 2.3.3 the expiry of a period of 12 weeks written notice to be given by the Authority to the Service Provider;
- 2.3.4 the expiry of a period of 12 weeks written notice to be given by the Service Provider to the Authority;
- 2.3.5 in accordance with the provisions of Clause 21.6.3 and/or 22.3;
- 2.3.6 at any time by mutual consent.

#### 2.4 **Termination for Cause**

This Agreement may be terminated immediately by the Authority by notice in writing served on the Service Provider where the Service Provider:

- 2.4.1 is in material or continuing breach of any of its obligations under this Agreement and fails to remedy the breach (if capable of remedy in accordance with Clause 2.2) for a period of 30 days after written notice to do so is served on the Service Provider by the Authority, provided that where the Authority considers the breach to be of such a serious nature that the safety of passengers, customers or the general public has been endangered it may terminate the Agreement forthwith; or
- 2.4.2 is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986) or if any voluntary agreement is proposed in relation to it under section 1 of that Act or enters into any scheme of arrangement; or
- 2.4.3 has a receiver (which includes an administrative receiver within the meaning of section 29 of the Insolvency Act 1986), manager or administrator appointed over the whole or a material part of its assets or undertaking; or
- 2.4.4 has an administration order under section 8 of the Insolvency Act 1986 made in relation to it; or
- 2.4.5 passes any resolution for winding-up; or
- 2.4.6 has a petition presented in any court for its winding-up or for an administration order; or
- 2.4.7 convenes a meeting of its shareholders and or creditors for the purposes of amalgamation or reconstruction; or
- 2.4.8 has anything similar or analogous happen in relation to it in any jurisdiction outside England; or
- 2.4.9 is in default of any duty or care or any fiduciary duty or statutory duty owed to the Authority, employees or agents of the Authority; or
- 2.4.10 there is a change of ownership or control of the Service Provider; or



- 2.4.11 purports to assign this Agreement in breach of the terms of this Agreement; or
- 2.4.12 ceases or threatens to cease to carry on its business.

## 2.5 **Variation**

The terms of this Agreement may be varied during its currency in accordance with the provisions of Clause 20.

## 2.6 **Continuation of Rights**

Termination or variation of this Agreement shall not prejudice the rights of either party that have arisen on or before the date of such termination or variation.

# **3. EFFECTS OF TERMINATION**

## 3.1 **Handover of Services**

On termination of this Agreement, howsoever effected and without prejudice to the rights, duties and liabilities of the parties, the Service Provider shall:

- 3.1.1 immediately provide to the Authority or (at the Authority's request) to a successor service provider, all records, documentation, manuals, statements and other materials relating to or required for the provision of the Services. If requested the Service Provider shall certify in writing that it has fully complied in all respects with this provision after the return of such documentation;
- 3.1.2 participate in the phased handover of the service to the Authority, or as the case may be, a successor service provider on such terms as may be agreed between the Authority and the Service Provider or, in default of agreement, as stipulated by the Authority. For the avoidance of doubt, it is expressly contemplated that such phased handover may involve the parallel running of the Services or parts of them with services provided by a successor service provider.

## 3.2 **Consequences of Termination**

- 3.2.1 Where any notice of termination has been served under this Agreement, the Service Provider undertakes to continue to provide the Services to the Authority in accordance with this Agreement until expiry of the period of notice and the Authority undertakes to continue to pay the Service Provider for the Services in accordance with the terms of this Agreement.
- 3.2.2 Upon termination of this Agreement for any reason whatsoever and without prejudice to the rights, duties and liabilities of the parties :
  - 3.2.2.1 the Service Provider shall cease to provide the Services and the Authority shall cease to make use of the Services;
  - 3.2.2.2 the Service Provider shall, within 30 days of the effective date of termination, return all documentation, manuals, statements and other materials (and all copies thereof) supplied under or in connection with

performance or receipt of the Services and which contains Confidential Information. If requested the Service Provider shall certify in writing that it has fully complied in all respects with this provision after the return of such documentation;

- 3.2.2.3 the clauses in this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination;
- 3.2.2.4 the Authority shall be entitled to recover from the Service Provider the amount of any Loss resulting from the termination under Clause 2.3. For the avoidance of doubt the Authority shall be entitled to recover from the Service Provider the additional cost incurred by the Authority in providing a replacement service for a maximum of 12 weeks after termination of the Contract;
- 3.2.2.5 the Service Provider agrees that upon termination of this Agreement for any reason or expiry of this Agreement it shall not be entitled to make a claim against the Authority in relation to costs incurred by the Service Provider in providing the Services or in engaging third parties in connection with the Services whether or not such costs were amortised in the calculation of the charges payable by the Authority under this Agreement. For the avoidance of doubt, the Service Provider will not be restricted from making any claim in respect of such charges to the extent the relevant charges are outstanding and due and payable; and
- 3.2.2.6 the Service Provider shall retain all papers, files and records relating to the provision of the Services and the recruitment/employment of staff engaged in the provision of the Services for the period of 6 years after the date of the termination of this Agreement and thereafter shall not destroy them but deliver them to the Authority.

#### **4. THE ROLE OF THE AUTHORISED OFFICER**

- 4.1 The Authority may at its discretion appoint an Authorised Officer to exercise its functions, rights and powers conferred by this Agreement. Such Authorised Officer shall exercise all the rights and powers conferred on the Authority by this Agreement.
- 4.2 The Authorised Officer may nominate an officer or officers to be responsible for exercising the rights and powers conferred on him under this Agreement. If any clarification of the powers and duties of individual officers is required by the Service Provider then this shall be sought in writing from the Authorised Officer.
- 4.3 The Service Provider shall not question the existence or extent of the authority of the Authorised Officer or any nominee or person appointed by him.

#### **5. SERVICE PROVIDER REPRESENTATIVE**

- 5.1 The Service Provider shall, subject to the prior written approval of the Authority, appoint, or at the written request of the Authority, remove and or replace without delay

a Service Provider Representative for the management of this Agreement.

- 5.2 The Service Provider shall ensure that the Service Provider Representative or a competent deputy duly authorised to act on his behalf is available to the Authority at all reasonable times when the Services are being provided.
- 5.3 Prior to such person acting in such capacity, the Service Provider shall inform the Authorised Officer in writing of the identity of any person authorised to act for any period as deputy for the nominated Service Provider Representative as soon as practicable.

## **6. VEHICLES AND ROUTES**

- 6.1 The Service Provider shall ensure that all vehicles provided for the performance of the Services are occupied only by legitimate passengers and those persons who are directly involved in the provision of the Services and that no unauthorised persons are allowed on to such a vehicle without the written consent of the Authority.
- 6.2 The Service Provider shall at all times during the continuation of this Agreement use and/or operate all vehicles and other equipment used in connection with the Services with due regard for fuel economy and energy saving and shall ensure that all Personnel are effectively instructed in such matters to such a standard as the Authority may reasonably require.
- 6.3 Nothing contained in this Agreement shall prevent the Authority from letting all or any part of a bus route to third parties at such times as they are not let to the Service Provider to be used in the provision of the Services.
- 6.4 Any vehicles used in providing the Services shall be owned or leased and licensed in the Service Provider's name, unless stated in the specification. The Service Provider shall not, without the written permission of the Authority, except in emergency (including breakdown), hire in any vehicle, transfer, assign or sub-let to any person or persons, any portion of the Services, provided that:
  - 6.4.1 any emergency action necessary shall be notified to the Authority immediately and require the use of an "on hire to ...." notice;
  - 6.4.2 the Authority shall in its absolute discretion decide whether to permit the continuance of the emergency arrangements or arrange suitable alternative provision in accordance with Clause 24; and
  - 6.4.3 in all instances of where the Authority decides to allow the continuance of the emergency transfer, assignment or sub-letting, the Service Provider shall remain responsible to ensure the observance of all terms and conditions of this Agreement and to ensure compliance with PSV/PCV regulations, where appropriate.
- 6.5 The Service Provider shall not use any vehicle for any other purpose (including, for the avoidance of doubt, another service agreement between the Authority and the Service Provider) whilst it is being used in the performance of the Services, except where this is permitted by the Specification, or as agreed by the Authority in writing.

## **7. PROVISION OF SERVICES**

- 7.1 The Service Provider shall provide the Services to the Authority on and from the Effective Date for the remainder of the term of this Agreement in accordance with the terms of this Agreement.
- 7.2 The Authority shall at its own expense provide to the Service Provider all information that the Authority, at its sole discretion, deems to be required by the Service Provider to enable it to provide the Services.
- 7.3 The provision of the Services by the Service Provider shall, at its own expense, include the procuring and maintenance of all necessary approvals, licences, permissions or accreditations to enable the Authority to receive the Services.
- 7.4 The Service Provider shall ensure that all vehicles and all other equipment used by the Service Provider during the provision of the Services complies with the latest relevant British Standard, European Standard or Directive or other appropriate specification or legislation.
- 7.5 The Service Provider agrees that it will during the currency of this Agreement:
- 7.5.1 provide the Services promptly (and in any event within any time targets as may be set out in the Specification) strictly in accordance with this Agreement and the Specification;
  - 7.5.2 ensure that (except with the Authority's prior written approval) all Services are provided continuously during the hours set out in the Specification;
  - 7.5.3 act in a professional and courteous manner so as to reflect and promote the image of the Authority;
  - 7.5.4 provide the Services in accordance with all applicable UK and European laws and regulations and best industry practice; and
  - 7.5.5 provide the Services in accordance with the policies (including, when on any premises of the Authority or on any other premises where it works alongside the Authority's staff, any racial discrimination and equal opportunities policies), rules, procedures and the quality standards of the Authority as amended from time to time.
  - 7.5.6 exercise due care in relation to all passengers carried pursuant to the provision of the Services;
  - 7.5.7 provide the Services to the Authority's reasonable satisfaction and in accordance with the standards of service and quality assurance set out in the Specification or any revisions or additions thereto from time to time agreed between the Authority and the Service Provider;
  - 7.5.8 ensure that the conduct and operation of the Services does not in any way interrupt or interfere with the provision by the Authority of other services or any

other activities carried on elsewhere on a bus route;

- 7.5.9 without prejudice to the generality of Clause 7.8, ensure that the operation of all vehicles complies at all times with the requirements of any appropriate authority (including but not limited to the local police force, the local fire officer, the local planning authority, the local environmental health authority, the local education authority) and will notify the Authority immediately upon receipt of any order notice or requirement from any such authority or body and will immediately take all steps necessary to comply with the same;
- 7.5.10 comply with any reasonable requirements from time to time made by the Authority in connection with the proper management of the vehicles used in the provision of the Services (including but not limited to those for keeping the vehicles and all other equipment, fixtures and fittings in a good state of repair clean and tidy to the satisfaction of the Authority) and will ensure that all Personnel are suitably qualified and/or trained in the running of the vehicles and in all other aspects of the Services and in particular (but without limitation) in all necessary maintenance and cleaning procedures relating to the vehicles and all other equipment;
- 7.5.11 prior to the commencement of the Services and periodically throughout the term of this Agreement, perform appropriate assessments to identify potential risks to the Personnel and users of the Services and provide the Services in a manner which is calculated to minimise such risks; and
- 7.5.12 ensure that the Services are provided at the times and in the manner described in the Specification (which, for the avoidance of doubt, shall include performance in accordance with routes and timetables detailed in the Specification unless the same have been varied with the express written consent of the Authorised Officer).
- 7.6 Notwithstanding the contents of the Specification the Service Provider shall ensure that in providing the Services it shall comply with any policy statement relating to provision of public transport issued from time to time by the Authority.
- 7.7 Neither the Service Provider nor its Personnel shall in any circumstances hold itself or themselves out as
- 7.7.1 being the servant or agent of the Authority otherwise than in circumstances expressly permitted by this Agreement;
- 7.7.2 being authorised to enter into any contract on behalf of the Authority or in any other way to bind the Authority to the performance, variation, release or discharge of any obligation; or
- 7.7.3 having the power to make, vary, discharge or waive any by-law or any regulation of any kind.
- 7.8 The Service Provider shall comply strictly with all relevant legal provisions (including but not limited to orders, regulations, statutes, statutory instruments, codes of practice, by-laws and directives), to be observed and performed in connection with the Services and shall indemnify the Authority against any loss or damage caused by

non-compliance with any such legal provisions. In particular, but without limitation to the foregoing, the Service Provider shall:

- 7.8.1 at all times comply with the requirements of the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999, the Electricity at Work Regulations 1989, the Control of Substances Hazardous to Health Regulations 2002, and of any other legal provisions pertaining to the health and safety of its own staff, the Authority's employees and others who may be affected by its performance of the Services;
- 7.8.1.1 review its health and safety policy on a regular and on-going basis and provide the Authority with a copy of the policy on each anniversary of the Effective Date and on demand and inform the Authority when the last review of the policy took place;
- 7.8.1.2 ensure that its health and safety policy has been drawn to the attention of all Personnel and that all of its management and supervisory staff have a detailed knowledge of the policy; and
- 7.8.1.3 observe such policy and require its personnel to comply fully with its provisions.
- 7.8.2 Where the Authority considers that the Service Provider's health and safety policy is deficient the Authorised Officer may notify the Service Provider of the reasonable revisions required and the Service Provider will as soon as reasonably practicable revise the policy in accordance with such reasonable revisions and send a copy of such revised policy to the Authority:
- 7.8.2.1 have and keep in force a Public Service Vehicle/Passenger Carrying Vehicle (PSV/PCV) Operator's Licence of the relevant classification as required by current legislation and regulations pertaining thereto which permits the operation of this Agreement in the manner required and shall produce such licences at any time for inspection by an authorised officer of the Authority; and
- 7.8.2.2 notify the Authority within 7 days of any change to such licence made by the relevant licensing authority.
- 7.8.3 Revocation, suspension, or withdrawal of any such licence or the attachment of such conditions to it which prohibit the operation of the Services in accordance with the requirements of this Agreement shall be a circumstance permitting the Authority to terminate this Agreement pursuant to Clause 2.4.1;
- 7.8.3.1 where a service operated under this Agreement has to be registered with the Traffic Commissioner in accordance with the Transport Act 1985, secure the registration or any subsequent variations of registration as may be agreed under the provisions of this Agreement and copy all documentation to the Authority at the same time. The Authority's liability under this Agreement is conditional upon proper registration of the Services to be provided;
- 7.8.3.2 submit any appropriate registration documents to the Traffic

Commissioner, no later than 7 days after receipt of the formal award of contract;

7.8.3.3 make all payments in respect of registration, except in those cases where subsequent variations of registration are required as a result of any changes made to the Services at the request of the Authority in accordance with Clause 20;

7.8.4 ensure that all vehicles used in the provision of the Services at all times display a valid PSV operator's licence disc.

## **8. PROVISION AND MAINTENANCE OF VEHICLES AND EQUIPMENT**

8.1 The Service Provider shall at all times and its own expense during the period of this Agreement provide and maintain sufficient machinery, vehicles, equipment, materials and consumables as are required for the proper and efficient performance of the Services.

8.2 The Service Provider shall, at its own expense, put, keep and maintain all machinery, vehicles and equipment in proper repair and condition, in order that it will perform the Services throughout the life of this Agreement and comply with all statutory requirements, including but not limited to the Electricity at Work Regulations 1989. On request, the Service Provider shall provide details of arrangements made for maintenance of all such machinery and equipment, together with a schedule of maintenance completed to the date of request.

8.3 The Service Provider shall ensure that all vehicles used in the provision of the Services:

8.3.1 are clean and are maintained in such a serviceable condition that they present a professional image to the public;

8.3.2 comply with relevant statutory requirements, including but not limited to the Road Vehicles (Construction and Use) Regulations 1986 (as amended);

8.3.3 have either a current MOT Certificate, or the equivalent certificate for public service vehicles;

8.3.4 clearly display the name and address of the Service Provider.

8.4 The Service Provider shall keep all records of the maintenance of any vehicle(s) being used in the operation of the Service during the terms of this Agreement and 6 years thereafter. Such records, the maintenance facilities and vehicles shall be made available for inspection by the Authority in accordance with the provisions of Clause 22.

8.5 The Service Provider shall make its own arrangements for insurance, security and housekeeping of any items of machinery, vehicles, equipment, materials and consumables used in the performance of the Services wherever kept and maintain adequate insurances in relation to the same for the duration of this Agreement.

## **9. SERVICE REQUIREMENTS**

### **9.1 Route Description and Bus Stations**

- 9.1.1 The Service Provider shall provide the Services in accordance with the detailed route descriptions and any variations, timing, terminus, layover points and any turning or reversing manoeuvres on the highway contained in the Specification included within specific mini-competitions.
- 9.1.2 Within bus stations and at terminus/layover points not on the highway, buses will stand and manoeuvre as directed by the owner of the relevant bus station. Where indicated within the Specification, the Service Provider shall be responsible for paying all charges for using bus stations as may be levied by the owners of the bus stations.
- 9.1.3 Where the use of a bus station or interchange is required in the Specification, the Service Provider will be solely responsible for notifying the owner of such bus station of the intention to use, for the payment of any charges due to the bus station owners or operators and for the observance of any terms and conditions which may be imposed.

### **9.2 Stopping Places**

The Service Provider will set down and pick up passengers at all established stops on the route, unless otherwise indicated in the Specification, having regard to the requirements for the safe and proper use of the highway. In addition, the Service Provider shall set down and pick up passengers at such additional points as may be notified in writing from time to time by the Authority. Where the Service Provider wishes to use any other additional stops, they must be agreed in writing in advance with the Authority. In order to comply with any road traffic regulations and or similar provisions, any stop at which the Service Provider intends to stop for longer than reasonably necessary to set down and pick up passengers must be identified and used for such purposes only by written agreement with the Authority.

### **9.3 Timetables**

The Services shall be provided in accordance with the timetables contained in the Specification or as may otherwise be agreed between the Authority and the Service Provider. Where the Service Provider in its reasonable opinion believes that it cannot adhere to the applicable timetable due to matters beyond its control it must notify the Authority immediately giving details of the relevant matters and their perceived effect on the timetable.

### **9.4 Fares**

The Services shall be provided in accordance with the appropriate fare-tables or maximum fares supplied or to be supplied by the Authority to the Service Provider and any Special Fare Conditions attached to the Specification, any of which may be varied from time to time by the Authority.

### **9.5 Concession Fares**



Where fares are to be taken from passengers, the Service Provider shall apply the following fare concessions on all Services (except where otherwise detailed in the Specification):

#### 9.5.1 **Children**

Accompanied Children under five years of age shall be carried free of charge (maximum of two per adult passenger).

Children under sixteen years of age shall be required to pay half the adult fare (rounded down to the nearest penny).

#### 9.5.2 **Elderly and Disabled Persons**

##### English National Concessionary Travel Scheme Pass-Holders (ENCTS)

Free Travel will be available to ENCTS pass holders on local bus journeys anywhere in England between 0930 and 2300 on weekdays and all day Saturdays, Sundays and Bank Holidays.

Travel before 0930 or after 2300 will be at full adult fare unless the local Travel Concession Authority (TCA) has made arrangements for an additional concession within a local area.

Full details of local TCA's additional concessions are produced in publications available from the Authority, which may be varied from time to time.

#### 9.5.3 **Animals**

Passenger Assistance dogs, such as Guide and Hearing dogs, shall be carried free of charge at all times.

Other animals shall be carried under the terms of the Service Provider's "Conditions of Carriage". Where they are carried they shall be carried free of charge.

### 9.6 **Other Ticketing Schemes**

Where the Specification requires the Service Provider to become involved in an off bus, transfer ticket, return ticket, season ticket or other marketing scheme on all or any of the Services, the Service Provider shall participate in such schemes, provided that the Authority shall not introduce such schemes without first consulting with the Service Provider.

### 9.7 **Issue and Recording of Tickets and Travel**

- 9.7.1 Vehicles operating **local** bus services under contract to the Authority where the seating capacity is 16 seats or greater, must be fitted with a Electronic Ticket Machine and Smart Card reader, approved by the Authority. The Service Provider will be required to ensure the appropriate Data Management System is in place, as detailed in Schedule 1 of this Agreement, where further information on the requirements in respect of SmartCard equipment is also available. The service specifications for each mini-competition to be conducted under this Framework Agreement will include details of any additional requirements.

- 9.7.2 Where the Authority permits that fares are to be taken from passengers, fares must be collected from all passengers except those exempted from paying by the possession of a valid permit (which must be electronically recorded by the Service Provider and reported to the Authority in accordance with Clause 23.1). All fares collected shall be receipted by issue of a ticket to each passenger from an electronic machine which records accurately financial and numerical statistics.
- 9.7.3 Statistics of cash collected, tickets issued and passengers carried on each separate journey shall be recorded by the Service Provider on a waybill.
- 9.7.4 The Service Provider shall give change if the money tendered by a passenger(s) is in excess of the fare specified for the journey to be taken. If a passenger is unable to tender the full fare or cannot produce a valid permit for travel, or if the driver is unable to provide the correct change, instructions within the Authority's "Driver's Handbook" should be followed, or such other guide issued by the Authority from time to time to replace it.
- 9.7.5 Auditable emergency tickets shall be carried on each journey and issued by the Service Provider in the case of a ticket machine breakdown.

## 9.8 **Maintaining Records**

The Service Provider shall retain all records from which the returns as detailed in Clause 23 are to be completed for at least 24 calendar months from the date of operation.

## 9.9 **Surveys and Inspection of Tickets**

Without prejudice to the provisions of Clause 22, the Service Provider shall permit duly authorised and identified representatives of the Authority to travel on the contracted vehicles free of charge and carry out ticket inspections and passenger surveys.

## 9.10 **Lost Property**

The Service Provider shall make arrangements to deal with lost property in accordance with PSV/PCV Regulations and shall handle all lost property in accordance with such arrangements.

## 9.11 **Publicity**

Unless otherwise provided in the Specification or where notified otherwise by the Authority, the Service Provider shall be responsible for advertising the Services and providing passenger information in accordance with the Transport Act 2000 and the strategy for the provision of information on local bus services issued from time to time by the Authority or as may be described in the Specification. In addition, the Service Provider shall provide such publicity as may be required in the Specification.

## 9.12 **Passenger Transport Information Ltd (PTi Ltd.)**

- 9.12.1 In accordance with the Transport Act 2000 the Authority's Bus Information Strategy was adopted in 2002. As part of this strategy the Authority has specified that public transport route and timetable information will be made available to the public by telephone, internet, SMS and mobile internet as part of the national Traveline initiative through PTi Ltd.
- 9.12.2 Those Service Providers who operate commercially registered local bus service(s) are required to make a contribution towards the operating costs of PTi Ltd. The required contribution is based on number of calls received requesting information on each Service Provider's commercial services. If the Service Provider fails to make the required contribution the Authority may make the contribution on behalf of the Service Provider and recover such monies in accordance with Clause 21.7.

## **10. SERVICES ON PUBLIC HOLIDAYS**

- 10.1 Except where required otherwise in the Specification, the Service Provider shall provide the following Services during public holidays:-

New Year's Day	No Service
Good Friday	Sunday Service (See note below)
Easter Monday	Sunday Service (See note below)
May Day	Sunday Service (See note below)
Spring Bank Holiday	Sunday Service (See note below)
Late Summer Bank Holiday	Sunday Service (See note below)
Christmas Day/Boxing Day	No Service

Where the Specification does not include the operation of Sunday services, no services will operate.

- 10.2 In the event of other days being declared a Public Holiday or Bank Holiday, or where the Authority decides that a different level of service is required on certain days, the service to be operated on those days shall be determined by the Authority. The Authority will give the Service Provider at least 28 days notice of its requirements prior to the relevant day.
- 10.3 The Authority may at its discretion require normal services to be operated on Christmas Eve and New Year's Eve up to approximately 20:00 hours or as otherwise given in the Specification. The Authority will give the Service Provider at least 28 days notice of its requirements prior to the relevant day.

## **11. SCHOOL TRANSPORT REQUIREMENTS**

### **11.1 Provision of School Transport**

Where the Services include the carrying of school pupils to and from school or otherwise in connection with the provision of their education, the provisions of this Clause shall apply.

### **11.2 Passes**

For school transport, the Service Provider shall ensure that all passes are checked on every journey and that any pupil not in possession of a valid permit shall pay the appropriate fare provided that a child who does not have a valid permit or the appropriate fare shall not be refused travel unless the Service Provider is so directed in writing by the Authority. Where no fare can be taken, details of the pupil shall be forwarded as soon as possible to the Authority, in accordance with the "Driver's Handbook" or any other guidance stipulated by the Authority,

### **11.3 Changes to Dates of Operation**

Any changes to the dates of operation of the Services shall be notified to the Service Provider in writing by the Authority. Unless the Service Provider has been given at least 7 days prior notice that the Authority wishes to cancel a journey, the Service Provider shall be entitled to claim the prevailing daily rate for that journey, less a deduction for any costs not actually incurred. No payment shall be made for journeys for which at least 7 days prior notice of cancellation has been given.

### **11.4 Notification by Service Provider of Non Operation**

Without prejudice to the provisions of Clauses [15 and [16.1, if it becomes impossible to operate any part of a school transport service, the Service Provider shall immediately notify the Head Teacher/Principal at the relevant school/college and the Authorised Officer.

### **11.5 Drivers Guidance**

Where the Services involve the conveyance of pupils, the Service Provider shall ensure that the Personnel are made aware of and perform their duties in accordance with the Authority's "Driver's Handbook", or such other guide issued by the Authority from time to time to replace it.

### **11.6 School Bus Signs**

The Service Provider shall ensure that for any school transport journey when operating buses and coaches "School Bus" signs complying with the Road Vehicle Lighting Regulations 1989 (as amended) are displayed to the front and rear whilst the vehicle is in use in providing that school service.

Such signs shall not be displayed on any vehicle that is not being used for the provision of school services.

## **12. VEHICLE FEATURES**

### **12.1 Vehicle Age Criteria**

Any vehicle used in the provision of transport services must not exceed the maximum age criteria for the particular type of vehicle as shown in the following table, other than in exceptional circumstances (i.e. vehicle breakdown). Such exceptions must be reported to the Authorised Officer at the earliest opportunity.

<b>A</b>	PSV/PCV Vehicle : Maximum Age – 15 years	9 – 21 seats
<b>B</b>	DDA LOW FLOOR PSV/PCV Vehicle : Maximum Age – 10 years	9 – 21 seats
<b>C</b>	DDA LOW FLOOR PSV/PCV Vehicle : Maximum Age – 10 years	22 – 35 seats
<b>D</b>	PSV/PCV Vehicle : Maximum Age – 15 years	22 – 35 seats
<b>E</b>	DDA LOW FLOOR PSV/PCV Vehicle : Maximum Age – 15 years	22 – 35 seats
<b>F</b>	PSV/PCV Vehicle : Maximum Age – 15 years	35 seats or more
<b>G</b>	DDA LOW FLOOR PSV/PCV Vehicle : Maximum Age – 15 years	35 seats or more
<b>H</b>	PSV/PCV Vehicle : Maximum Age – 25 years	35 seats or more

## 12.2 Seating Capacity

Subject to the provision of the minimum seating capacity or vehicle type required in the Specification, the Service Provider may choose the allocation of vehicles to be used in the provision of the Services, subject to suitability for use on the route served.

## 12.3 Vehicle Design

Except as otherwise agreed with the Authority, all licensed PSV/PCVs with more than 16 seats shall either have passenger door(s) which are directly controlled by the driver (by electrical or mechanical means) or carry a passenger assistant, whose duties include the supervision of boarding and alighting.

No PSV/PCV shall rely on rear passenger boarding and alighting and no vehicle shall be of “open top” type unless previously approved in writing by the Authority.

It shall be the driver's responsibility to ensure the passenger door(s) are safely secured when the vehicle is in motion.

## 12.4 Vehicle Livery

Except as otherwise agreed with the Authority, all licensed PSV/PCVs used in the provision of the Services shall be clearly identifiable as belonging to the Service Provider.

Except as otherwise agreed with the Authority, all licensed PSV/PCVs used in the provision of **local** bus services shall display a standard company livery.

## 12.5 Cleanliness

The Service Provider shall ensure that the exterior and interior of all vehicles used in the performance of the Services are cleaned not less than once per day. The Authority may require the Service Provider to keep records of the cleaning of any vehicle(s) being used in the operation of the Service and such records shall be made available for inspection by the Authority in accordance with the provisions of Clause

22.

## 12.6 **Route and Destination Display**

All vehicles (except those used exclusively for school services and not registered as a local bus service with the Traffic Commissioner) shall display at the front of the vehicle an electronic or roller blind showing the information required by the Specification and all vehicles shall comply with all applicable law (including but not limited to the Public Service Vehicles Accessibility Regulations 2000 (as amended)).

For school services a board of a durable construction may be provided and must not be obscured in any part by the vehicle structure or any other matter; and be legible from a distance of at least 50 metres at any time.

Temporary displays may be permitted for a period of no more than 56 days from the Effective Date for any service.

Where digital or roller number blinds are fitted to a vehicle, they must be correctly set for each journey, as indicated in the Specification.

No hand-written displays shall be used for the purposes of complying with this clause.

## 12.7 **Authority Notices**

The Service Provider shall display on and inside vehicles used in the provision of the Services such notices relating to the Authority's involvement in the provision of the Services as the Authority may require. The Authority shall bear the cost of producing such notices.

## 12.8 **Category of Service**

Where this Agreement has been entered into on the basis of a tender price for a vehicle which meets the minimum specification for a DDA Low Floor tender, the vehicles used in the provision of the Services must at all times provide as a minimum the features offered in the vehicle specification submitted with the tender. Where the Contract has been awarded on the basis of a tender price for a service which requires the drivers to be trained as defined in the Specification, the drivers used to operate the Services shall fulfil the criteria stated in the Specification and the Service Provider shall provide evidence of the same on receipt of a request from the Authority.

## 12.9 **Interior Lighting and Heating**

All interior lighting shall be illuminated to the maximum level required under PSV/PCV regulations during operation of the Services in the hours of darkness. All vehicles shall be equipped with internal heating systems which shall be used for the reasonable comfort of passengers.

## 12.10 **No Smoking Policy**

"No Smoking" signs shall be displayed on all vehicles used in the provision of the Services advising the prohibition of smoking. Smoking by any person on vehicles shall be prohibited at all times.

## 12.11 Carriage of Electronic Equipment

- 12.11.1 The Service Provider acknowledges the right of the Authority to enter any vehicle used in the provision of the Services to install any electronic equipment (including radio, communication devices, closed circuit television, surveillance cameras and ticketing equipment) which the Authority may deem necessary in such positions as the Authority shall in its absolute discretion think fit and to operate, maintain and remove such equipment.
- 12.11.2 Where the Authority has installed equipment on a vehicle in accordance with Clause 12.11.1, the Service Provider shall:
- 12.11.2.1 not interfere or tamper with such equipment without the express written permission of the Authority;
  - 12.11.2.2 notify the Authority immediately on becoming aware of any theft of, damage to or lack of repair of such equipment; and
  - 12.11.2.3 allow the Authority at any time on reasonable prior notice (or sooner in case of emergency) to enter a vehicle to inspect the equipment and to examine its condition.
- 12.11.3 The Authority shall use reasonable endeavours (if reasonably practicable) to minimise any disruption to the Service Provider's provision of the Services when installing, operating, maintaining and removing equipment pursuant to this Clause 12.11 or exercising its right to inspect the condition of such equipment, but shall have no liability to the Service Provider should any such disruption occur.
- 12.11.4 The Service Provider shall, where required in the Specification, install any electronic equipment (including radio, communication devices, closed circuit television, surveillance cameras and ticketing equipment) on a vehicle used in the provision of the Services in such positions as the Authority shall in its absolute discretion think fit and operate and maintain such equipment until such time as the Authority requires the removal of such equipment from the vehicle.
- 12.11.5 The Service Provider shall at all times at its sole cost act promptly to make good, replace, renew or repair any items of equipment installed pursuant to Clause 12.11.4 which shall be damaged or destroyed or fall into disrepair (howsoever caused) other than as a result of the act or neglect of the Authority.
- 12.11.6 The Service Provider acknowledges that all intellectual and industrial property rights in any images, data or other items or information produced by or received from (as the case may be) such equipment shall belong to the Authority.
- 12.11.7 The Service Provider shall give the Authority not less than 14 days notice of :
- 12.11.7.1 the permanent withdrawal from service of any vehicle on which equipment has been fitted pursuant to this Clause 12.11; or

- 12.11.7.2 the permanent movement of any such vehicle to another depot and shall provide the Authority with reasonable access to such vehicle 7 days before its withdrawal or movement to enable the removal of any equipment installed in it.
- 12.11.8 The Service Provider shall give the Authority not less than 14 days notice of the movement of any vehicle not fitted with equipment to a depot where buses are fitted with equipment and the Authority may arrange for any such vehicle to be fitted with equipment.

### **13. WARRANTIES**

The Service Provider warrants and undertakes to the Authority that:

- 13.1 subject to the terms of this Agreement; it has full capacity and authority to perform the Services;
- 13.2 the Services shall be provided with all reasonable skill and care and that it shall ensure that the Personnel shall have the necessary skills and competencies, experience, equipment and other resources to enable them properly and expeditiously to perform the Services;
- 13.3 the Services and any materials and equipment supplied in the performance of the Services shall be provided in accordance with best industry practice and the highest professional standards and shall conform to any and all codes of practice, performance ratings and quality standards as are laid down in the Specification, the Tender Document and or elsewhere within this Agreement.
- 13.4 the Services shall at all times conform to the Specification;
- 13.5 it shall not without the written permission of the Authority advertise the fact that it is providing the Services to the Authority;
- 13.6 neither it nor any person engaged by it to provide the Services will solicit any gratuity, tip or other form of reward or charge for performing the Services other than the charges set out in this Agreement;
- 13.7 any and all Intellectual Property Rights developed under this Agreement or arising by virtue of the performance of the Services shall belong to the Authority. The Service Provider agrees that it shall execute or cause to be executed (by its Personnel if necessary) all deeds, documents and acts required to vest such Intellectual Property Rights in the Authority.

### **14. QUALITY ASSURANCE AND PERFORMANCE OF THE SERVICES**

- 14.1 The Service Provider shall provide the Services in accordance with defined quality management control processes and procedures contained in the Specification and this Agreement.



- 14.2 Where the Service Provider does not have the appropriate certification under a recognised quality management system agreed by the Authority, the Service Provider shall provide the Authority on request with copies of its quality procedures and records. The Service Provider recognises the right of the Authority to inspect such procedures and/or records.
- 14.3 If, after an inspection has been carried out by the Authority, it is of the opinion that changes are required to the Service Provider's quality management processes and/or procedures, the Authority may give written notice to the Service Provider requiring it to make such changes as may be specified.
- 14.4 The Service Provider shall make such changes as soon as practicable after the receipt of written notice from the Authority in accordance with Clause 14.3 and notify the Authority in writing when such changes have been made. For the avoidance of doubt the Authority shall have no liability whatsoever to the Service Provider in relation to the implementation of any such procedures and or records.
- 14.5 Time shall be of the essence with regard to the obligations of the Service Provider under this Agreement.
- 14.6 If at any time the Service Provider becomes aware of any act or omission or any proposed act or omission by the Authority or by any member, official or employee of the Authority which prevents or hinders or may prevent or hinder the Service Provider from providing the Services in accordance with this Agreement then the Service Provider shall immediately inform the Authorised Officer of that fact. For the avoidance of doubt the Service Provider's compliance with this clause shall not in any way relieve the Service Provider of any of its obligations under this Agreement.
- 14.7 The Service Provider will immediately notify the Authorised Officer of any actual or potential problems relating to the Service Provider's own suppliers that affects or might affect its ability to provide the Services.

## **15. CONTINUITY OF PERFORMANCE**

- 15.1 Both parties recognise that it is of paramount importance that there is no break in the provision of the Services and have accordingly agreed to the other requirements of this Clause.
- 15.2 The Service Provider shall immediately notify the Authorised Officer of any Contingency. The Service Provider shall be responsible for providing the Services in accordance with the terms of this Agreement at all times (at no extra cost) during any industrial action by its own Personnel (the "Service Provider Personnel Contingency") but the provisions of Clause 15.3 and 15.4 shall apply to any other Contingency.
- 15.3 The Service Provider shall prepare contingency plans and arrangements and submit details thereof to the Authorised Officer on request. For the avoidance of doubt, it is recognised that such plans and arrangements may be inspected in accordance with Clause 22 and, where necessary, amendments required by the Authority. Where such amendments are notified in writing, the Service Provider shall within a reasonable time make such amendments and confirm in writing to the Authority that such amendments have been made.

- 15.4 In the event of any Contingency (save for the Service Provider Personnel Contingency), the Service Provider shall provide the best possible substituted service as determined by the Authorised Officer. The cost of such substituted service shall apply with effect from the date of the commencement of the Contingency and shall (where appropriate) be based upon the rates contained in the relevant Schedule of Prices. In the event that the Authorised Officer and the Service Provider fail to agree the cost of such substituted service the matter shall be referred for resolution in accordance with Clause 29.4.
- 15.5 If the Service Provider's performance of its obligations under this Agreement is affected by any Contingency, then:
- 15.5.1 it shall give written notice specifying the nature and extent of the Contingency, immediately upon becoming aware of the Contingency, and will at all times use all reasonable endeavours to mitigate (so far as that is possible) the impact of the Contingency;
- 15.5.2 subject to the provisions of Clause 15.6, the date for performance of such obligation shall be deemed suspended only for a period equal to the delay caused by such event; and
- 15.5.3 unless otherwise agreed in writing, it shall not be entitled to payment from the Authority in respect of extra costs and expenses incurred by virtue of the Contingency.
- 15.6 If the Contingency in question prevails for a continuous period in excess of 14 days after the date on which the Contingency begins, the Authority, without prejudice to any other right or remedy available to it, shall then be entitled to give notice in writing to the Service Provider to terminate this Agreement without liability. The notice to terminate must specify the termination date, which must not be less than 7 days after the date on which the notice to terminate is given. Once the notice to terminate has been validly given, this Agreement will terminate on the termination date set out in the notice.
- 15.7 In the event of the Service Provider being unable to maintain the Services to the standards envisaged by this Agreement, the Service Provider shall without prejudice to the remedies of the Authority permit the Authorised Officer and its staff, to have access to the unrestricted use of such machinery, equipment and materials (save for vehicles owned and or operated by the Service Provider unless otherwise agreed in writing between the parties) which being the property of the Service Provider deemed necessary to maintain the Services by the Authorised Officer during industrial action, or any other such occurrence, without additional charge.

## **16. GOOD FAITH**

- 16.1 Both parties will cooperate with, and act in good faith towards each other in relation to all matters arising under this Agreement to enable the Authority to derive the full benefit of this Agreement and in particular each party shall inform the other fully and as soon as possible of any circumstance which might alter the burden of the obligations of each party under this Agreement.

- 16.2 Both parties will do all things reasonably within their power which are necessary or desirable to give effect to the spirit and intent of this Agreement and its fundamental purpose.
- 16.3 Any act, omission, decision, requirement, agreement or any other step of any kind taken by either party shall be taken reasonably and in good faith. Any reference (express or implied) to any period, time, occasion, or any other similar matter shall be subject to the qualification or reasonableness, unless the context otherwise requires.
- 16.4 Where the Authority's consent is required to do anything under this Agreement there shall not be implied (unless expressly stated) any presumption that such consent shall not be unreasonably withheld or delayed.

## **17. ASSISTANCE IN LEGAL PROCEEDINGS**

- 17.1 Where requested by the Authorised Officer, the Service Provider shall promptly provide to the Authority any relevant information (including, but not limited to, documentation and statements from Personnel) in connection with:
- 17.1.1 any legal inquiry, arbitration or court proceedings in which the Authority may become involved, or
- 17.1.2 any disciplinary hearing internal to the Authority
- arising out of the provision of the Services and or the Service Provider's presence on a bus route. The Service Provider shall, if required, give evidence in such inquiries, arbitrations, proceedings or hearings.
- 17.2 Where the Service Provider or any of its Personnel become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services, it shall notify the Authorised Officer immediately in writing. Such notification shall include all relevant information to enable the Authorised Officer to investigate the matter fully.
- 17.3 Information provided or assistance rendered pursuant to the obligation in Clause 17.1 and/or 17.2 respectively, in whatever form, shall be at no cost to the Authority.

## **18. STAFFING AND EMPLOYEES**

- 18.1 The Service Provider shall employ sufficient Personnel to ensure that the Services are provided in accordance with this Agreement at all times. In particular, the Service Provider shall provide management or supervisory personnel approved from time to time by the Authority to supervise and inspect the delivery of the Services. Without prejudice to the generality of the foregoing, the Service Provider shall ensure that a sufficient reserve of Personnel is available to provide the Services in accordance with this Agreement during staff holidays or absence through sickness, whether paid or unpaid.

- 18.2 The Service Provider shall agree with the Authority a person to be responsible for health and safety matters as required by the Health and Safety at Work etc. Act 1974 and the Management of Health and Safety at Work Regulations 1999.
- 18.3 The Service Provider shall, if requested, provide the Authority with the name, address and personal details of any member of the Personnel employed in the provision of the Services and the Authority may check these details with procedures authorised by the Home Office or successor body for the disclosure of criminal backgrounds of people with access to children and/or vulnerable people.
- 18.4 The Service Provider shall seek references from previous employers when appointing any member of the Personnel employed in the provision of the Services. The Service Provider shall upon the request of the Authority and at the Service Provider's own expense provide copies of references or any other relevant information that may reasonably be requested by the Authority. In the event that the consent of any of the Service Provider's Personnel is required prior to providing the requested references or other relevant information, then the Service Provider shall obtain this.
- 18.5 The Service Provider will notify the Authority immediately of any criminal proceedings against any driver employed in the provision of the Services following the award of the Contract or subsequent to any check in relation to Clause 18.3.
- 18.6 The Service Provider shall ensure that every member of the Personnel at all times renders a competent, sober and courteous service and that all such persons are properly and sufficiently trained and instructed with regard to all aspects of the provision of the Services and in particular (but without limitation) with regard to:
- 18.6.1 the particular tasks that person has to perform;
  - 18.6.2 all of the relevant provisions of this Agreement;
  - 18.6.3 all relevant rules, regulations and procedures (including, but not limited to risk of fire, fire precautions and health and safety at work).
  - 18.6.4 has a command of the English language sufficient to allow effective verbal communication with service users.
- 18.7 The Service Provider shall require all Personnel to comply with a dress code agreed with the Authority when performing the Services, including wearing, if instructed, at all times a clearly visible identification badge of a type and design agreed with or, in default of agreement, specified by the Authorised Officer.
- 18.8 The Service Provider shall comply with and/or procure compliance with any instruction made by the Authorised Officer from time to time requiring the removal from the performance of the Services of any person employed by the Service Provider who in the opinion of the Authority (which it shall not be required to explain or disclose to the Service Provider) is not acceptable on the grounds of security or other grounds and that such persons shall not be employed again in connection with the Services without the written consent of the Authority.

18.9 By virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), the provisions of Sections 4(2) and 4(3)(b) of the Rehabilitation of Offenders Act 1974 do not apply to:-

Persons whose employment means that they are working in a 'regulated activity' within the meaning of the Protection of Freedoms Act 2012. This covers persons whose employment involves driving vehicles conveying children in connection with the Services.

- 18.9.1 Any member of the Service Provider's Personnel whose duties fall within the meaning of a 'regulated activity' will be required by the Authority to seek, an enhanced Disclosure & Barring Certificate from the DBS. New arrangements are to be introduced during 2013 and are set out in detail in Schedule 2. The Authority will provide DBS identification badges which must be worn at all times in the provision of the Services in line with Clause 18.7.
- 18.9.2 If the information given to the Authority by the DBS in response to a check carried out in accordance with Clause 18.9.1 discloses conduct by a member of Personnel which by its nature makes them unsuitable to be employed in providing or supervising the provision of journeys transporting school children, or who have access to children or any vulnerable persons the Service Provider shall not employ such member of the Personnel in such provision or supervision.
- 18.9.3 Where a member of the Service Provider's Personnel leaves the employment of the Service Provider, the Service Provider must inform the Authority without delay, providing, if possible, details of any new employer. Where a Service Provider employs an individual who possesses an LCC DBS Identification badge, the Service provider must inform the Authority without delay.
- 18.9.4 Where a member of the Service Provider's Personnel, who has been issued with a DBS Identification badge and no longer wishes to accept contracted work provided by the Authority, the Service Provider must inform the Authority immediately, recover the DBS Identification badge and return the badge to the Authority.
- 18.9.5 To ensure that all persons previously barred from the provision of contracted work provided by the Authority are identified, the Service Provider, where there is no requirement to obtain a DBS Identification Badge and enhanced DBS Disclosure, must contact the Authority to confirm the status of all members of current or prospective Personnel.

For the avoidance of doubt, this applies to all LCC contracted Bus Services, where there is no requirement to obtain a DBS Identification Badge and enhanced DBS Disclosure. The Service Provider will be required to provide the Authority with the Personnel's name and date of birth.

A breach of this procedure, where a Service Provider has used a barred person on a contracted bus service will render the Service Provider liable to disciplinary action and the Authority may terminate this Agreement in accordance with the provisions of Clause 2.2.2.

- 18.10 Should a serious incident occur, or an allegation of serious misconduct is made against a person employed or engaged in the provision of the Services, that person may be required to be suspended from engagement in the provision of the Services whilst an investigation takes place. The person may not resume in provision of the services until confirmed by the Authority that they may do so.
- 18.11 The Authority may require the Service Provider to remove any member of Personnel from work in or about the provision of the Services. The Service Provider shall immediately comply with such instruction as soon as it is reasonably practicable and thereafter shall replace such personnel at no extra cost with a person, or persons, of equal or superior ability, knowledge and/or experience in order that the provision of the Services is maintained.
- 18.11.1 Any member of the Service Provider's Personnel removed from work in accordance with 18.11 shall not be re-engaged in the provision of the Services without the written consent of the Authority.
- 18.11.2 The Authority shall in no circumstances be liable either to the Service Provider or member of Personnel in respect of any liability, loss or damage occasioned by such withdrawal, suspension or removal and the Service Provider shall fully indemnify the Authority against any claim made by such members of Personnel.
- 18.12 If any of the Personnel are, in the reasonable opinion of the Authority, unsatisfactory or incapable of performing the Services to the reasonable satisfaction of the Authority, the Authority may request that the Service Provider shall replace such unsatisfactory persons at no extra cost with a person, or persons, superior ability, knowledge and/or experience.
- 18.13 If any of the Personnel is incapable of performing the Services due to accident or illness, the Service Provider shall replace such incapable personnel at no extra cost with a person, or persons, of equal or superior ability, knowledge and/or experience.
- 18.14 The Service Provider shall ensure that all drivers or other persons in charge of a vehicle being used in the provision of the Services carry with them at all times whilst they are providing the Services a mobile telephone or other similar communications equipment which is in good repair and fit for purpose. For the avoidance of doubt, such equipment shall not be deemed to be unusable by virtue only of local fluctuations in signal strength or quality. The Service Provider shall ensure that such equipment is used in manner which is calculated to reduce risk and minimise accidents which, for the avoidance of doubt, includes not using such equipment unless a vehicle is safely parked and vehicle engine switched off.
- 18.15 The Service Provider and all Personnel shall regard as confidential and shall not disclose to any person other than a person authorised by the Authority any Confidential Information acquired by the Service Provider or the Personnel in connection with the provision of the Services.
- 18.16 The Service Provider and the Personnel shall comply with such reasonable codes of conduct, policies and practices relating to the provision of the Services as the Authority may from time to time direct or any replacements from time to time provided by the Authority which, for the avoidance of doubt, shall include the following:

- 18.16.1 the care of passengers on contracted services, as stipulated by the Authority from time to time;
- 18.16.2 the protection of children and vulnerable adults, whistle blowing and the management and investigation of allegations;
- 18.16.3 the requirement to attend or undertake specific training programmes targeted at members of the Personnel employed in the provision of the Services, as stipulated by the Authority from time to time, including those matters referred to in Clause 18.16.1
- 18.16.4 environmental standards;
- 18.16.5 the operation and use of CCTV and the delivery of footage to the Authority;
- 18.16.6 the provision of information on local bus services; and
- 18.16.7 *NowCard* (smartcard) operation including, when advised, compliance with the requirements of ITSO Operating License and methods of data collection and transmission.

18.17 The Personnel will be the employees of the Service Provider and will have no contractual relationship with the Authority.

18.18 In the event that the Service Provider terminates the employment of any person employed by it the Service Provider hereby acknowledges, agrees and undertakes to the Authority that it shall be fully and solely responsible for any redundancy payments, rewards for unfair dismissal or compensation for loss of office arising from such termination or other compensation arising out of the employment relationship and the Service Provider shall not seek to join the Authority as a party to any proceedings which may be instituted against it in respect of such termination or otherwise. In the event that the authority is joined as a party in any proceedings with the Service Provider in respect of such a termination or otherwise the Service Provider undertakes to fully indemnify the Authority in respect of all costs (including legal and other professional fees) expenses, awards, loss or damages which the Authority may suffer, incur or pay as a result of such proceedings.

#### 18.19 TUPE Event

18.19.1 Upon the expiry or termination of this Agreement for any reason whatsoever, it is expressly agreed between the parties that such expiry or termination shall not be a TUPE Event for the purposes of transferring the contracts of employment from the Service Provider to the Authority in respect of any employees of the Service Provider, save for:

- (a) in the event that the Services continue to be provided by the Authority acting in its own capacity or
- (b) in the event that the Services are to be provided by another service provider following a public procurement exercise, in which case it is accepted that contract of employment in respect of any employees of

the Service Provider will not transfer to the Authority but may transfer to any new service provider for the Services.

- 18.19.2 It is further agreed that the Service Provider shall be responsible for any employees of the Service Provider at the date of such termination and that the Authority shall have no responsibility either to facilitate the provision of reasonable alternative employment to such individuals or to contribute to any redundancy or other costs associated with such employees upon the expiry or termination of this Agreement.
- 18.19.3 For the avoidance of doubt it is expressly agreed that the Service Provider shall use its best endeavours to re-deploy any relevant employees of the Service Provider in relation to the provisions of the Services and shall have sole responsibility for the termination of employment of such staff by way of redundancy (if appropriate) and shall indemnify the Authority in respect of all costs (including legal and other professional fees) expenses, awards, loss or damages which the Authority may suffer, incur or pay as a result of the expiry or termination of this Agreement.
- 18.19.4 The Service Provider shall indemnify the Authority against all costs, claims, liabilities and expenses (including legal expenses) incurred by the Authority in connection with or as a result of:
- (a) any claim or demand by any employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) including, without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, age, disability, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Service Provider in respect of any employee in the period on and before the expiry or termination of this Agreement;
  - (b) any failure by the Service Provider to comply with its obligations under Regulation 13 and of the Regulations, or any award of compensation under Regulation 15 of the Regulations, save where such failure arises from the failure of the Authority and any future provider of the Services to comply with its or their duties under Regulation 13 of the regulations;
  - (c) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing the employees of the Service Provider arising from or connected with any failure by the Service Provider to comply with any legal obligation to such trade union, body or person;
- 18.19.5 The Authority may request from the Service Provider such details relating to the Service Provider's method of service delivery and staff, and of their terms and conditions of service, as the Authority may reasonably require as being necessary to disclose to other tenderers in connection with any future tender of these Services to enable them to prepare and make a bid for these Services. The Service Provider shall comply with such request as soon as reasonably



practicable and, in any event within 21 days of being so requested, and at no cost to the Authority. The Service Provider covenants with the Authority that the information provided shall be complete and accurate and up to date and that it shall notify the Authority promptly of any changes occurring between the date of submission of the information and the end of the Agreement.

- 18.19.6 The Service Provider shall enable and assist the Authority along with any future tenderer for the Services to communicate with and meet the Service Provider's employees and relevant Trade Unions and/or elected employee representatives.
- 18.19.7 The Service Provider shall indemnify and keep the Authority indemnified fully in respect of any claims, losses, costs, expenses, demands and liabilities arising from the provision of information or the failure to provide information under Sub-clause 18.19.5.

## **18.20 RECRUITMENT AND EMPLOYMENT PRACTICES**

- 18.20.1 In the recruitment and employment of Personnel engaged in connection with the provision of the Services, the Service Provider shall at its own cost adopt and implement measures equivalent to or better than those operated by the Authority including but not limited to any measures as are set out in any statute or statutory guidance for the time being in force as shall be notified to the Service Provider by the Authority.
- 18.20.2 The Authority shall provide such assistance to the Service Provider as the Service Provider may reasonably require in implementing the measures required under Clause 18.20.1
- 18.20.3 The Authority shall be entitled to monitor, inspect, audit and examine the Service Provider's compliance with the measures required under Clause 18.20.1
- 18.20.4 The Service Provider shall at its own expense co-operate and provide all reasonable assistance to the Authority by:
- (a) Maintaining all documents materials and records relating to the recruitment and employment of staff engaged in the provision of the Services referred to in Schedule 3 to this Agreement or otherwise specified from time to time by the Authority;
  - (b) Permitting the Authority to conduct spot checks on the Service Provider's recruitment and employment practices without notice at any reasonable time in the course of which the Service Provider shall allow the Authority unhindered access to the Service Provider's premises and Personnel to ask questions and to inspect any documents materials and records the Authority reasonably requires access to;
  - (c) On receiving a request to do so by the Authority promptly and in any event within 7 days providing the Authority with copies of any documents materials and records referred to in Clause 18.20.4 (a);

- (d) Allowing the Authority to interview any of the Service Provider's Personnel in relation to the recruitment and employment practices operated by the Service Provider.

18.20.5 The provisions of this Clause 18.20 shall survive the termination of this Agreement.

## **18.21 SAFEGUARDING AND CONTRACT COMPLIANCE POLICY**

The Authority shall provide the Service Provider with details of the Authority's Safeguarding and Contract Compliance Policy. This document will be updated and circulated to all Service Providers at least annually to remind Service Providers the importance of this Policy.

Service Providers must ensure that all Personnel engaged in connection with the provision of the Services are fully aware of this Policy and its importance.

## **19. REVIEW**

19.1 The Service Provider Representative and the Authorised Officer shall be the prime contact point between the Parties and shall have responsibility for monitoring the provision of the Services by the Service Provider under this Agreement.

19.2 The terms of this Agreement shall be reviewed in accordance with the provisions of this clause. Such reviews shall be carried out by way of a meeting between the Authorised Officer and the Service Provider Representative ("the Review Meeting") who shall be obliged to attend such meeting.

19.3 Reviews shall be carried out either:

19.3.1 annually during the currency of this Agreement; or

19.3.2 at such other times as are required by either party on giving reasonable written notice to the other.

19.4 Each party must submit to the other details of those matters that it requires to be discussed at the appropriate Review Meeting in writing at least 14 days prior to the date of such meeting. Such meetings shall be minuted by the Authority and copies of such minutes circulated to the Service Provider. Any complaints or problems relating to the provision of the Services shall be referred by the Authorised Officer to the Service Provider Representative and shall be discussed at such meeting and appropriate action shall be taken. Any unresolved problems emerging from such meetings shall be referred immediately to a senior executive officer of each party who shall attempt to resolve the issue.

19.5 If, as a result of a Review Meeting, changes are proposed to be made to this Agreement, such changes shall be made in accordance with the provisions of Clause 20.

19.6 If any outstanding matters referred to in a Review cannot be settled to the satisfaction of both parties, either party may refer such outstanding matter for dispute resolution

in accordance with the terms of Clause 29.4.

## **20. CONTRACT SERVICE AGREEMENT VARIATION**

20.1 The Authority reserves the right to vary the terms and conditions of this Agreement in accordance with the terms of this Clause 20. For the avoidance of doubt, such a variation may include variations to:

- 20.1.1 length of contract and price;
- 20.1.2 vehicle features, including electronic equipment and seating capacity,
- 20.1.3 times and routes of journeys;
- 20.1.4 fares to be charged (where appropriate); or
- 20.1.5 any other provision of the Services

provided that the Authority shall not require a variation to be made that falls outside the terms of any licence or other authorisation issued to the Service Provider by a competent governmental body unless it is approved by the relevant authorising authority.

20.2 If the Authority requests the Service Provider to make a change or addition to the Services, the Parties shall discuss in good faith the detail of any changes to be made.

20.3 If the Parties agree to make such change:

- 20.3.1 the Authority shall, so far as it is able and to the extent agreed with the Service Provider, provide reasonable assistance in relation to the developing, testing and introduction of such change or addition as part of the Services by the Service Provider; and
- 20.3.2 the description of the Services, the charges and any other aspects of this Agreement identified shall be amended or supplemented as appropriate to reflect the variation.

20.4 The Authority shall notify the Service Provider in writing the detail of any changes to be made as soon as practicably possible.

## **21. FINANCIAL CONTROL**

### **21.1 Invoicing and Payment**

The Authority shall, subject to satisfactory provision of the Services and to the other provisions of this Agreement which provide to the contrary, pay the Price agreed for the Services. Such Price shall not include value added tax which shall be payable by the Authority in the manner and at the rate from time to time prescribed by law.

21.2 The payment shall be on a type of basis required in the Specification which, where

revenue is taken, may be one of the following:

**21.2.1 Minimum Cost Basis**

This basis shall be referred to hereinafter as "Minimum Cost". Specific conditions applying to Minimum Cost Contracts are:

21.2.1.1 Revenue – Full details of all revenue received shall be notified to the Authority on the Claim Form and deducted from the payment.

21.2.1.2 Should a Contract be awarded as part of or within a commercial route, revenue shall be allocated on the following basis:

21.2.1.2.1 Any passenger boarding the bus on the commercial section of the route should have their fare allocated to the commercial revenue regardless of where they disembark.

21.2.1.2.2 Any passenger boarding the bus on the Contract section of the route should have their fare allocated to the Contract revenue regardless of where they disembark.

21.2.1.3 Payment – The payment to be made by the Authority each full 4 week period shall be one-thirteenth of the total annual Price, less the amount to be deducted for lost mileage, less the revenue received in the period covered by the claim. Payments in respect of Contracts which start, end or are assigned during a 4 week period will be adjusted to take account of the total days of operation up to and including the period in which the Contract starts, ends, is varied or assigned, in accordance with the number of operating days.

21.2.1.4 Revenue Loss – The Service Provider shall be responsible for any loss of revenue arising out of dishonesty or negligence of their Personnel. Payments due to the Service Provider in respect of the Contract shall, unless otherwise agreed by the Authority, be reduced by a sum equal to twenty times any revenue loss identified by the Authority and deducted in accordance with Clause 21.7.1.

**21.2.2 Minimum Subsidy Basis**

This basis shall be referred to hereinafter as "Minimum Subsidy". Specific conditions applying to Minimum Subsidy Contracts are:

21.2.2.1 Revenue – This basis does not require revenue to be taken into account in the claim for payment. However, it is a requirement that such information is supplied on each Claim Form for management and review purposes, unless otherwise agreed in accordance with Clause 21.4.

21.2.2.2 Should a Contract be awarded as part of or within a commercial route, revenue shall be allocated on the following basis:

21.2.2.2.1 Any passenger boarding the bus on the commercial section of the route should have their fare allocated to the commercial revenue regardless of where they disembark.

- 21.2.2.2.2 Any passenger boarding the bus on the Contract section of the route should have their fare allocated to the Contract revenue regardless of where they disembark.
- 21.2.2.3 Payment – The payment to be made by the Council each 4 week period shall be one thirteenth of the annual price, less the amount to be deducted for lost mileage, for the period covered by the claim. Payments in respect of a Contract which starts, ends, is varied or assigned during a 4 week period will be adjusted to take into account the total days of operation up to and including the period in which the Contract starts, ends, is varied or assigned, in accordance with the number of operating days.
- 21.2.2.4 Marketing Schemes – The Service Provider shall be reimbursed in respect of any loss of revenue incurred as a result of participating in any marketing schemes initiated by the Authority in accordance with the terms of that marketing scheme.
- 21.2.2.5 Fare Reduction – The Service Provider may reduce any or all of the fares and charges included in the Specification's schedule of fares and charges, at any time on giving 28 days notice in writing to the Authority. The Service Provider shall inform the Authority of the fares and charges on the Service not less than 14 days before the implementation date.
- 21.2.2.6 Fare Increases – The Service Provider may increase any or all the fares and charges charged in respect of the Services provided under this Agreement, providing the resultant fares and charges do not exceed the fare conditions included in the schedule of fares and charges at any time on giving 28 days notice in writing to the Authority. The Service Provider shall inform the Authority of the fares and charges on the Service not less than 14 days before the implementation date.
- 21.2.2.7 Fare Reviews – The Authority will undertake periodic reviews of the schedule of maximum fares applicable to Services and such other reviews as may be necessary in the light of changes to other journeys provided along the same route.
- 21.2.2.8 Price Adjustments – On amendment by the Authority of the Specification's schedule of fares and charges the net Price of the contract shall be adjusted in accordance with the fare increase. The effect of any fare increase in excess of the Consumer Price Index will be subject to an elasticity of -0.4.
- 21.2.3 **De Minimis Basis**  
This basis shall be referred to hereinafter as "De Minimis". Specific conditions applying to De Minimis Contracts are:
- 21.2.3.1 Revenue – This basis does not require revenue to be taken into account in the claim for payment. However, it is a requirement that such information is supplied on each Claim Form for management and review purposes, unless otherwise agreed in accordance with Clause

## 21.4.

21.2.3.2 Should a Contract be awarded as part of or within a commercial route, revenue shall be allocated on the following basis:

21.2.3.2.1 Any passenger boarding the bus on the commercial section of the route should have their fare allocated to the commercial revenue regardless of where they disembark.

21.2.3.2.2 Any passenger boarding the bus on the Contract section of the route should have their fare allocated to the Contract revenue regardless of where they disembark.

21.2.3.3 Payment – The payment to be made by the Council each 4 week period shall be one thirteenth of the annual price, less the amount to be deducted for lost mileage, for the period covered by the claim. Payments in respect of a Contract which starts, ends, is varied or assigned during a 4 week period will be adjusted to take into account the total days of operation up to and including the period in which the Contract starts, ends, is varied or assigned, in accordance with the number of operating days.

21.2.3.4 Fare Reviews – The Service Provider may revise any or all of the fares and charges included in the Specification's schedule of fares and charges, at any time on giving 28 days notice in writing to the Authority. Any such change in fares and charges must be agreed by the Authority prior to the implementation date.

21.2.3.5 Price Adjustments – On amendment by the Service Provider of fares and charges there will be no change to the net Price of the contract.

### 21.2.4 **Carriage of Students on Commercial Services.**

Please refer to Schedule 4 for full details.

21.3 Upon receipt, the Service Provider shall submit the Claim Form to the Authority and payment will only be made within 30 calendar days if the Claim Form is correctly completed containing all the information specified by the Authority. Save in respect of Clause 3 in the event of termination of the Agreement all deposits or pre-payments made by the Authority to the Service Provider will be re-paid to the Authority within 14 calendar days of the date of termination.

### 21.4 **Lost mileage.**

21.4.1 Notwithstanding the requirements to provide the Services in strict accordance with this Agreement, the Service Provider shall provide the Authority with a list of any Journeys not operated, operated early or operated over 15 minutes late (lost mileage). Such information shall be recorded on the Claim Form submitted by the Service Provider further to Clause 21.3. For each Journey the following information shall be recorded:

21.4.1.1 Date;

- 21.4.1.2 Service Number;
  - 21.4.1.3 Departure Point;
  - 21.4.1.4 Scheduled Departure Time;
  - 21.4.1.5 Actual Departure Time;
  - 21.4.1.6 Number of Miles not operated or operated early or over 15 minutes late;
  - 21.4.1.7 Reason for non operation, early operation or late (over 15 minutes) operation classified into Staff Shortage, Vehicle Shortage, Breakdown, Vehicle replacement, Traffic congestion, Weather or Other (to be specified by the Service Provider).
- 21.4.2 If there is no lost mileage during any four week period, then a nil return shall be submitted by the Service Provider noted on the Claim Form.
- 21.4.3 The Service Provider shall have an auditable system for recording and declaring any lost mileage.
- 21.4.4 Payments due to the Service Provider in respect of the Contract shall, unless otherwise agreed by the Authority, be reduced by an amount equal to twice the average price per mile for each Journey mile not operated due to breakdown or failure to provide staff or vehicles.

Payments due to the Service Provider in respect of the Contract shall, unless otherwise agreed by the Authority, be reduced by an amount equal to the average price per mile for each Journey mile not operated due to industrial disputes, or which is 15 or more minutes late in departing from a timing point, or arriving at the service destination, or operates early compared to Specification.

The Service Provider shall make every reasonable effort to run the service in adverse traffic and exceptional weather conditions or in any other extraordinary circumstances beyond his control. When the Service Provider is unable to provide the service for reasons beyond his reasonable control, Payments due to the Service Provider in respect of the Contract shall be reduced for the period concerned. Payments will be reduced in the case of minimum subsidy contracts, by 25% of the average price per mile for each mile not operated. In the case of minimum cost contracts, payments will be reduced by 50% of the average price per mile for each mile not operated. Details of, and reasons for, any journeys not run should be included on the lost mileage return for the relevant period.

The average price per mile shall be calculated by dividing the total annual price by the total live annual mileage. The Authority reserves the right to make deductions for lost mileage where the reasons for the loss are other than those mentioned above, except in cases where mileage is lost due to circumstances beyond the control of the Service Provider.

21.4.5 The Authority shall be entitled to recover from the Service Provider the amount of any additional loss resulting from a service failure due to Lost Mileage. For the avoidance of doubt the Authority shall be entitled to recover from the Service Provider the additional cost incurred by the Authority in providing a replacement service.

21.4.6 Where the Service Provider fails to declare any mileage not operated, the Authority may consider this a default under the Contract and invoke Clause 2.2.

## 21.5 Concessionary Travel

21.5.1 The Service Provider shall be required to participate in the NoWcard Concessionary Travel Scheme or any such Scheme which replaces it.

21.5.2 On Contracts where concessionary passengers are carried, the concessionary passenger numbers and the full fare equivalent, or any other information that may reasonably be requested, must be provided in the form stated by the Authority.

## 21.6 Price Reviews

The Authority will review the Price payable for individual service contracts under this Agreement as follows:

21.6.1 For those "Split price" contracts (where the fuel element and other elements of the Price are indicated separately):

21.6.1.1 The fuel element of the Price will be reviewed and if appropriate amended on the 4 week payment period by reference to the published monthly Retail Price for DERV (excluding VAT).

21.6.1.2 All other elements of the Price will be reviewed during February each year and if appropriate amended by reference to the Confederation of Passenger Transport UK (CPT) Cost Index, Consumer Price Index (CPI) and Index of Labour Costs per Hour (ILCH). Service Providers will be advised in writing of any amendment to the Price to apply from the 4 week payment period containing 1<sup>st</sup> April of the subsequent year, by no later than 1<sup>st</sup> March.

21.6.1.3 The relevant elements of the Price as referred to in Clause 21.6.1.1 and 21.6.1.2 are as detailed within the Pricing Schedule specified in the individual service specification.

21.6.2 For those "Total Price" contracts (where all elements comprising the Price are combined into a single figure):

21.6.2.1 The total Price will be reviewed during February each year and if appropriate amended by reference to the Confederation of Passenger Transport UK (CPT) Cost Index, Consumer Price Index (CPI) and Index of Labour Costs per Hour (ILCH). Service Providers will be advised in writing of any amendment to the Price to apply from the 4 week



payment period containing 1<sup>st</sup> April of the subsequent year, by no later than 1<sup>st</sup> March.

21.6.2.2 The Price as referred to in Clause 21.6.2.1 is as detailed within the Pricing Schedule specified in the individual service specification.

21.6.3 For "ST11 passes" and "ST12 passes" contracts, the Price will be reviewed as per Clause 21.6.2.

Price reviews are only applicable to Minimum Cost and Minimum Subsidy Contracts. For Deminimis Contracts, Service Providers will be required to maintain any Price reviews through the revision of fares in line with commercial rates.

## 21.7 Recovery of Sums

21.7.1 Whenever under this Agreement any sum of monies shall be recoverable from or payable by the Service Provider, the same may be deducted from any sum due, or which at any time thereafter may become due to the Service Provider under this Agreement or under any other Agreement with the Authority.

### 21.7.1.1 Revenue Loss

The Service Provider shall be responsible for any loss of revenue arising out of the dishonesty or negligence of their Personnel. Payments due to the Service Provider in respect of the Contract shall, unless otherwise agreed by the Authority be reduced by a sum equal to twenty times any revenue loss identified by the Authority and deducted in accordance with Clause 21.7.1.

21.7.2 In the event of any failure by either Party to pay either Party any sum due under this Agreement the Party in default will further pay the other Party interest at the rate of prevailing Bank of England base rate per month. Such interest will run from day to day and accrue before and after any judgement and shall from time to time be compounded monthly on the amount overdue until payment has been received.

21.7.3 In accordance with Clause 21.7.1 if the Service Provider fails to pay any invoice whether issued by PTi Ltd or the Authority relating to the Service Provider's contributions to PTi Ltd within a period of 28 days from the date of the issue of the invoice, the Authority shall be entitled to deduct such monies from any sum then due, or which at any time thereafter may become due, or which at any time thereafter may become due to the Service Provider under this Agreement or under any other Agreement with the Authority.

## **22. INSPECTION AND MONITORING**

22.1 At all times during the currency of this Agreement, the Authority may inspect, examine and audit the provision of the Services and compliance with the terms of this Agreement with or without giving prior notice to the Service Provider. The Service Provider shall at all times co-operate with such inspection examination and audit by:

- 22.1.1 retaining all documents materials and records (which, for the avoidance of doubt, includes all books, vouchers, waybills and accounts) referred to in this Agreement or otherwise specified from time to time by the Authority;
- 22.1.2 granting to, or procuring for, the Authority such reasonable rights of access to any sites at which are kept any vehicles, equipment or materials used by the Service Provider in the provision of the Services or any documents materials or records referred to in Clause 22.1.1 for the purposes of inspecting such vehicles, equipment, documents, materials or records;
- 22.1.3 making available any vehicle for inspection at such places as may be specified for such purpose by the Authority;
- 22.1.4 within a reasonable time of receiving a request to do so, providing to the Authority copies of all or any of the documents, materials or records referred to in Clause 22.1.1; and
- 22.1.5 providing members of its staff who are properly qualified to do so to answer the Authority's questions arising from such inspection examination and audit

provided that the Authority shall use all reasonable endeavours to ensure that such rights are exercised in such a way as to cause minimum disruption to the Service Provider's business.

For the avoidance of doubt, the above provisions includes the right for the Authority's internal or external audit at any time to examine and at his own cost take copies of such documents as he may reasonably require which are owned, held or otherwise within the control of the Service Provider (who shall procure that any person acting on its behalf who has such documents and/or other information shall also provide reasonable access) and may require the Service Provider to produce such oral or written explanation as he reasonably and properly considers necessary for the purposes of the preparation, examination and certification of the Authority's accounts and or any examination pursuant to any statutory provision that affects the economy, efficiency and effectiveness with which the Authority has used its resources .

- 22.2 If, after an inspection, examination and/or audit has been carried out by the Authority, it is of the opinion that the Services are not being performed in accordance with the terms of this Agreement, the Authority may give written notice within 14 days of such an inspection, examination and/or audit requiring the Service Provider to remedy such defects as may be specified. In particular, the Authority may instruct the Service Provider not to use any vehicle which is found to have a defect which could, in the opinion of the Authority, affect the safety of passengers carried in the performance of the Services or any other contract between the Service Provider and the Authority.

In such circumstances, the Service Provider will provide and meet the cost of any alternative vehicle required in the performance of the Services. A vehicle thus provided shall comply with all legal requirements and regulations.

The vehicle found to be defective shall not be used to provide the Services until the Authority is satisfied that the defects have been rectified and the vehicle is fit for purpose and complies with all legal and other requirements specified in this Agreement.

- 22.3 If after service of written notice by the Authority in accordance with Clause 22.2, the Service Provider fails to remedy the defects specified the Authority may terminate this Agreement in accordance with the provisions of Clause 2.2.2.
- 22.4 The Service Provider shall notify the Authority immediately of any significant change (which shall include any proposed change) in the circumstances relating to the provision of the Services.
- 22.5 The Service Provider shall provide such relevant information as the Authority may reasonably require concerning the Services within 28 days of receiving a request for the same from the Authority.
- 22.6 Any matter which shall be in dispute between the parties shall if such dispute is not resolved pursuant to Clause 20 be resolved following the dispute resolution procedure set out in Clause 29.4.

## 22.7 **Complaints**

The Service Provider shall provide the Authority with:

- 22.7.1 details of all complaints received by the Service Provider from any customer or other interested party in connection with any of the Services immediately on receipt of the same, and within 7 days of any complaint being received by the Service Provider, details of the replies to such complaint;
- 22.7.2 details of any road traffic or other accident (including injuries to passengers) involving vehicles used in the performance of the Services immediately on its occurrence, together with a full written report on the incident within 7 days thereafter.
- 22.8 As part of the monitoring and review process specified in Clause 22, the Authorised Officer and the Service Provider Representative will within a reasonable time of each anniversary of the Effective Date jointly undertake an annual review of the Services (which may take place jointly with a review of all or some of any other contracts the Service Provider may have with the Authority) ("Annual Review").
- 22.9 As part of the Annual Review, the Service Provider will provide an Annual Report to the Authority by no later than four weeks after each anniversary of the Effective Date collating the information and giving a summary of the reports given in accordance with Clause 23.1.

## **23 SERVICE COMPLIANCE**

- 23.1 With each invoice delivered to the Authority in accordance with Clause 21, the Service Provider shall provide the Authority with a statement showing:
- 23.1.1 failures in the achievement of the service levels specified in this Agreement during that four-week period;

- 23.1.2 those journeys that did not operate in accordance with the Specification (which shall include where electronic ticketing and/or smartcard equipment failed or was not used);
- 23.1.3 numbers of passengers exempted from paying by reason of the possession of a valid permit; and
- 23.1.4 such other reasonable information as the Authority may from time to time specify.
- 23.2 In the event that the Service Provider fails to provide the Services in a manner that complies with the Specification and in accordance with the service levels described in this Agreement:
- 23.2.1 the Service Provider shall, at the request of the Authority and without prejudice to the Authority's other rights and remedies, arrange all such additional resources as are necessary to fulfil the said obligation as early as practicable thereafter at no additional charge to the Authority; and
- 23.2.2 the Authority shall be entitled to deduct from the charges payable in accordance with this Agreement the appropriate service credit set out in Schedule 1 for each item of the Services which fails to attain the appropriate service level. The Service Provider and the Authority agree that the amount of such service credit is the minimum loss suffered by the Authority as a result of the failure to meet the required service level and that the Authority may (at its sole discretion) take such further action as it considers necessary to recover any further loss that it may suffer as a result of such failure.

## **24. SUBSTITUTED PERFORMANCE**

- 24.1 If the Service Provider fails to perform the Services in whole or in part strictly in accordance with the terms of this Agreement, then without prejudice to any other remedy available to the Authority, the Authority may make arrangements to provide and perform, by its own staff or the staff of another Service Provider, such Services or part which the Service Provider fails to perform.
- 24.2 For the avoidance of doubt, the arrangements made by the Authority pursuant to Clause 24.1 may include:
- 24.2.1 arranging for the provision of appropriate management or supervisory staff to enable the provision of the Services; or
- 24.2.2 the provision of adequate equipment, materials and consumables to be used in the performance of the Services.

In the event that the Authority provides any of the items referred to in Clauses 24.2.1 or 24.2.2, it may make a charge to the Service Provider equivalent to the full cost of providing such items together with an additional charge of ten per cent of such costs as a contribution towards the Authority's administrative costs, provided that the Authority undertakes to use reasonable endeavours find the most economic price reasonably available in the circumstances, but retains the right not to accept the

lowest price for any such item.

- 24.3 In the circumstances described in Clause 24.1, the Authority may use all or any part of the Service Provider's equipment that was allocated for the performance of the Services.
- 24.4 The operation of this Clause 24 shall not relieve the Service Provider of any obligations under this Agreement in respect of the Services as a whole, nor restrict the Authority's right to terminate this Agreement under Clause 2.2. The Authority shall be under no obligation whatsoever to effect a substituted service in accordance with these provisions

## **25. CONFIDENTIALITY**

### **25.1 Undertaking**

The Service Provider undertakes with the Authority

- 25.1.1 to keep all Confidential Information (including all portions and copies) secret and confidential in the same manner as its own proprietary information;
- 25.1.2 not, without the written consent of the Authority, to disclose or reveal Confidential Information (or any portion or copy) to any person other than to such officers or employees to whom it is necessary to reveal such information for the performance of the Services (whether written or oral);
- 25.1.3 not to use Confidential Information (or any portion or copy) other than in the furtherance of this Agreement or any other agreement between the parties (whether written or oral);
- 25.1.4 not to make any copies of any document, drawing, facsimile transmission or any magnetic or electronic medium upon which Confidential Information is stored or comprising or containing (in whole or in part) any Confidential Information without the prior written consent of the Authority;
- 25.1.5 to ensure that any Confidential Information received by it will be at all times within its possession or under its control;
- 25.1.6 on termination of this Agreement, to return to the Authority all documents and any data stored on magnetic or electronic media (including copies) which contain Confidential Information; and
- 25.1.7 to ensure that all employees who may gain access to Confidential Information are informed of the confidential nature of that information and are contractually bound to safeguard that confidentiality.
- 25.2 Where it is considered necessary in the opinion of the Authority, the Service Provider shall and shall ensure that its Personnel or such professional advisors or consultants sign a confidentiality undertaking in a form approved by the Authority before commencing work in connection this Agreement. The Service Provider shall ensure that its Personnel, its professional advisors and consultants are aware of the Service Provider's obligations under this Agreement.

- 25.3 Nothing in the Clause shall prevent the Authority from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law.
- 25.4 The Service Provider acknowledges that the Authority is or may be subject to the Freedom of Information Act 2000 (the "FOIA"). The Service Provider notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions (the "Codes of Practice") and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 (as may be amended, updated or replaced from time to time) (the "EIR"). The Service Provider will act in accordance with the FOIA, the Codes of Practice and the EIR (or any other applicable codes of practice or guidance notified to the Service Provider from time to time) to the extent that they apply to the Service Provider's performance under this Agreement.
- 25.5 The Service Provider agrees that:
- 25.5.1 subject to Clause 25.5.2, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Authority;
- 25.5.2 where the Authority is managing a request as referred to in Clause 25.5.1 the Service Provider shall cooperate with the Authority making the request and shall respond within 7 days of any request by it for assistance in determining how to respond to a request for disclosure.
- 25.6 The Service Provider shall and shall procure that its sub-contractors shall:
- 25.6.1 transfer any request for information pursuant to FOIA, or EIR (as appropriate) to the Authority as soon as practicable after receipt and in any event within 7 days (or such other period as the Authority may specify) of the Authority requesting that information;
- 25.6.2 provide the Authority with a copy of all information in its possession or power in the form that the Authority requires within 7 days (or such other period as the Authority may specify) of the Authority requesting that information; and
- 25.6.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a request for information within the time for compliance set out in the FOIA or EIR (as appropriate).
- 25.7 The Authority may consult the Service Provider in relation to any request for disclosure of the Service Provider's Confidential Information in accordance with all applicable guidance.
- 25.8 This Clause 25 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data. Save as aforesaid and unless otherwise expressly set out in this Agreement, this Clause 25 shall remain in force for a period of 3 years after the termination or expiry of this Agreement.

- 25.9 In the event that the Service Provider fails to comply with this Clause 25, the Authority acting reasonably reserved the right to terminate this Agreement by notice in writing with immediate effect.
- 25.10 The Service Provider shall at its own expense co-operate and provide all reasonable assistance to the Authority by:
- 25.10.1 permitting the Authority to conduct spot checks on the Service Provider's procedures in relation to the safe keeping of all confidential documents and information pertaining to the contract without notice at any reasonable time in the course of which the Service Provider shall allow the Authority unhindered access to the Service Provider's premises and Personnel to ask questions and to inspect any documents materials and records the Authority reasonably requires access to;
- 25.10.2 allowing the Authority to interview any of the Service Provider's Personnel in relation to the safe keeping of all confidential documents and information pertaining to the contract; and
- 25.10.3 The provisions of this Clause 25.10 shall survive the termination of this Agreement.

## **26. LIABILITY AND INDEMNITY**

- 26.1 The Service Provider shall not be responsible for any injury, loss, damage, cost or expense suffered by the Authority if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Agreement.
- 26.2 Subject always to clauses 26.3:
- 26.2.1 the aggregate liability of the Service Provider in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 150% of the Price paid or payable to the Service Provider; and
- 26.2.2 in no event shall the Service Provider be liable to the Authority for any:
- (a) loss of profits;
  - (b) loss of business;
  - (c) loss of revenue;
  - (d) loss of or damage to goodwill;
  - (e) loss of savings (whether anticipated or otherwise); and/or
  - (f) any indirect, special or consequential loss or damage.
- 26.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- 26.3.1 death or personal injury caused by its negligence or that of its Personnel;

26.3.2 fraud or fraudulent misrepresentation by it or that of its Personnel; or

26.3.3 any other matter which, by law, may not be excluded or limited.

## **27. INSURANCE**

27.1 During the term of this Agreement and for a period of 6 years thereafter, the Service Provider shall (but without limiting his obligations and responsibilities under the indemnities given by the Service Provider in this clause) insure against any damage, loss or injury which may occur to any property or to any person by or arising out of the execution of this Agreement or in carrying out of this Agreement. Such insurance shall be effected with an insurer and in terms approved by the Authority and for at least the sum of £5 million any one claim unlimited in any one period of insurance or for any higher amount specified by the Authority. The terms shall include a provision whereby in the event of any claim in respect of which the Service Provider would be entitled to receive indemnity under the policy being brought or made against the Authority, the insurer will indemnify the Authority against such a claim and any costs, charges and expenses in respect thereof. The Service Provider shall wherever required produce to the Authority the policy or policies of insurance and receipts for payment of the current premiums.

27.2 Without prejudice to the provisions of Clause 27.1, the Service Provider shall also take out and maintain insurance in respect of employer's liability insurance with a minimum limit of liability of £10 million in respect of any one act or occurrence or series of acts or occurrences arising from one event but with no aggregate limit during any one period of cover.

27.3 For the avoidance of doubt, the Service Provider shall effect and maintain in force with a reputable insurance company a policy or policies of insurance which is or are adequate to enable it to meet its liabilities under this Agreement including but not limited to public liability employer's liability and professional indemnity with minimum cover levels of:

**FIVE MILLION POUNDS** in respect of public liability; and

**TEN MILLION POUNDS** in respect of employer's liability

for any one incident and unlimited in total claims for each and every claim the number of claims unlimited.

## **28. PARENT COMPANY GUARANTEE**

28.1 If the Service Provider is a subsidiary company within the meaning of S.1159 of the Companies Act 2006, then, if required by the Authority, it shall also provide a parent company guarantee by its ultimate holding company or companies (as defined by the said S.1159) to secure the performance by the Service Provider of its obligations to the Authority.

28.2 The form of the parent company guarantee entered shall be as specified by the Authority from time to time.



## **29. GENERAL**

### **29.1 Waiver**

No delay, neglect or forbearance on the part of either Party in enforcing against the other any provision of this Agreement shall be or be deemed to be a waiver or in any way prejudice the rights of that Party under this Agreement.

### **29.2 Right To Set-Off**

The Authority reserves its right at Common Law and in Equity to set-off against its indebtedness to the Service Provider any debt owed to it by the Service Provider and in respect of any liability, damage, loss, costs, charges and expenses which it has incurred in consequence of any breach by the Service Provider of this Agreement or any other agreement with the Authority.

### **29.3 Entire Agreement**

This Agreement contains the whole agreement and understanding between the Parties and neither Party has relied on any oral or written representations made to it by the other Party or its employees or agents other than as may be set out in the Tender Document. Nothing in the Clause shall exclude liability for fraud or fraudulent misrepresentation.

### **29.4 Dispute Resolution**

Any dispute between the Parties about any matter relating to the performance of this Agreement which cannot be resolved by the Parties within 30 days of the notice of the dispute being served by one Party on the other will first be referred to mediation or other alternative dispute resolution procedure as agreed between the parties, each acting in good faith.

If the Parties are unable to agree a procedure or any aspect of a procedure they will seek assistance from the Law Society. Unless otherwise agreed, the Parties will share equally the costs of mediation, and the use of mediation will be without prejudice to the rights of the Parties in all respects if the mediation does not achieve an agreed resolution of the dispute.

### **29.5 Assignment and Sub-Contracting**

29.5.1 Neither Party may assign, transfer or otherwise dispose of, or delegate or sub-contract in whole or in part, any of its rights or obligations under this Agreement without the prior written consent of the other party.

29.5.2 The Service Provider shall not be entitled to sub-contract all or part of its obligations under this Agreement without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed). Nothing in this Clause 29.5 shall operate to relieve the Service Provider of its obligations under this Agreement and the Service Provider shall remain responsible for the acts and omissions of any sub-contractor as if it were its own acts and omissions.

29.5.3 The Service Provider shall ensure that any sub-contractor appointed hereunder by the Service Provider is competent to perform the relevant

services and shall perform the relevant service in accordance with this Agreement. The Service Provider shall, on the request of the Authority, provide to the Authority evidence that the sub-contractors appointed by the Service Provider are competent to perform the relevant services

## **29.6 Corrupt Gifts and Payments of Commission**

29.6.1 The Service Provider shall neither:

29.6.1.1 offer or give or agree to give anyone engaged by the Authority any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Agreement or any other agreement with the Authority or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; nor

29.6.1.2 enter into this Agreement if in connection with it commission has been paid or agreed to be paid to any person referred to in Clause 29.6.1.1 by the Service Provider or on the Service Provider's behalf, or to the Service Provider's knowledge, unless before this Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Authority.

29.6.2 In the event of any breach of this Clause 29.6 by the Service Provider or by anyone employed by the Service Provider or acting on the Service Provider's behalf (whether with or without the knowledge of the Service Provider) or the commission of any offence by the Service Provider or by anyone employed by the Service Provider or acting on behalf of the Service Provider under the Bribery Act 2010 in relation to this Agreement, the Authority may summarily terminate this Agreement by notice in writing to the Service Provider. Provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and provided always that the Authority may recover from the Service Provider the amount or value of any such gift, consideration or commission.

29.6.3 The decision of the Authority shall be final and conclusive in any dispute, difference or question arising in respect of:

29.6.3.1 the interpretation of this Clause (except so far as the same may relate to the amount recoverable from the Service Provider under Clause 29.6.2 in respect of any loss resulting from such termination of this Agreement); or

29.6.3.2 the right of the Authority under this Clause 29.7 to terminate this Agreement; or

29.6.3.3 the amount or value of any such gift, consideration or commission.

## **29.7 Equal Opportunities**

29.7.1 The Service Provider 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 Service Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010.

- 29.7.2 The Service Provider shall notify the Authority immediately of any investigation of or proceedings against the Service Provider in relation to the Equality Act 2010 and shall cooperate fully and promptly with any requests of the person or body conducting such investigation conducted or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.
- 29.7.3 The Service Provider shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought in relation to the Equality Act 2010 due directly or indirectly to any act or omission by the Service Provider, its agents, employees or sub-contractors.
- 29.7.4 The Service Provider shall impose on any sub-contractor obligations substantially similar to those imposed on the Service Provider by this Clause 29.

## 29.8 Notices

- 29.8.1 Any notice, which expression includes any other communication whatsoever which is made in accordance with this Agreement, shall without prejudice to any other method of giving it, be sufficiently given if it is sent by registered or recorded delivery first class post or delivered by hand (for which a receipt has been obtained):
- 29.8.1.1 in the case of the Service Provider to the address stated at the head of this Agreement, or
- 29.8.1.2 in the case of the Authority to the Head of Service for Public & Integrated Transport at County Hall, PO Box 100, Preston, PR1 0LD
- 29.8.2 Notices shall be deemed to have been properly given after 5 days in the case of notices sent inland and 10 days in the case of notices sent overseas.

## 29.9 Data Protection

- 29.9.1 The Service Provider shall comply with the Data Protection Act 1998 and any other applicable data protection legislation. In particular the Service Provider agrees to comply with the obligations placed on the Authority by the seventh data protection principle ("the Seventh Principle") set out in the Data Protection Act 1998, namely:

- 29.9.1.1 to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Authority by the Seventh Principle;
- 29.9.1.2 only to process Personal Data for and on behalf of the Authority, in accordance with the instructions of the Authority and for the purpose of performing its obligations under this Agreement and to ensure compliance with the Data Protection Act 1998;
- 29.9.1.3 to allow the Authority to audit the Service Provider's compliance with the requirements of this Clause 29.9 on reasonable notice and/or to provide the Authority with evidence of its compliance with the obligations set out in this Clause 29.9.
- 29.9.2 The Service Provider agrees to indemnify and keep indemnified the Authority against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Authority as a result of any claim made or brought by any individual or other legal person in respect of any loss, damage or distress caused to that individual or other legal person as a result of the Service Provider's unauthorised processing, unlawful processing, destruction of and/or damage to any Personal Data processed by the Service Provider, its employees or agents in the Service Provider's performance of this Agreement or as otherwise agreed between the parties.
- 29.9.3 Both parties agree to use all reasonable efforts to assist each other to comply with the Data Protection Act 1998. For the avoidance of doubt, this includes (without limitation) the Service Provider notifying the Authority immediately upon becoming aware of a breach of this Clause 29.9 and the Service Provider providing the Authority with reasonable assistance in complying with subject access requests served on the Authority under Section 7 of the Data Protection Act 1998 and the Service Provider consulting with the Authority prior to the disclosure by the Service Provider of any Personal Data in relation to such requests.

## 29.10 **Environmental Protection**

The Service Provider at all times during delivery of the services shall use its best endeavours to minimise any negative impact upon the environment.

## 29.11 **No Partnership**

Nothing contained in this Agreement shall constitute a partnership or joint venture or employment or agency with or between either of the Parties and no Party shall hold itself out as an agent for an employee of the other Party

## 29.12 **Advertising**

The Service Provider shall not use the Authority's name or refer to the Authority directly or indirectly in any advertisement or release to any publication without receiving the Authority's prior written approval for such use or release in the form and context in which the reference to the Authority is to appear.

### 29.13 **Third Party Rights**

Any rights of any person to enforce the terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded

### 29.14 **Office Cover**

The Service Provider shall ensure that a manned telephone number is available for members of the public to contact the company. The telephone shall be, as a minimum, be manned during normal workday normal office hours (Monday to Friday between 0800 and 1700).

### 29.15 **Safer Travel Unit.**

29.15.1 The Authority shall provide the Service Provider with copies of the Incident Reporting Protocol and the Safety Guide for Drivers via the Safer Travel Unit website [www.safertravelunit.co.uk](http://www.safertravelunit.co.uk). The Service Provider must report all incidents of crime and anti-social behaviour to the Safer Travel Unit.

29.15.2 The Authority will also issue the Service Provider with its "Driver's Handbook". The Service Provider shall ensure that any member of the Personnel employed in the provision of the Services are issued with and use their best endeavours to adhere at all times to the rules and guidelines contained therein.

29.15.3 The Service Provider shall comply with any reasonable request of the Authority's Safer Travel Unit.

### 29.16 **Notification to Traffic Commissioner or Licensing Authority**

The Authority reserves the right to advise the Traffic Commissioner or Licensing Authority any material or continuing breach perpetrated by the Service Provider or its Personnel.

### 29.17 **Severability**

If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

### 29.18 **Governing Law**

This Agreement shall be governed by the laws of England and Parties submit to the exclusive jurisdiction of the English Courts.

### 29.19 **Local Incidents and Major Peacetime Emergencies.**

If a local Incident arises or a "Major Peacetime Emergency" is declared by the Authority, the Authority may ask the Service Provider to make available the vehicles(s) and driver(s) required for the Contract to the Authority and if necessary cease operation of the service specified by the Contract. If so requested, the

vehicle(s) and driver(s) shall operate as directed by the Authority's Director of Environment or nominated officer of the Emergency Services for the duration of the Incident or Emergency. All reasonable additional costs incurred by the Service Provider will be met by the Authority. The Service Provider shall supply the Authority with a telephone number and name of the person to be contacted in an emergency out of office hours.

## Schedule 1

### LANCASHIRE COUNTY COUNCIL (LCC)

#### **INFORMATION CONCERNING PURCHASE OF SMART CARD EQUIPMENT FOR USE ON CONTRACTED SERVICES**

##### **Provision of Smart Card Equipment**

Lancashire based Service Providers using ITSO compliant Smart Card enabled Electronic Ticket Machines (ETM), can either purchase the equipment themselves or are supplied on a rental basis as follows:

##### **Rental option**

An annual charge will be made, of one tenth of the total cost of each ETM/Depot Reader, module, and base plate, subject to an annual Retail Price Index adjustment.

##### **Maintenance Fee**

A charge of £88.14 per annum (£6.78 per period) for each ETM/Depot Reader, subject to an annual Retail Price Index adjustment, will be made for the maintenance of the equipment

##### **NoWCard Small Operator Data Processing**

Service Providers are offered the opportunity for all their passenger/sales information to be collected electronically and processed through the Authority's centralised "NoWCard Operations Support" facility. This includes all fare table preparation and future fare increase processing. A fee of £71.89 per annum (£5.53 per period) is charged for each contracted service, for this facility.

This is regarded as a major benefit to both Service Provider and the Authority, as it not only avoids the Service Provider incurring high capital/revenue costs, it also ensures the application of current and essential software, in addition to providing timely service data reports.

Service Providers linked to the centralised "Operations Support Office" are required to provide at their own cost, a dedicated analogue telephone line to allow the uninterrupted flow of data. They must also ensure that driver's data modules are "signed off" as required by the Authority.

All charges are subject to an annual Consumer Price Index (CPI) adjustment.

##### **Lancashire County Council Contact Details**

NoWCard Operations Support Team – 01772 533871

##### **Manufacturer Contact Details**

Parkeon – 01202 339339

## **Schedule 2**

### **LANCASHIRE COUNTY COUNCIL (LCC)**

#### **INFORMATION CONCERNING DISCLOSURE & BARRING SERVICE (DBS) CHECKS**

Drivers of LCC Contracted School Bus services must have an Enhanced DBS Clearance produced by Lancashire County Council.

Drivers providing an acceptable Enhanced DBS Disclosure will be issued with a LCC Identification Badge which must be worn when operating the relevant school or college journey. This means that the badge must be on display and be highly visible.

LCC no longer pays for DBS Clearances.

LCC will NOT accept Enhanced DBS Clearances produced by other Authorities or Organisations.

The current cost of producing an Enhanced DBS Clearance and Driver DBS Identity Badge is £65, (£44 for the DBS Clearance and £21 Administration Fee).

The revised definition of Regulated Activity, in respect of School Bus Drivers is 'Unsupervised Activity – Drive a vehicle only for children'.

A revised ID Checking Process with stricter criteria has been introduced.

From 17 June 2013 a single DBS Disclosure Certificate has been introduced, along with an on-line 'Update Service' and 'DBS Portability'. From this date the Authority will not receive a copy of the DBS Disclosure Certificate and the applicant will have to provide the certificate to the Authority so that the Applicants DBS status can be ascertained. A revised process has been introduced, whereby the applicant can visit County Hall on Wednesday by appointment, full details have been circulated to all suppliers.

DBS also advise that applicants can subscribe to the 'Update Service'. Upon payment of a £13 annual subscription fee, the applicant can make their DBS Disclosure Certificate portable, taking it with them from role to role, as long as the role is of the same level. The applicant must also give permission to their employer or the Local Authority to view their certificate status on line.

Until such time that the Authority can confirm that the majority of applicants have subscribed to the Update Service, and that the process is sufficiently robust to ensure that subscriptions and On Line Access can be monitored and administered accurately and economically, the Authority will continue to utilise the current 'Manual DBS Process'.

This will require the DBS applicant to apply for a 'paper' DBS Disclosure Certificate, which will be renewed every three years, at a current cost of £65.

Service Providers must ensure that they and their employees are fully aware of the legal responsibilities placed upon them, regarding the application, provision and implementation of the DBS process and LCC DBS Identification badges.



### **Schedule 3**

#### **LANCASHIRE COUNTY COUNCIL (LCC)**

##### **INFORMATION CONCERNING RECRUITMENT AND EMPLOYMENT RECORDS**

In line with Clause 18.20.1 of the Service Agreement, the Service Provider shall undertake to implement and maintain the following documents and procedures for each member of staff used in provision of the service(s).

Please see the table below for further guidance on the documentation required for each member of staff used in provision of the service(s):-

<b>Document</b>	<b>New Staff</b>	<b>Existing Staff</b>
Application form	Yes	No
Evidence of identity	Yes	Yes
Evidence of entitlement to work in the UK	Yes	Yes
Notes of Interview	Yes	No
Evidence of all required recruitment and vetting checks including Enhanced DBS Disclosure no older than [3] months at date of appointment and renewed at least every [3] years	Yes	Yes
Certificate of Good Conduct from overseas jurisdictions (where appropriate)	Yes	Yes
References in respect of a 5 year period immediately prior to employment with the Service Provider	Yes	No
Employment history	Yes	No
Valid Driver's Licence(s)	Yes	Yes
Training Records	Yes	Yes

The Authority also recommends Service Providers to seek Medical Clearance when appointing staff used in provision of the service(s).

## **Schedule 4**

### **LANCASHIRE COUNTY COUNCIL (LCC)**

#### **CARRIAGE OF STUDENTS ON COMMERCIAL BUS SERVICES**

As an alternative to contracted school bus services, the Authority may also provide school transport by the procurement of seats on Commercial Bus Services in blocks of seats, known as ST11 Passes. Service Providers, who do not operate Commercial Bus Services, may submit alternative Minimum Cost tenders.

The Authority may also provide school transport for students by the procurement of individual seats on Commercial Bus Services, known as ST12 Passes.

All such contracts, whether ST11 or ST12 contracts will be procured by mini competition and awarded and provided under the Local Bus and School Bus Services Framework Service Agreement.

ST11 Passes will generally be awarded for a five year period and for the purposes of an Annual Price Review, will be regarded as a Total Price Contract, with an Annual Price Review in line with Clause 21.6.2.3 of the Service Agreement.

ST12 Passes will generally be awarded for a five year period and will be subject to an Annual Price Review which will be agreed by negotiation between the Authority and Service Provider.

With regard to ST12 passes, payment for each student allocated to a commercial service, will be calculated as follows:-

- a) In the case of an under 16 school student, the price quoted for the journey;
- b) In the case of an over 15 student, the price quoted for the journey;
- c) In the case of further college students (the college academic year is ten days less than the school academic year), the price quoted for an over 15 student x 0.95;
- d) In the case of students reaching their 16<sup>th</sup> birthday during the academic year (the average 16<sup>th</sup> birthday is 1<sup>st</sup> March), the price quoted will be calculated on the under 16 student price x 0.56 plus the over 15 student price x 0.44;
- e) In the case of a student issued with an 'am only' or a 'pm only' pass, half the price quoted calculated on the above.

ST12 passes issued to for home to school/college journeys, for which specific quote have not been received will be allocated to the Service Provider providing the most appropriate commercial service to meet the students timetable needs. The pass price will be based on the lowest single, return, or multi-journey ticket price available at that time.

On account payments will be made by the Authority in twelve four-weekly instalments, adjusted on Period 12 to take account of the exact numbers of days each pass has been issued.

Students in possession of a valid Travelpass issued by the Authority and marked with name of the Service Provider shall be carried free of charge over all, or part of the route for which the Travelpass is valid. The standard conditions on the reverse of the Travelpass shall apply.

The Service Provider will make every reasonable effort to provide the commercial service. In the event that the service is not provided, the Authority reserves the right to reduce the payment to the Service Provider for the period concerned.

The submission of a quote for any journey will be deemed by the Authority as confirmation that the Service Provider will provide a service which will allow the student to arrive at school or college in the morning in time to start school or college, but no earlier than 20 minutes before the establishment is due to start. In the afternoon, the service must depart no later than 20 minutes after the school or college finishes and at a time which allows the student reasonable time to catch the service.

A Service Provider who does not, at the time of submission of a quote, provide a commercial service, must include a statement with the submission of the quote, giving details of how it is intended to comply.

Extension Vouchers, issued to students who have been attending extra-curricular activities and which allow students to travel on the bus services of the Service Providers named on the Travelpass after 1830 hours shall be accepted by the Service provider.

Under normal circumstances ST11 & ST12 transport for students will be provided on commercial bus services forming part of the Service Providers network of commercial bus services.

The Disclosure & Barring Service (DBS) have taken the view that where a student travels on a service which is part of a commercial network, accessed by members of the public, contact with students is incidental. The bus driver will not be performing a 'regulated activity' and an enhanced DBS Disclosure is not required and will not be issued.

However, where a Service Provider conveys students on a 'stand alone, school day only' commercial school bus service, not available to members of the public and which does not form part of the headway of a commercial bus service; the Authority takes the view that driving the 'standalone' commercial school bus service is 'regulated activity', an Enhanced DBS Disclosure is required and the service must be registered as a 'Schools or Works Service'.

The definition of 'regulated activity' relating to children and in relation to a bus driver is:- 'unsupervised activities: teach, train, instruct care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children'.

- End of SECTION 2 -