



**LANCASHIRE COUNTY COUNCIL**

and

**SERVICE PROVIDER**

Call-off Terms and Conditions for a  
Contract for Route Instruction for the  
Provision of Passenger Transport Services

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

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

## Contents

### Clauses

1. Definitions and interpretation
2. Term and extending the Term
3. Consents, licences and registrations
4. Service Provider's warranty and due diligence
5. Supply of services and good faith
6. Service Levels
7. Service standards
8. Health and safety
9. Authority's Assets
10. Price
11. Payment
12. Service Credits and Authority self-help remedy
13. Key personnel and representatives
14. Other personnel used to provide the Services
15. Safeguarding
16. Employees: TUPE and equal opportunities
17. Reporting, meeting and complaints
18. Monitoring
19. Change control, benchmarking and continuous improvement
20. Dispute resolution and assistance in legal proceedings
21. Sub-contracting and assignment
22. Indemnities
23. Limitation of liability
24. Insurance
25. Freedom of information
26. Data protection
27. Confidentiality
28. Audit
29. Intellectual property
30. Termination for breach
31. Termination on notice
32. Force majeure
33. Prevention of bribery and modern slavery
34. Consequences of termination
35. Non-solicitation
36. Waiver
37. Cumulation of remedies
38. Severability
39. Partnership or agency
40. Third party rights
41. Publicity
42. Notices
43. Entire agreement
44. Counterparts
45. Governing law and jurisdiction
46. Assistance in legal proceedings
47. Parent company guarantee
48. Sole hirer

**Schedule 1: General Specification**

- Main body
- Appendix 1: CCTV Guidelines
- Appendix 2: Health and Safety
- Appendix 3: Dress Code
- Appendix 4: Safeguarding, Contract Compliance and Driver's Safety Code
- Appendix 5: Contingency Arrangements
- Appendix 6: Vehicle Specification
- Appendix 7: Guidelines on Physical Restraints
- Appendix 8: Standards of Behaviour

**Schedule 2: Individual Specification**

**Schedule 3: Policies**

**Schedule 4: Service Levels**

- Part 1: Service Levels
- Part 2: Service Credits

**Schedule 5: Charges and Payment**

- Appendix 1: Operator Claim Form

**Schedule 6: Contract Management and Authorised Representatives**

- Part 1: Contract Management
- Part 2: Authorised Representatives

**Schedule 7: Change Control**

**Schedule 8: TUPE**

- Appendix 1: TUPE drafting
- Appendix 2: Employee Liability Information

**Schedule 9: Commercially Sensitive Information**

**Schedule 10: Service Provider's Request to Participate**

**Schedule 11: Exit Management**

**THIS AGREEMENT** is made

**BETWEEN**

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

**Background**

- (A) The Services shall include the provision of passenger transport services in Lancashire.
- (B) The Contract for Route Instruction has been awarded to the Service Provider following the establishment by the Authority for eligible service providers to be appointed to the Authority's DPS for passenger transport.
- (C) The Authority shall seek the appointment of an eligible service provider to perform transport services (as an element of the Services) for each of a series of separate requirements known as Route Instructions which may be awarded by the Authority following a mini-competition (between eligible service providers appointed to the Authority's passenger transport DPS)). Each Route Instruction, which the Authority anticipates to award following an electronic based procedure, shall specify the Authority's transport services requirement in an Individual Specification and invite a Price (and Tender) from each service provider invited to tender. Where the Service Provider is selected to perform the Route Instruction then the Route Instruction, Tender and these Call-off Terms shall describe the terms and conditions applicable to the Service Provider.
- (D) These Call-off Terms do not contain pricing information. Each Route Instruction shall be awarded to an eligible service provider at the Price set out in its tendered pricing schedule.

**NOW IT IS AGREED AS FOLLOWS:**

**1 Definitions and interpretation**

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

**1986 Regulations:** means the Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078).

**2000 Regulations:** means the Public Service Vehicles Accessibility Regulations 2000 (SI 2000/1970).

**Accredited Supplier:** means a supplier who has been accepted onto the Authority's DPS for passenger transport or otherwise approved by the Authority.

**Achieved Service Levels:** means in respect of any Service in any measurement period, the standard of performance actually achieved by the Service Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in Part 1 (Contract Management) of Schedule 6 (Contract Management and Authorised Representatives)).

**Applicable Laws:** means any statutes, statutory instruments or other legislative provisions (including, without limitation any successor, replacement or amendment statute, statutory instrument or other legislative provision) governing or otherwise relevant to the provision of the Services.

**Assistance Dog:** has the meaning given to it in paragraph 15 of Schedule 1 (General Specification).

**Associated Company:** means any holding company from time to time of the Service Provider and any subsidiary from time to time of the Service Provider, or any subsidiary of any such holding company.

**Authorised Officer:** means the officer appointed by the Authority in accordance with Clause 13 (Key personnel and representatives).

**Authorised Representatives:** means the persons respectively designated as such by the Authority and the Service Provider, the first such persons being set out in Part 2 (Authorised Representatives) of Schedule 6 (Contract Management and Authorised Representatives).

**Authority Assets:** means any materials, plant or equipment owned or held by the Authority and provided by the Authority for use in providing the Services.

**Best Industry Practice:** means the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the Parties, the service levels, the term, the pricing structure and any other relevant factors.

**Bribery Act:** means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Call-off Terms:** means these terms and conditions.

**Catastrophic Failure:** means any action by the Service Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authority's Representative has or may cause significant harm to the reputation of the Authority.

**Category:** means the categories (or lots) into which the Authority's requirements for passenger transport services have been defined in the DPS Agreement.

**CCTV:** means closed circuit television.

**CEDR:** means the Centre for Effective Dispute Resolution.

**Change:** means any change to this agreement or an addition to the Services by the Authority setting out:

- (a) the likely timescale for such change to be implemented;
- (b) details of any variation to be made to the Price 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.

**Change Control Procedure:** means the procedure for changing this agreement, as set out in Schedule 7 (Change Control).

**Child Restraint Regulations:** means The Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006 (SI 2006/1892).

**Claim Form:** means the Authority's Integrated Transport Services team's "Operator's Claim Form", provided to the Authority by the Service Provider on a monthly basis in order to invoice the Authority for payment of the Price for various Contracts for Route Instruction, in substantially the form attached at Appendix 1 (Operator Claim Form) to Schedule 5 (Charges and Payment).

**Clients:** means the service users of the Authority's "Education and Children's Services" and "Adult Services and Health and Well Being" departments (or any successor organisations) referred to in this agreement (including Pupils).

**Code of Practice:** means the Department of Transport Code of Practice VSE 87/1.

**Commencement Date:** means the date on which the Service Provider joins the Authority's DPS for the provision of passenger transport services.

**Commercially Sensitive Information:** means the information listed in Schedule 9 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Service Provider, its intellectual property rights or its business or which the Service Provider has indicated to the Authority that, if disclosed by the Authority, would cause the Service Provider significant commercial disadvantage or material financial loss.

**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.

**Consistent Failure:** shall have the meaning set out in Part 1 (Service Levels) of Schedule 4 (Service Levels).

**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 these call-off terms and conditions including any schedules and/or appendices thereto and in particular, the Specification (as amended or re-issued from time to time) and the Service Provider's response to any Route Instruction mini-competition for Services applicable to each Route Instruction awarded under the DPS.

**Contract Price:** means the respective sums of money set out by the Service Provider in the Tender or such variation of these sums as may be provided for or agreed in accordance with these call-off terms and conditions.

**Contract Schedules:** means the schedules specifying details of the Service to be provided under this agreement, including timetables and other information submitted by the Service Provider and supplied by the Authority as part of the Tender.

**Contract Year:** means a period of a calendar year, commencing on the Commencement Date.

**CPC:** means Certificate of Professional Competence (Driver CPC) in accordance with the requirements of EU Directive 2003/59.

**Crown:** means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales) including, but not limited to, government ministers and government departments and particular bodies, persons and government agencies.

**Crown Body:** means any department, office or agency of the Crown.

**Data Processor:** shall have the same meaning as set out in the Data Protection Legislation.

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

**DBS:** means the Disclosure and Barring Service.

**DDA or DPTAC Tender:** means a tender to provide services with a vehicle(s) with, as a minimum, the features described in the 2000 Regulations.

**Default Notice:** has the meaning given to it in Clause 5.2 (Supply of services and good faith).

**Dispute Resolution Procedure:** means the procedure set out in Clause 20 (Dispute resolution and assistance in legal proceedings).

**Discrimination Acts:** has the meaning given to it in Clause 16.3 (Employees: TUPE and equal opportunities).

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

**DPS:** means a dynamic purchasing system awarded in accordance with regulation 34 of the Procurement Regulations.

**DPS Agreement:** means the terms of the agreement made between the Authority and the Service Provider and accepted by the Service Provider as a condition of the appointment of the Service Provider by the Authority as an eligible service provider to join the Authority's DPS for passenger transport services (following the Service Provider's submission of the standard selection questionnaire submitted to the Authority).

**Driver:** means Vehicle driver.

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

**Establishment:** means any school, college, day centre or any other Authority nominated site served by this agreement.

**Exit Management Plan:** means the plan set out in Schedule 11 (Exit Management).

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

**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 (but excluding any industrial dispute relating to the Service Provider, the Service Provider's Personnel or any other failure in the Service Provider's supply chain), 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.

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

**General Specification:** refers to that part of the Specification set out in Schedule 1 (General Specification).

**Individual Specification:** refers to that part of the Specification set out in Schedule 2 (Individual Specification) which is incorporated by agreement in writing between the Parties upon the Service Provider successfully bidding for that element of the Services pursuant to a Route Instruction mini-competition or direct award.

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

**Initial Term:** means the period commencing on the Commencement Date and ending on the completion of the Services.

**Intellectual Property:** means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

**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.

**Key Personnel:** means those personnel identified in Part 2 (Authorised Representatives) of Schedule 6 (Contract Management and Authorised Representatives) for the roles attributed to such personnel, as modified pursuant to Clause 13 (Key personnel and representatives).

**Licence:** means a public service vehicle operator's licence, a community bus permit, a small bus permit, a large bus permit, a hackney carriage licence, a private hire operator's licence or any other licence or permit required by law in order to provide the Services in accordance with this agreement.

**LOLER:** means the Lifting Operations and Lifting Equipment Regulations 1998 (SI 1998/2307).

**Loss:** means 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.

**Management Reports:** means the reports to be prepared and presented by the Service Provider in accordance with Clause 17 (Reporting, meeting and complaints) and Part 1 (Contract Management) of Schedule 6 (Contract Management and Authorised Representatives) to include a comparison of Achieved Service Levels with the Service Levels in the measurement period in question and measures to be taken to remedy any deficiency in Achieved Service Levels.

**Modern Slavery Legislation:** means the legislation referred to in section 54 of the Modern Slavery Act 2015.

**Necessary Consents:** means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service.

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

**Passenger or passenger:** means a Client.

**Passenger Assistant:** means an employee or agent of the Authority travelling on a Vehicle to assist one (1) or more passengers.



**PCV:** means a passenger carrying vehicle.

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

**Personal Data:** shall have the same meaning as set out in the Data Protection Legislation.

**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 Drivers, operatives, supervisors, directors, nurses, medical assistants 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 sub-contractors, servants or agents.

**Price:** means the sum specified in (or calculated by reference to) the Tender.

**Policies:** shall mean the policies listed in Schedule 3 (Policies), as amended from time to time.

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

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

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- (c) committing any offence:
  - (i) under the Bribery Act or under section 117(2) of the Local Government Act 1972;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this agreement or any other contract with the Authority; or
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

**PRU:** means Pupil Referral Unit.

**PSV:** means public service vehicle.

**Pupils:** means the school children or students referred to in this agreement.

**PUWER:** means the Provision and Use of Work Equipment Regulations 1998 (SI 1998/2306).

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

**Regulated Activity Provider:** shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

**Regulations:** means the Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078).

**Relevant Transfer:** means a relevant transfer for the purposes of TUPE.

**Remediation Notice:** means a notice served by the Authority in accordance with Clause 30.1.1 (Termination for breach).

**Replacement Services:** means any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Service Provider.

**Replacement Service Provider:** means any third party supplier of Replacement Services appointed by the Authority from time to time.

**Request for Information:** means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR.

**Review Meeting:** has the meaning given to it in Clause 17.2 (Reporting, meeting and complaints).

**Route Instruction:** means (that for all eligible service providers appointed to the Authority's DPS for passenger transport services and invited to tender by the Authority) the Authority's route instruction specification and request for a Tender which shall be issued by the Authority according to the procedure set out in such DPS.

**Safe Transportation Briefing:** has the meaning given to it in paragraph 14.1 of Schedule 1 (General Specification).

**Section 19/22:** means sections 19 and 22 of the Transport Act 1985.

**SEND:** means special educational needs and disabilities.

**Service Credits:** means the sums attributable to a Service Failure as specified in Part 2 (Service Credits) of Schedule 4 (Service Levels).

**Service Failure:** means a failure by the Service Provider to provide the Services in accordance with any individual Service Level.

**Service Levels:** means the service levels to which the Services are to be provided, as set out in the Specification and/or Part 1 (Service Levels) of Schedule 4 (Service Levels).

**Service Provider Briefing Meeting:** has the meaning given to it in paragraph 14.3 of Schedule 1 (General Specification).

**Service Provider Party:** means the Service Provider's agents and contractors, including each Sub-Contractor.

**Service Provider Personnel Contingency:** has the meaning given to it in paragraph 15 of Schedule 1 (General Specification).

**Service Provider Representative:** means the person appointed by the Service Provider, in accordance with Clause 13 (Key personnel and representatives), to be its prime contact point for managing and monitoring the provision of the Services under this agreement and having the authority to contractually bind the Service Provider on all matters relating to the Services.

**Service Provider's Personnel:** means all employees, staff, other workers, agents and consultants of the Service Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

**Service Provider's Request to Participate:** the standard selection questionnaire submitted by the Service Provider and other associated documentation set out in Schedule 10 (Service Provider's Request to Participate) and accepted by the Authority to enable the Service Provider to join the Authority's DPS for passenger transport services as an eligible service provider.

**Services:** the services to be delivered by or on behalf of the Service Provider under this agreement, as more particularly described in Schedule 1 (General Specification) and Schedule 2 (Individual Specification).

**Specification:** means the detailed specification (including both the General Specification and the Individual Specification) prepared by the Authority and attached to this agreement at Schedule 1 (General Specification) and Schedule 2 (Individual Specification).

**Standards of Behaviour:** means the Authority's code of practice for expected behaviour for operators and drivers which is set out in Appendix 8 (Standards of Behaviour) to Schedule 1 (General Specification).

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

**Sub-Contractor:** means any contractor or service provider that enters into a Sub-Contract with the Service Provider.

**Tender:** means the Service Provider's submission including its Price in response to a Route Instruction.

**Term:** means the period of the Initial Term for a Contract for Route Instruction as may be varied by:

- (a) any extensions to a Contract for Route Instruction which are agreed pursuant to Clause 2 (Term and extending the Term); or
- (b) the earlier termination of a Contract for Route Instruction in accordance with its terms.

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

**Termination Payment Default:** means the Authority's failure to pay the Service Provider (following receipt of a valid, undisputed VAT invoice submitted by the Service Provider by way of a Claim Form) where the Service Provider has also issued a notice requesting payment after thirty (30) days from the date of the Claim Form and where payment has not been made by the Authority within the following thirty (30) days of a sum exceeding seventy-five per cent (75%) of such invoiced amount.

**Traffic Commissioner:** means the traffic commissioner with responsibility for the administrative area of Lancashire as appointed by the Secretary of State for Transport.

**TUPE:** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

**TUPE Event:** means the transfer of an identifiable economic unit for the purposes of TUPE.

**Valid Invoice:** means a request for payment, which accurately reflects this agreement Price minus any deductions (including but limited to Service Credits or any sums set off) that have been notified to the Service Provider.

**Vehicle:** means a public service vehicle, hackney carriage vehicle, private hire vehicle, vehicle operating under a permit, ferry or any other vehicle as detailed in this agreement Specification or subsequent variation, being used by the Service Provider in the performance of this agreement.

**WAV:** means wheelchair accessible Vehicle.

**Working Day:** means between the hours of 0730hrs and 1730hrs on Monday to Friday inclusive, excluding any public holidays in England and Wales.

1.2 In this agreement, unless the context otherwise requires:

1.2.1 Clause, schedule and paragraph headings are for convenience of reference only and shall not affect the interpretation or construction of this agreement;

- 1.2.2 a person includes a natural person, corporate or unincorporated body and partnerships (whether or not having separate legal personality);
- 1.2.3 the schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules;
- 1.2.4 a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.5 a references to any person include references to any human being, company, body corporate, association, joint venture, partnership, trust and any legal entity capable of suing and being sued;
- 1.2.6 words in the singular shall include the plural and vice versa;
- 1.2.7 a reference to one gender shall include a reference to the other genders;
- 1.2.8 a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;
- 1.2.9 a reference to writing or written includes email but not faxes;
- 1.2.10 any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done;
- 1.2.11 a reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time;
- 1.2.12 references to Clauses and schedules are to the Clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule;
- 1.2.13 where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
  - 1.2.13.1 the Clauses of the agreement;
  - 1.2.13.2 Schedule 2 (Individual Specification) to this agreement;
  - 1.2.13.3 Schedule 1 (General Specification) to this agreement;
  - 1.2.13.4 Schedule 4 (Service Levels) to this agreement;
  - 1.2.13.5 Schedule 5 (Charges and Payments) to this agreement;
  - 1.2.13.6 the remaining schedules to this agreement other than Schedule 10 (Service Provider's Request to Participate); and
  - 1.2.13.7 Schedule 10 (Service Provider's Request to Participate) to this agreement.
- 1.2.14 Any words following the terms "**including**", "**include**", "**in particular**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.15 Reference to the Service Provider shall include the Service Provider's sub-contractors unless expressly excluded.
- 1.2.16 Reference to "this agreement" is to the Call-off Terms as part of the Contract for Route Instruction to implement a Route Instruction.

## **2 Term and extending the Initial Term**

- 2.1 The Contract for Route Instruction shall take effect on the Commencement Date and shall continue for the Term.
- 2.2 The Authority may extend the Contract for Route Instruction beyond the Initial Term by a further period or periods up to a maximum of twenty-four (24) months in addition to the Initial Term (the "**Extension Period**"). If the Authority wishes to extend the Contract for Route Instruction, it shall use reasonable endeavours to give the Service Provider at least two (2) weeks' written notice of such intention before the expiry of the Initial Term or Extension Period.

- 2.3 If the Authority gives such notice then the Term shall be extended by the period set out in the notice.
- 2.4 If the Authority does not wish to extend the Contract for Route Instruction beyond the Initial Term the Contract for Route Instruction shall expire on the expiry of the Initial Term and the provisions of Clause 34 (Consequences of termination) shall apply.
- 2.5 If the Authority does extend the Initial Term, then it shall do so on the same terms and conditions as set out in this agreement.

### **3 Consents, licences and registrations**

- 3.1 The Service Provider shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 3.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 3.3 The Service Provider shall at its own expense obtain and keep in force any Licence necessary to provide the Service and shall ensure that the requirements of that Licence are observed at all times. Failure to comply may result in the Authority terminating this agreement in accordance with Clause 30.1.1 (Termination for breach).
- 3.4 The Service Provider shall notify the Authority by letter or e-mail within five (5) days of any change made to the Licence by the appropriate licensing body, including curtailment. The Service Provider shall also advise the Authority of any calls before the Traffic Commissioner or other legislative body, within forty-eight (48) hours of receiving such notification.
- 3.5 Without prejudice to the Authority's rights and remedies, including but not limited to its termination rights, the Authority may suspend this agreement during any period when the Service Provider does not have the appropriate Licence, or when a Licence previously granted has been suspended or has had conditions attached which prevent the operation of the Service in accordance with this agreement. The Service Provider shall be liable to the Authority for the additional cost incurred by the Authority in providing a replacement service for four (4) months during the period of such suspension or until this agreement is terminated under Clause 30.1.1 (Termination for breach).
- 3.6 Not Used.
- 3.7 The Vehicles and Drivers shall normally be licensed in accordance with PSV/PCV and/or district council hackney carriage or private hire regulations. In circumstances where the Contract could be undertaken legally outside these licensing regulations, such licences, or a Section 19/22 permit, shall nevertheless be required for this agreement.
- 3.8 The Service Provider shall ensure that it and its Personnel are licensed and insured in accordance with all legal requirements in respect of the Services to be undertaken and shall conform at all times with any local by-laws relating to such Services.
- 3.9 In the case of any vehicle operated under a PSV operator's licence, the driver should hold a full Category D or D1 driving licence, with the exception of vehicles operating under Section 19/22 where the driver must have a minimum of Category "D1 101" entitlement.
- 3.10 Drivers holding a full Category "D" or "D1" licence must also carry their Driver's Qualification Card (DQC) whilst driving on a PCV vehicle. Failure to do so may result in the driver being suspended from the Contract.
- 3.11 Hackney carriage tariffs are set by each local licensing authority and are the maximum fares that can be charged by hackney carriage drivers for journeys that are wholly within each licensing area.
- 3.12 Hackney carriage drivers and/or the Service Provider may submit a Price which is below the Contract Price or metered price.

#### **4 Service Provider's warranty and due diligence**

4.1 The Service Provider acknowledges and confirms that:

- 4.1.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
- 4.1.2 it has received all information requested by it from the Authority pursuant to Clause 4.1.1 to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
- 4.1.3 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to Clause 4.1.2;
- 4.1.4 it has raised all relevant due diligence questions with the Authority before the Commencement Date;  
and
- 4.1.5 it has entered into this agreement in reliance on its own due diligence.

4.2 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Service Provider by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

4.3 The Service Provider warrants and undertakes to the Authority that:

- 4.3.1 it has full capacity and authority to perform the Services;
- 4.3.2 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;
- 4.3.3 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 Service Provider's Request to Participate and or elsewhere within this agreement;
- 4.3.4 the Services shall at all times conform to the Specification;
- 4.3.5 it shall not without the written permission of the Authority advertise the fact that it is providing the Services to the Authority;
- 4.3.6 neither it nor any person engaged by it to provide the Services shall solicit any gratuity, tip or other form of reward or charge for performing the Services other than the Price set out in this agreement; and
- 4.3.7 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; and
- 4.3.8 It shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Service Levels.

4.4 The Service Provider shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Service Provider in accordance with Clause 4.3.8 save where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Service Provider could not

reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Service Provider shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

4.5 Nothing in this Clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

## **5 Supply of services and good faith**

- 5.1 The Service Provider shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement.
- 5.2 In the event that the Service Provider does not comply with the provisions of Clause 5.1 in any way, the Authority may serve the Service Provider with a notice in writing setting out the details of the Service Provider's default (a "**Default Notice**").
- 5.3 Both Parties shall co-operate 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.
- 5.4 Both Parties shall 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.
- 5.5 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.
- 5.6 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.
- 5.7 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 paragraph 5 of Schedule 1 (General Specification).
- 5.8 The Parties acknowledge that, without prejudice to the Authority's rights to terminate the DPS Agreement in accordance with clause 17 of the DPS Agreement, if a right to terminate the DPS Agreement arises in accordance with clause 17 of the DPS Agreement, the Authority may suspend the Service Provider's right to receive Route Instructions from the Authority in any or all Service Provider's Categories by giving notice in writing to the Service Provider. If the Authority provides notice to the Service Provider in accordance with clause 18 of the DPS Agreement, the Service Provider's appointment shall be suspended immediately for the period set out in the notice or such other period notified to the Service Provider by the Authority in writing from time to time.

## **6 Service Levels**

- 6.1 Where any Service is stated in Schedule 1 (General Specification), Schedule 2 (Individual Specification) and/or Part 1 (Service Levels) of Schedule 4 (Service Levels) to be subject to a specific Service Level, the Service Provider shall provide that Service in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level.
- 6.2 As existing Services are varied and new Services are added, Service Levels for the same will be determined and included within Schedule 1 (General Specification), Schedule 2 (Individual Specification) and/or Part 1 (Service Levels) of Schedule 4 (Service Levels).
- 6.3 The Service Provider shall provide records of and Management Reports summarising the Achieved Service Levels as provided for in Clause 17 (Reporting, meeting and complaints).

6.4 In the event that any Achieved Service Level falls short of the relevant Service Level, without prejudice to any other rights the Authority may have, the provisions of Clause 12 (Service Credits and Authority self-help remedy) shall apply.

## 7

### Service standards

7.1 Without prejudice to Clause 6 (Service Levels), the Service Provider warrants that it shall provide the Services, or procure that they are provided:

- 7.1.1 diligently and with all skill and care as can be reasonably expected of an appropriately qualified and competent provider or contractor experienced in performing the same services and will perform the Services at all times in compliance with the Authority's requirements set out in this agreement including, but not limited to, the Authority's Specification;
- 7.1.2 in all respects in accordance with the Authority's policies set out in Schedule 3 (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, the Standards of Behaviour and the quality standards of the Authority as amended from time to time);
- 7.1.3 in accordance with all Applicable Laws and Policies so that the Service Provider, its employees and the Vehicles used in the performance of this agreement shall comply with all current relevant legislation and regulations (whether or not such legislation and regulations relate specifically to passenger transport);
- 7.1.4 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 (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);
- 7.1.5 (except with the Authority's prior written approval) continuously during the hours set out in the Specification;
- 7.1.6 in a professional and courteous manner so as to reflect and promote the image of the Authority;
- 7.1.7 in accordance with best industry practice;
- 7.1.8 exercising due care in relation to all passengers carried pursuant to the provision of the Services;
- 7.1.9 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 by Change between the Authority and the Service Provider;
- 7.1.10 ensuring 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;
- 7.1.11 without prejudice to the generality of Clause 7.1, ensuring 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 and the local education authority) and shall notify the Authority immediately upon receipt of any order, notice or requirement from any such authority or body and shall immediately take all steps necessary to comply with the same;
- 7.1.12 complying 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 reasonable satisfaction of the Authority) and shall ensure that all Personnel are suitably qualified and/or trained in the running of the Vehicles and in all other aspects of the Services and in particular (but without limitation) in all necessary maintenance and cleaning procedures relating to the Vehicles and all other equipment;
- 7.1.13 (prior to the commencement of the Services and periodically throughout the Term of this agreement),



performing appropriate assessments to identify potential risks to the Personnel and Passenger Assistants) and users of the Services (including Clients) and provide the Services in a manner which is calculated to minimise such risks;

- 7.1.14 notwithstanding the contents of the Specification, ensuring 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; and
  - 7.1.15 ensuring 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 whilst such Vehicles are engaged in the provision of the Services.
- 7.2 The Service Provider shall use as appropriate first class quality materials, skills and workmanship of their respective kinds and undertakes that the design workmanship and materials used will be fit to achieve the purpose for which the Services are required either as specified by the Authority expressly in this agreement or as may be implied from this agreement and the Service Provider further acknowledges that in performing the Services the Authority is reliant at all times on the Service Provider's skill and judgement.
- 7.3 Without limiting the general obligation set out in Clause 7.1, the Service Provider shall (and shall procure that the Service Provider's Personnel shall):
- 7.3.1 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Service Provider shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998; and
  - 7.3.2 not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.
- 7.4
- 7.4.1 The Service Provider shall satisfy itself that no product shall be supplied or used in the supply of the Services to the Authority which shall endanger the health of the Clients, Personnel or others or is derived from threatened species or environments.
  - 7.4.2 The Authority is committed to using the resources entrusted to it to ensure best value for money at the least possible cost to the environment.
  - 7.4.3 As part of this commitment to the environment, the Authority's Policies shall, wherever practicable, focus on specifying less environmentally damaging products, promoting greater use of renewable sources and encouraging suppliers to use environmentally friendly practices throughout the production process.
  - 7.4.4 The Service Provider shall provide on request evidence of practices and procedures as they relate to the protection of the environment.

## **8 Health and safety**

- 8.1 The Service Provider shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the agreement.
- 8.2 The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, including without limitation the Management of Health and Safety at Work Regulations 1999 (SI 1999/3242) and any other Acts, Regulations and Approved Codes of Practice relating to the health and safety of employees and others who may be affected by the Service Provider's work activities) which may apply to staff and other persons working in the performance of the agreement.
- 8.3 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 (SI 1999/3242).

- 8.4 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request. The Service Provider shall ensure that a copy of its statement of health and safety policy, which has been signed and dated by the partner or director with overall responsibility for health and safety in the Service Provider's organisation, is submitted to the Authority before the commencement of the first Contract for Route Instruction awarded to the Service Provider, and thereafter at such times as the Authority may require.
- 8.5 For each Contract for Route Instruction the Service Provider shall carry out a risk assessment of the route for any Route Instruction annually and prior to any variations to any route for any Route Instruction, including stops, road layout, traffic calming features, low bridges, overhanging trees and other factors that may affect the safe operation of the Services or of the types or sizes of Vehicle to be used in the performance of this agreement and/or any Contract for Route Instruction, and shall report any concerns to the Authority prior to commencement of the Service, Contract for Route Instruction or route variation.
- 8.6 For urgent and short term Route Instructions, the Service Provider should carry out and maintain a risk assessment of the route of the Route Instruction and any variations as soon as practicable but not later than one (1) week after the commencement of the Route Instruction. The Service Provider shall report any concerns to the Authority within one (1) week of the start of the Contract for Route Instruction or not later than one (1) week following any route variation.
- 8.7 For each Contract for Route Instruction, should any factor arise following the Commencement Date that the Service Provider considers may affect the safe operation of this agreement, the Service Provider shall bring this to the immediate attention of the Authority followed by a written report detailing the circumstances. The Authority will consider this information and the Service Provider shall not compromise the health and safety of its passengers or employees.
- 8.8 In the event of concerns arising regarding the safe operation of this agreement, (including allegations made against the Driver and/or Passenger Assistant) the Authority, the Service Provider and such other bodies as it may be deemed appropriate to involve at the time shall agree and implement promptly such measures as may be deemed necessary by the Authority to remedy the situation.
- 8.9 The Service Provider shall ensure that its employees are made aware of all hazards identified by any risk assessment and receive sufficient information and training to mitigate the associated risk, including those arising from the needs of the passengers, including boarding or alighting, or from passenger behaviour.
- 8.10 The Service Provider shall keep records of Route Instruction risk assessments and shall make those records available for inspection by the Authority in accordance with Clause 28 (Audit).

## **9 Authority's Assets**

9.1 Not Used.

9.2 Not Used.

9.3 The Service Provider shall ensure that:

9.3.1 where using any Authority Assets they are kept properly secure and it will comply and cooperate with the Authority's Authorised Representative's reasonable directions regarding the security of the same;

9.3.2 Not Used;

9.3.3 any Authority Assets used by the Service Provider are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed unless expressly permitted under this agreement or by the Authority's Authorised Representative.

9.4 The Authority shall maintain and repair the Authority Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Service Provider or its representatives (fair wear and tear excluded) the costs incurred by the Authority in maintaining and repairing the same shall be recoverable from the Service Provider as a debt.

9.5 The Service Provider shall notify the Authority immediately on becoming aware of any damage caused by the Service Provider, its agents, employees or Sub-Contractors to any property of the Authority or to any property of any other recipient of the Services in the course of providing the Services.

## 10 Price

10.1 Subject to Clauses 10.4, 10.5 and 10.8 the Price shall for each Route Instruction shall remain fixed for the Service Provider's period of operation.

10.2 Where the Initial Term has been extended by an Extension Period a Price increase will not be given for the remaining Term unless agreed at the point of extending the Term.

10.3 Neither the Service Provider nor the Authority shall be bound by any variation, waiver of, or addition to this agreement except as agreed by both Parties and signed on their behalf.

10.4 In the case of a Route Instruction specifying a passenger seating capacity of nine (9) or more passenger seats, or any Vehicle for the transport of Clients in wheelchairs, other than a London type cab, a payment of seventy-five per cent (75%) of the daily agreement rate may be claimed for up to five (5) days in any calendar year when the school is unavoidably closed (meaning unforeseen closure on account of bad weather, heating failure, damage to buildings etc. on a day when otherwise Pupils would have attended) and interpretation of individual circumstances as to whether they constitute unavoidable closure shall be a matter for the Authorised Officer of the Authority.

10.5 The agreement mileage for the Price may be varied by the Authorised Officer during the Term of the agreement. For increases/decreases of less than one (1) mile per trip, there will be no variation in the Price. For increases/decreases of one (1) mile or more per trip, the original Price per day will be revised only in relation to complete miles. There shall be no Price adjustment for part-miles (as illustrated in the examples provided below). Additional mileage charges will be based on complete miles. For each complete mile in excess of one (1) mile: £1.00 per mile for Vehicles up to eight (8) passenger seats and £1.50 per mile for Vehicles of nine (9) or more passenger seats. Where a Vehicle of up to eight (8) passenger seats was requested and the Service Provider decided to supply a Vehicle with more than eight (8) passenger seats the variation of Price will be based on the lower additional mileage charge of £1.00 per completed mile.

10.6 **Examples** (for a Vehicle of up to eight (8) passenger seats):

10.6.1 Additional Vehicle mileage per trip of 0.8 mile - no change to Price;

10.6.2 Additional Vehicle mileage per trip of 1.3 miles - additional payment of £1.00 per trip (1 mile @ £1.00 per mile);

10.6.3 Additional Vehicle mileage per trip of 2.3 miles - additional payment of £2.00 per trip (2 miles @ £1.00 per mile); and

10.6.4 Reduced Vehicle mileage per trip of 6.5 miles - reduction in payment of £6.00 per trip (6 miles @ £1.00 per mile).

10.7 For avoidance of doubt, the Authority shall have absolute discretion where there is a dispute over the correct mileage awarded to the journey. Where mileage is in dispute, the Authority will use software to determine the distance.

10.8 Where the Authority requires an increase or decrease in the size of the Vehicle the following variations will apply:

<b>Private Hire (PHV), Hackney Carriage (HCV) and Passenger Carrying Vehicle (PCV ~ 9+ passenger seats) Non-Wheelchair Accessible</b>	
Increase from a) 5 passenger seats (PHV or HCV) to 8 passenger seats (PHV or HCV)	10% increase to current Price

Increase from b) 8 passenger seats (PHV or HCV) to up to 16 passenger seats (PCV)	10% increase to current Price
Increase from c) 5 passenger seats (PHV or HCV) to 16 passenger seats (PCV)	20% increase to current Price
Decrease from d) 8 passenger seats (PHV or HCV) to 5 passenger seats (PHV or HCV)	10% decrease to current Price
Decrease from e) 16 passenger seats (PCV) to 8 passenger seats (PHV or HCV)	10% Decrease to current Price
Decrease from f) 16 passenger seats (PCV) to 5 passenger seats (PHV or HCV)	20% Decrease to current Price

<b>Private Hire, Hackney Carriage and PCV Wheelchair Accessible Vehicles (WAVs)</b>	
Increase from a) 2 wheelchair spaces plus contracted seated passengers to 3 wheelchair spaces plus contracted seated passengers	10% increase to current Price
Increase from b) 3 wheelchair spaces plus contracted seated passengers to 4 wheelchair spaces plus contracted seated passengers	10% increase to current Price
Increase from c) 2 wheelchair spaces plus contracted seated passengers to 4 wheelchair spaces plus contracted seated passengers	20% increase to current Price
Decrease from d) wheelchair spaces plus contracted seated passengers to 2 wheelchair spaces plus contracted seated passengers	10% decrease to current Price
Decrease from e) wheelchair spaces plus contracted seated passengers to 3 wheelchair spaces plus contracted seated passengers	10% Decrease to current Price
Decrease from f) 4 wheelchair spaces plus contracted seated passengers to 2 wheelchair spaces plus contracted seated passengers	20% Decrease to current Price

## 11 Payment

- 11.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this agreement, the Authority shall pay the Price to the Service Provider in accordance with any provisions set out in this Clause 11. The Authority will make no payment to the Service Provider in respect of this agreement other than this agreement Price, as varied from time to time in accordance with this agreement.
- 11.2 The Authority will, subject to satisfactory provision of the Services (and to any other provisions of this agreement, any Contract for Route Instruction and the Tender which provide to the contrary) make payment of the Price (as specified in the Contract for Route Instruction and as set out in the Tender) to the Service Provider in arrears on a calendar month basis, or other agreed period, either:
- 11.2.1 following receipt by e-mail (unless otherwise agreed) directed to the Authority's Representative at [itsoperatorclaimform@lancashire.gov.uk](mailto:itsoperatorclaimform@lancashire.gov.uk) of the Service Provider's Claim Form (in the form based on the template shown in Appendix 1 (Claim Form) of Schedule 5 (Charges and Payment)) which constitutes the Service Provider's valid invoice, provided that the Authority is satisfied that the Services charged for by the Service Provider as described on such Claim Form have been carried out and any such invoice shall take into account any Service Credits which have been accrued in the previous calendar month(s); or

- 11.2.2 (where required by the Authority) by automatic payment through a system developed by the Authority, without invoice, based on the Price stated in this agreement or subsequent variation to this agreement, taking into account all deductions and/or Service Credits that have been notified to the Service Provider.
- 11.3 The Price is stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Service Provider shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this agreement.
- 11.4 A record of operation of the Services for the period concerned including details of any journeys not operated, in full or in part, any sub-contracting arrangements, and any other irregularities and their cause shall be retained by the Service Provider to support the Service Provider's invoice and be available to the Authority on request. The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for seven (7) years from the end of the Contract Year to which the records relate.
- 11.5 If the Service Provider is informed by the Authority, the Client or their agent before the commencement of a journey that such journey is not required the Service Provider must declare that the journey did not take place when submitting the invoice and no payment shall be made for that journey. Where the Service Provider is informed after the commencement of a journey that the journey is not required payment shall be made for the journey.
- 11.6 The payment periods shall be based on calendar months irrespective of when during the calendar month the contracted Services commenced. For avoidance of doubt, if the Contract starts on 6 March the calendar month would end on 31 March and the invoice must be submitted by 30 April. Invoices must be submitted within thirty (30) days of the end of a payment period. Invoices received more than thirty (30) days after the end of the payment period shall be deemed to be in dispute.
- 11.7 Any invoices for payment submitted by the Service Provider will be considered and verified by the Authority in a timely fashion and that undue delay in doing so will not be sufficient justification for failing to regard an invoice as valid and undisputed.
- 11.8 The Authority shall pay within thirty (30) days of receipt of an undisputed invoice from the Service Provider.
- 11.9 If there is a variation to the Price, due for example because of additional mileage, the new Price must be agreed with the relevant Authorised Officer in advance of submitting the invoice. Failure to agree the Price in advance shall mean the claim is in dispute and shall require further investigation.
- 11.10 Where any Party disputes any sum to be paid by it then no payment shall be paid (for the avoidance of doubt no payment equal to the sum not in dispute shall be paid) and the dispute as to the sum that remains unpaid shall be determined in accordance with Clause 20 (Dispute resolution and assistance in legal proceedings). Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of thirty (30) days after resolution of the dispute between the Parties.
- 11.11 Subject to Clause 11.10, interest shall be payable on the late payment of any undisputed Price properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider shall not suspend the supply of the Services if any payment is overdue.
- 11.12 Where payments have been made to the Service Provider which subsequently are deemed to be overpayments as the result of journeys not being made then corrective deductions may be made from any other outstanding payments due to the Service Provider.
- 11.13 Where the Service Provider enters into a Sub-Contract with a supplier or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a Sub-Contract that requires

payment to be made of undisputed sums by the Service Provider to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.

11.14 The Authority may retain or set off any sums owed to it by the Service Provider which have fallen due and payable against any sums due to the Service Provider under this agreement or any other agreement pursuant to which the Service Provider or any Associated Company of the Service Provider provides goods or services to the Authority.

## **12 Service Credits and Authority self-help remedy**

12.1 If the Service Provider fails to provide the Services in accordance with the terms and conditions of this agreement, the Service Provider then where Clause 12.3 applies the Service Provider shall pay to the Authority the Service Credit set out in Part 2 (Service Credits) of Schedule 4 (Service Levels).

12.2 The Parties agree that any such Service Credit has been calculated as, and is, a genuine pre-estimate of the loss likely to be suffered by the Authority. The Service Provider has taken the Service Credit into account in setting the level of the Contract Price and Price.

12.3 Where the Authority issues a Remediation Notice or a Consistent Failure occurs or the Authority issues a termination notice the Authority shall have the right to make deductions by way of Service Credits from any payments due to the Service Provider. The level of Service Credit deductions will be subject to annual review by the Authority to be effective from 1 April each year and Part 2 (Service Credits) of Schedule 4 (Service Levels) may be revised accordingly.

12.4 The Authority will give five (5) Working Days' notice either by letter or e-mail of any intention to make a financial deduction from a payment due to the Service Provider as a result of infringement of the Service Provider's obligations under this agreement, and will give the Authority's reasons for making the deduction. A Default Notice, Remediation Notice or termination notice issued by the Authority constitutes such a notice and no further notification to the Service Provider is required.

12.5 Where the Service Provider fails to perform the Services in whole or in part the Authority may issue a Default Notice or Remediation Notice as a written warning to the Service Provider and in the event of subsequent unreasonable failures to perform the Service the Authority may be able to terminate this agreement in accordance with the termination events set out in Clause 30 (Termination for Breach). This is without prejudice to the Authority's rights, under Clause 30.1.4 (Termination for Breach), to terminate this agreement in the event of Consistent Failure for substantial or persistent breach.

12.6 Not Used.

12.7 Not Used.

12.8 Not Used.

12.9 Not Used.

12.10 Not Used.

12.11 For any day on which the Service Provider fails to operate any of the journeys specified in this agreement (for example due to a Vehicle breakdown):

12.11.1 the Service Provider shall be liable for any additional costs involved in providing alternative provision and the Authority reserves the right to recover the cost from any outstanding payments due to the Service Provider; and

12.11.2 in the event of Vehicle breakdown, staff shortage or other emergency preventing use of its own Vehicle, staff or other resources:

12.11.2.1 the Service Provider shall promptly make alternative arrangements at its own cost to ensure the Services are maintained in accordance with this agreement. The Service Provider shall ensure that any replacement Vehicles used are clearly signed so as to make passengers aware of the

temporary change. Details of sub-contracting in these instances shall be set out on the Service Provider's Claim Form (invoice). Sub-contracting shall otherwise be prohibited, except as outlined in Clause 21.1 (Sub-contracting and assignment); or

12.11.2.2 if the Service Provider is unable to make alternative arrangements satisfactory to the Authority to fulfil its obligations under this agreement then the Authority will make alternative arrangements and invoice the Service Provider for the full cost of providing the alternative arrangement plus administrative costs based on Authority staff costs and time taken to put the arrangements in place.

12.12 Not Used.

12.13 Not Used.

12.14 if the Service Provider fails to perform the Services in whole or in part strictly in accordance with the terms of this agreement (in a manner that complies with the Specification and in accordance with the Service Levels described in this agreement and the Contract for Route Instruction) or gives the Authority insufficient notice of the Service Provider's inability to perform the Services or a Service Provider termination 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 any part of them which the Service Provider fails to perform. In addition the Authority may, in its absolute discretion, not include the Service Provider as an eligible service provider to be invited to bid for any future Route Instructions for a period which shall be the shorter of (a) three (3) months from the Authority's date of making arrangements to perform the Services or (b) the period ending when the Authority is satisfied that, having taken remedial actions and demonstrating to the Authority (acting reasonably) its capacity and capability to deliver the Services, the Service Provider may be invited to bid for any future Route Instructions.

12.15 For the avoidance of doubt, the arrangements made by the Authority pursuant to Clause 12.14 may include:

12.15.1 arranging for the provision of appropriate management or supervisory staff to enable the provision of the Services; or

12.15.2 the provision of adequate equipment, materials and consumables to be used in the performance of the Services.

12.16 In the event that the Authority provides any of the items referred to in Clause 12.15.1 or Clause 12.15.2, 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 (10%) 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.

12.17 In the circumstances described in Clause 12.15.2, the Authority may use all or any part of the Service Provider's equipment that was allocated for the performance of the Services.

12.18 The operation of this Clause 12 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 30 (Termination for Breach). The Authority shall be under no obligation whatsoever to effect a substituted service in accordance with these provisions.

12.19 The Authority reserves the right to advise the Traffic Commissioner (in respect of PSV licensing matters) or licensing authority (in respect of any hackney carriage/private hire licensing matters) of any material or continuing breach perpetrated by the Service Provider or its Personnel which is in the public interest.

### **13 Key personnel and representatives**

13.1 Each Party shall appoint the persons named as such in Part 2 (Authorised Representatives) of Schedule 6 (Contract Management and Authorised Representatives) as the individuals who shall be

responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each Party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective Party on the matters for which they are expressed to be responsible.

- 13.2 The Service Provider shall not remove or replace any of the Key Personnel unless:
- 13.2.1 requested to do so by the Authority;
  - 13.2.2 the person is on long-term sick leave or is deceased;
  - 13.2.3 the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
  - 13.2.4 the person resigns from their employment with the Service Provider; or
  - 13.2.5 the Service Provider obtains the prior written consent of the Authority.
- 13.3 The Service Provider shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within ten (10) Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 13.4 The Authority may at its discretion appoint an Authorised Officer to exercise its functions, rights and powers conferred by this agreement.
- 13.5 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.
- 13.6 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.
- 13.7 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.
- 13.8 The Service Provider shall ensure that the Service Provider Representative (or subject to Clause 13.9 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. During the performance of this agreement, the Service Provider must be contactable by telephone as a minimum during normal workday normal office hours between the hours of 0730hrs and 1730hrs from Monday to Friday for members of the public and officers of the Authority to contact the Service Provider.
- 13.9 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.
- 13.10 Each Party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than twenty (20) Working Days (or such other reasonable period as may be agreed between the Parties). Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Service Provider or the Authority becoming aware of the role becoming vacant.
- 13.11 The Authority may require the Service Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.



13.12 If the Service Provider replaces the Key Personnel as a consequence of this Clause 13, the cost of effecting such replacement shall be borne by the Service Provider.

#### **14 Other personnel used to provide the Services**

14.1 At all times, the Service Provider shall ensure that:

14.1.1 each of the Service Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

14.1.2 there is an adequate number of Service Provider's Personnel to provide the Services properly;

14.1.3 only those people who are authorised by the Service Provider (having regard to any authorisation procedure agreed in writing between the Parties, in the event that such exists) are involved in providing the Services; and

14.1.4 all of the Service Provider's Personnel comply with all of the Authority's Policies.

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.

14.2 The Authority may refuse to grant access to, and remove, any of the Service Provider's Personnel who do not comply with any such Policies, or if they otherwise present a security threat.

14.3 The Service Provider shall replace, as soon as is reasonably practicable to do so, any of the Service Provider's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care or due to a safeguarding concern addressed by paragraph 8 of Schedule 1 (General Specification). Following the removal of any of the Service Provider's Personnel for any reason, the Service Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services and at no extra cost to the Authority.

14.4 The Service Provider shall maintain up-to-date personnel records on the Service Provider's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Authority on the Service Provider's Personnel. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

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

#### **15 Safeguarding**

15.1 The Parties acknowledge that, in the event that the Service Provider in the delivery of the Services is a Regulated Activity Provider, then they shall have ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

15.2 The Service Provider shall ensure that all individuals engaged in the provision of the Services are:

15.2.1 subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate (the Parties acknowledging that taxi and private hire vehicle drivers are required to satisfy this requirement as a condition of their licence and for PSV drivers the requirement applies to unescorted journeys only); and

- 15.2.2 the Service Provider shall monitor the level and validity of the checks under this Clause 15.2 for each member of staff.
- 15.3 The Service Provider warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 15.4 The Service Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 15 have been met.
- 15.5 The Service Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any Clients, service users, children or vulnerable adults.
- 15.6 The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Clients.
- 15.7 The Authority shall provide the Service Provider in Appendix 4 (Safeguarding, Contract Compliance and Driver's Safety Code) of Schedule 1 (General Specification) with details of the Authority's "Safeguarding, Contract Compliance and Driver's Safety Code (May 2019)" policy document which forms part of the Authority's safeguarding procedures. This document shall be updated and circulated to all the Authority's service providers at least annually to remind service providers of the importance of this policy and any amended, superseded or new policy document which imposes more onerous obligations onto the Service Provider shall (where not already implemented as a Change by the Authority) be a deemed Change by the Authority entitling the Service Provider to protection established by the Change Control Procedure. The Service Provider must ensure that all Personnel engaged in connection with the provision of the Services are fully aware of this policy and its importance. Any material breach of the Authority's safeguarding procedures by the Service Provider or its Personnel shall be an irremediable material breach of this agreement.

## **16 Employees: TUPE and equal opportunities**

- 16.1 As at the date of this agreement the Authority and the Service Provider do not envisage that a Relevant Transfer under TUPE will apply in relation to the provision of the Services under any Contract for Route Instructions. However, where a Relevant Transfer does apply the Parties agree that the provisions of Appendix 1 (TUPE drafting) to Schedule 8 (TUPE) shall apply to any Relevant Transfer of staff under this agreement.
- 16.2 The Service Provider shall comply with its responsibilities and duties under the Equality Act 2010 and take all reasonable steps to secure the observance of these provisions by all employees, or agents of the Service Provider and all sub-contractors employed in the delivery of this agreement.
- 16.3 The Service Provider shall not unlawfully discriminate either directly or indirectly on such grounds as the protected characteristics set out in the Equality Act 2010 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, the Human Rights Act 1998 or other relevant legislation or any statutory modification or re-enactment thereof (the "**Discrimination Acts**").
- 16.4 The Service Provider shall notify the Authority immediately of any investigation of or proceedings against the Service Provider in relation to the Discrimination Acts and shall co-operate 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.
- 16.5 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 Discrimination Acts due directly or indirectly to any act or omission by the Service Provider, its agents, employees or sub-contractors.

- 16.6 The Service Provider shall impose on any sub-contractor obligations substantially similar to those imposed on the Service Provider by this Clause 16.
- 16.7 The Service Provider shall observe as far as possible the codes of practice issued by the Equality and Human Rights Commission (including the statutory codes of practice dated 26 January 2011 on employment, equal pay and services/public functions/associations which replaced codes of practice under previous discrimination legislation), as approved by Parliament from time to time, and the Authority's policies (including on disability and sexual orientation). The Service Provider shall provide such information as the Authority may reasonably require enabling it to assess the Service Provider's compliance with these codes of practice.
- 16.8 If any court or tribunal, or the Equality and Human Rights Commission, should make any finding of unlawful discrimination against the Service Provider, then the Service Provider shall take all necessary steps to prevent reoccurrence of such unlawful discrimination. The Authority may require the Service Provider to provide full details of the steps taken to prevent such reoccurrence.
- 16.9 The Service Provider's equal opportunities policy shall be set out in any instructions circulated to those members of the Personnel concerned with recruitment, training and promotion, in relevant documentation available to its Personnel and others and in its recruitment advertisements and other relevant literature. The Service Provider shall provide to the Authority on request copies of such instructions, documents, advertisements and other literature.

## **17 Reporting, meetings and complaints**

- 17.1 The Service Provider Representative and the Authorised Officer shall be the respective prime contact points between the Parties and shall have responsibility for monitoring the provision of the Services by the Service Provider under this agreement.
- 17.2 The terms of this agreement shall be reviewed in accordance with the provisions of this Clause 17. 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.
- 17.3 Review Meetings shall be carried out either:
- 17.3.1 annually during the currency of this agreement; or
- 17.3.2 at such other times as are required by either Party on giving reasonable written notice to the other.
- 17.4 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 fourteen (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 (which are not classified by either Party as a dispute to be resolved by the process set out in Clause 20 (Dispute resolution and assistance in legal proceedings)) shall be referred immediately to a senior executive officer of each Party who shall attempt to resolve the issue.
- 17.5 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 19.1 (Change control, benchmarking and continuous improvement) and Schedule 7 (Change Control).
- 17.6 If any outstanding matters referred to in a Review Meeting 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 20 (Dispute resolution and assistance in legal proceedings)
- 17.7 The Service Provider, where it has five (5) or more Vehicles, shall operate a complaints and suggestions procedure whereby all complaints and suggestions received in connection with the performance of this agreement are recorded and investigated. All complaints must be dealt with to standards that at least meet (are no worse) than the Authority's standards as published from time to time on its website.

- 17.8 The Service Provider shall provide the Authority with details of all complaints received in connection with the performance of this agreement, together with copies or details of the Service Provider's responses thereto, within five (5) Working Days of the complaint being received by the Service Provider.
- 17.9 The Service Provider shall keep a record of all suggestions received from customers and Personnel regarding this agreement, and shall forward relevant suggestions to the Authority for consideration.
- 17.10 Where the Route Instruction involves transport to any educational Establishment (including a SEND school or college), customers, Clients and the Authority must be able to contact the Service Provider by telephone (not a messaging service) between the hours of 0730hrs and 1730hrs on each day that the Route Instruction operates unless transport operates outside these hours in which case the Service Provider must also be contactable at these times.
- 17.11 The Service Provider shall provide the Authority with 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 seven (7) days thereafter.
- 17.12 If it becomes impossible to operate any part of the Service, the Service Provider shall immediately notify the Authorised Officer.

## **18 Monitoring**

- 18.1 The Authority may monitor the performance of the Services by the Service Provider.
- 18.2 The Service Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in Clause 18.1 at no additional charge to the Authority.
- 18.3 The Authority shall carry out checks to ensure that the Service is being provided in accordance with this agreement. The Service Provider shall allow the Authority to carry out those checks. These checks may include:
- Surveys:** The Service Provider shall allow the Authority to undertake customer satisfaction surveys as required.
- Monitoring and Annual Checks:** The Service Provider shall allow the Authority to carry out these and any other checks applicable to this agreement.
- Recruitment:** During the term of this agreement the Authority shall be working with the Service Provider to ensure that they are complying with good recruitment procedures. The Service Provider must demonstrate its willingness to adhere to any recommendations and/or procedures applied by the Authority.
- 18.4 The Service Provider shall allow the Authorised Officer and their nominated auditors, to have access and right to inspect the premises vehicles and records of the Service Provider in relation to the operation of this agreement, with prior arrangement.
- 18.5 The Service Provider shall at his or her own expense co-operate with the Authority in providing information or documentation should the Authority receive a request pursuant to Data Protection Legislation, FOIA or EIR.
- 18.6 The Authority reserves the right to carry out any other checks that may reasonably be required to ensure that the Service is carried out in accordance with this agreement.
- 18.7 The Service Provider shall notify the Authority immediately of any breach of this agreement setting out the details and reasons for such a breach.
- 18.8 The Service Provider shall allow persons authorised by the Authority to conduct inspections, ticket/pass checks, surveys and passenger interviews and to distribute publicity on board Vehicles used in the performance of this agreement, and on any other journeys operated by the Service Provider along a similar route. Any journeys made would be without charge.

18.9 The Service Provider shall allow persons holding a valid authority provided by the Authority to travel without charge on any journey provided under this agreement and, by prior agreement with the Service Provider, on any related positioning or out of service journeys, subject to the maximum capacity of the Vehicle not being exceeded.

## **19 Change control, benchmarking and continuous improvement**

19.1 Any requirement for a Change shall be subject to the Change Control Procedure.

19.2 As far as is permissible by current legislation, the Authority reserves the right to vary the terms and conditions of this agreement in accordance with the terms of this Clause 19. For the avoidance of doubt, such a Change may include variations to:

19.2.1 length of contract and price;

19.2.2 Vehicle features, including electronic equipment and seating capacity, times and routes of journeys; or

19.2.3 any other provision of the Services.

19.3 The Authority shall not require a Change 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.

19.4 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.

19.5 If the Parties agree to make such Change:

19.5.1 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

19.5.2 the description of the Services, the Price and any other aspects of this agreement identified shall be amended or supplemented as appropriate to reflect the Change.

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

19.7 The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services.

19.8 Any potential Changes highlighted as a result of the Service Provider's reporting in accordance with Clause 19.7 shall be addressed by the Parties using the Change Control Procedure.

19.9 This agreement, including the Price, may be modified in the following circumstances (as far as is permissible by current legislation) as to Term length, Price, Vehicle features (including electronic equipment and seating capacity), times and routes of journeys, fares to be charged (where appropriate or any other provision of the Services):

19.9.1 if the number of passengers using the Services require a Vehicle or Vehicle(s) of a different capacity or Specification to be used;

19.9.2 to meet changes in passenger demand and/or requirements and this may include:

19.9.2.1 a revised timetable with more or fewer journeys;

19.9.2.2 providing transport on additional, fewer or different days;

19.9.2.3 providing a vehicle of different capacity and/or Specification; or

19.9.2.4 providing transport to/from alternative origins and destinations;

19.9.3 Not Used;

19.9.4 if the route and/or timetable needs amending for any of the following reasons:

19.9.4.1 due to a change in opening hours of any destination passengers are travelling to/from;

19.9.4.2 to ensure punctuality and reliability are maintained;

19.9.4.3 to provide transport for the same purpose in the same geographical area; or

19.9.4.4 circumstances which the Authority could not have foreseen including but not limited to changes in levels of funding, legislation and Authority policy,

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.

19.10 Any Change that may be agreed between the Parties shall be sent electronically to the Service Provider by the Authority's Authorised Officer (in accordance with Clause 19.1 and Schedule 7 (Change Control)) specifying the Route Instruction reference, nature and terms of the Change and the date from which it is to be operative. If the Service Provider does not agree with the proposed Change, then it must give notice to the Authority within seven (7) Working Days of the date of issue. Otherwise the Change shall be deemed to be effective from the date of issue of the proposed Change or as otherwise agreed.

19.11 If the Parties cannot reach agreement on a proposed Change to this agreement requested by the Authority, acting reasonably, then the Authority may terminate this agreement by giving four (4) weeks' notice or the relevant contract notice period if shorter, unless a shorter termination period is mutually agreed.

19.12 Without prejudice to Clause 19.7 and Schedule 7 (Change Control) the Authority may vary this agreement, acting reasonably, by issuing a letter of amendment or re-issuing this agreement in its entirety. Where any amendment or re-issue would substantially affect this agreement, the Authority will first consult with the Service Provider. Any amendment or re-issue shall be effective immediately after notice has been given to the Service Provider.

19.13 The Route Instruction timetable, route, Vehicle capacity and any school transport obligations are as known at the time of tendering. However, any of these elements are subject to change over the Initial Term (as may be extended by the Extension Period) and the Contract for Route Instruction will need to flex in line with these changing requirements, although the overall intention of the agreement cannot be altered. Each operational change will be agreed between the Authority and Service Provider, but any variation in Price must be in line with the original Contract for Route Instruction award.

## **20 Dispute resolution and assistance in legal proceedings**

20.1 Either Party may call an extraordinary meeting of the Parties by service of not less than five (5) Working Days' written notice (or such other period as may be agreed in writing) and each Party agrees to procure that its Authorised Representative together with any other member of Key Personnel requested to attend by the Authority (if any) shall attend all extraordinary meetings called in accordance with this Clause 20.1.

20.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either Party, by notice in writing to the other, may refer the dispute to the Service Provider's Managing Director or the Authority's nominated representative (or other senior officers of the Parties as may be appropriate and agreed from time to time) who shall co-operate in good faith to resolve the dispute as amicably as possible within ten (10) Working Days of service of such notice. If the officers referred to in this Clause 20.2 fail to resolve the dispute in the allotted time, then the Parties shall, within that period, on the written request of either Party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator

agreed by the Parties or, in default of such agreement within five (5) Working Days of receipt of such request, appointed, at the request of either Party, by the CEDR or such other similar body as is agreed.

- 20.3 The Parties shall then submit to the supervision of the mediation by the CEDR for the exchange of relevant information and for setting the date for negotiations to begin.
- 20.4 Recourse to this Dispute Resolution Procedure shall be binding on the Parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the Parties in any future legal proceedings. Except for any Party's right to seek interlocutory relief in the courts, no Party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until fifteen (15) Working Days after the Parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 20.5 If, with the assistance of the mediator, the Parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly Authorised Representative of each of the Parties, shall remain binding on the Parties.
- 20.6 The Parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the Parties equally.
- 20.7 While the Dispute Resolution Procedure referred to in this Clause 20 is in progress and any Party has an obligation to make a payment to another Party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant Parties at a clearing bank and such payment shall be a good discharge of the Parties' payment obligations under this agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the Parties pro rata according to the split of the principal sum as between the Parties.
- 20.8 Both Parties agree to continue in good faith with the performance of this agreement during any dispute process.
- 20.9 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:
- 20.9.1 any legal inquiry, arbitration, court proceedings or hearings in which the Authority may become involved (and the Service Provider shall, if required, give evidence in such inquiries, arbitrations, court proceedings or hearings); or
- 20.9.2 any disciplinary hearing internal to the Authority.
- 20.10 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, the Service Provider 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.
- 20.11 Information provided or assistance rendered pursuant to the obligation in Clause 20.9 and/or Clause 20.10 respectively, in whatever form, shall be at no cost to the Authority.

## **21**

### **Sub-contracting and assignment**

- 21.1 Subject to Clause 21.3 and Clause 21.5, neither Party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other Party (and in the event of such consent being granted by the Authority any transfer, novation or assignment shall be subject to such conditions as the Authority may think fit but such consent, if given, shall not relieve the Service Provider from any liability or obligation under this agreement), neither may the Service Provider sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority. Where the Service Provider wishes to novate any Contract for Route Instruction to another service provider which is also appointed to the Authority's DPS for

passenger transport services the Authority shall be entitled to charge the Service Provider a novation fee of five hundred pounds (£500) (as annually reviewed by the Authority in its absolute discretion and as a minimum indexed in accordance with the Consumer Price Index on each anniversary of 1 July 2019 and then notified as soon as reasonably practicable to all service providers appointed to the Authority's DPS for passenger transport services).

- 21.2 In the event that the Service Provider enters into any Sub-Contract in connection with this agreement it shall:
- 21.2.1 remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
  - 21.2.2 impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
  - 21.2.3 provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.
- 21.3 The Authority shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority. In the event that the Authority in whole or in part is to become a unitary authority or merged with another local authority by Implemental Order under the Local Government and Involvement in Public Health Act 2007 or otherwise the Authority shall be entitled to terminate this agreement (without liability to the Service Provider) or freely assign any or all of its rights or obligations hereunder.
- 21.4 A Service Provider wishing to sub-contract, novate or assign a Contract for Route Instruction (or any part of it) shall write to the Authority with the details of the proposed sub-contractor counterparty or assignee and this agreement or part Contract to be assigned. The Authority shall require the proposed Party to confirm compliance with the requirements of this agreement by letter or e-mail, including acceptance of this agreement and/or any relevant Contract for Route Instruction Price, before making a decision on the Service Provider's request.
- 21.5 Any sub-contractor used on this agreement or any Route Instruction must be an Authority Accredited Supplier unless otherwise agreed.

## **22 Indemnities**

- 22.1 The Service Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the act, omission, breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors arising out of or in connection with this agreement and the performance of it, with the exception of death or personal injury resulting from negligence by the Authority, save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Authority or its Representatives (excluding any Service Provider's Personnel).

## **23 Limitation of liability**

- 23.1 Subject to Clause 23.5, neither Party shall be liable to the other Party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 23.2 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Party is entitled to bring a claim against the other Party pursuant to this agreement.
- 23.3 Subject to Clause 23.5, the Authority's total aggregate liability:
- 23.3.1 in respect of the indemnities given by the Authority in Schedule 8 (TUPE) is unlimited; and



- 23.3.2 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay any of the Price that is properly due and payable and for which the Authority shall remain fully liable), shall in no event exceed one million pounds (£1,000,000) in each Contract Year or, if lower, one hundred and twenty-five per cent (125%) of the aggregate Price paid under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.
- 23.4 Subject to Clause 23.5, the Service Provider's total aggregate liability:
- 23.4.1 in respect of the indemnities given by the Service Provider in Clause 22 (Indemnities), Clause 29.2 (Intellectual property) and Schedule 8 (TUPE) is unlimited;
- 23.4.2 in respect of Service Credits, is limited, in each Contract Year, to one hundred per cent (100%) of the Price that is payable by the Authority in the applicable Contract Year; and
- 23.4.3 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, shall in no event exceed one million pounds (£1,000,000) in each Contract Year.
- 23.5 Notwithstanding any other provision of this agreement neither Party limits or excludes its liability for:
- 23.5.1 fraud or fraudulent misrepresentation;
- 23.5.2 death or personal injury caused by its negligence;
- 23.5.3 breach of any obligation as to title implied by statute; or
- 23.5.4 any other act or omission, liability for which may not be limited under any applicable law.

## 24 Insurance

- 24.1 The Service Provider shall at its own cost effect and maintain with a reputable insurance company such policies of insurance as are reasonably required for the delivery of the Services including but not limited to the following:
- 24.1.1 public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one (1) claim or series of claims;
- 24.1.2 employer's liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one (1) claim or series of claims;
- 24.1.3 (where relevant, for example where specialist ambulance or medical transport services are being provided and medical intervention insurance and/or medical malpractice insurance is required for medical professionals engaged in the delivery of the Services) professional indemnity insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one (1) claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover,
- (the "**Required Insurances**") in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider.
- 24.2 All Vehicles used in the operation of this agreement shall be insured in accordance with the Road Traffic Acts and any other current applicable legislation with, as a minimum, third party insurance.
- 24.3 The Service Provider shall give the Authority, on request, copies of all insurance policies referred to in this Clause 24 or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those

policies. The Authority may approach the Service Provider's insurers to verify any information regarding insurance submitted to the Authority and the Service Provider must authorise any such approach.

24.4 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

24.5 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the agreement.

24.6 The Service Provider shall hold and maintain the Required Insurances for a minimum of six (6) years following the expiration or earlier termination of the agreement.

24.7 The Service Provider shall give immediate notice by letter or e-mail to the Authority if for any reason whatsoever any Vehicle or Required Insurance required to meet the requirements of Clauses 24.1 to 24.3 is cancelled or becomes inoperative. Failure to have the correct insurance at any time during this agreement may result in the Authority terminating this agreement in accordance with Clause 30.1.1 (Termination for breach).

24.8 The Authority shall not be liable for any damage to any Vehicle or other equipment used by the Service Provider in the performance of this agreement whether that damage is caused by Clients or other passengers. The Authority will investigate complaints of damage to the Service Provider's Vehicle by Clients and will endeavour to assist identification of those responsible and to assist the Service Provider in recovering their costs.

24.9 Up to date details of insurances held must be recorded on the Authority's e-sourcing system. Failure to do so may result in the Authority terminating this agreement in accordance with Clause 30.1.1 (Termination for breach).

## **25 Freedom of information**

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

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

25.2.1 transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;

25.2.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires in a timely manner but in any event within five (5) Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and

25.2.3 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 section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

25.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

25.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or

25.3.2 is to be disclosed in response to a Request for Information.

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

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

25.5.1 without consulting with the Service Provider; or

25.5.2 following consultation with the Service Provider and having taken its views into account, provided always that where Clause 25.5.2 applies the Authority shall, in accordance with any recommendations of the Code referred to in Clause 25.5, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

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

25.7 The Service Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 25.5.

## **26 Data protection**

26.1 The Service Provider shall (and shall procure that any of its Service Provider's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the Data Protection Legislation and both Parties shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with the agreement.

26.2 Notwithstanding the general obligation in Clause 26.1, where the Service Provider is processing Personal Data as a Data Processor for the Authority, the Service Provider shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data); and

26.2.1 provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the Data Protection Legislation;

26.2.2 promptly notify the Authority of any breach of the security measures required to be put in place pursuant to Clause 26.2; and

26.2.3 ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the Data Protection Legislation.

26.3 The provisions of this Clause 26 shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

26.4 The Service Provider shall indemnify and keep indemnified the Authority against all actions or claims against the Authority arising from the Service Provider's breach of the Data Protection Legislation.

26.5 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this agreement is not Confidential Information.

26.6 Notwithstanding any other term of this agreement, the Service Provider hereby consents to the publication of this agreement in its entirety including from time to time agreed changes to this agreement subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA or EIR.

26.7 In preparing a copy of this agreement for publication pursuant to Clause 26.6 above the Authority may consult with the Service Provider to discuss any possible redactions, but the final decision in relation to the redacting of information shall be at the Authority's absolute discretion.

26.8 The Service Provider shall assist and co-operate with the Authority to enable the Authority to publish this agreement.

## **27 Confidentiality**

27.1 Subject to Clause 27.2, the Parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or EIR, the content of this agreement is not Confidential Information. The Service Provider and the Service Provider's staff shall regard as confidential and shall not disclose to any person other than a person authorised by the Authority any information acquired by the Service Provider or the Service Provider's staff in or in connection with the provision of the Service under this agreement concerning Clients, the Authority or its staff or its procedures.

27.2 Clause 27.1 shall not apply to any disclosure of information:

27.2.1 required by any applicable law, provided that Clause 25.1 (Freedom of information) shall apply to any disclosures required under the FOIA or the Environment Information Regulations;

27.2.2 that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this agreement;

27.2.3 where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of Clause 27.1;

27.2.4 by the Authority of any document to which it is a Party and which the Parties to this agreement have agreed contains no commercially sensitive information;

27.2.5 to enable a determination to be made under Clause 20 (Dispute resolution and assistance in legal proceedings);

27.2.6 which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;

27.2.7 by the Authority to any other department, office or agency of the Government; and

27.2.8 by the Authority relating to this agreement and in respect of which the Service Provider has given its prior written consent to disclosure.

27.3 On or before the Termination Date the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authorities' employees, rate-payers or Clients, are delivered up to the Authority or securely destroyed.

## **28 Audit**

28.1 During the Term and for a period of seven (7) years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:

28.1.1 to verify the accuracy of the Contract Price and Price (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;

28.1.2 to review the integrity, confidentiality and security of any data relating to the Authority or any Clients;

28.1.3 to review the Service Provider's compliance with the DPA, the FOIA, in accordance with Clause 26 (Data protection) and Clause 25 (Freedom of information) and any other legislation applicable to the Services;

28.1.4 to review any records created during the provision of the Services;

- 28.1.5 to review any books of account kept by the Service Provider in connection with the provision of the Services;
- 28.1.6 to carry out the audit and certification of the Authority's accounts;
- 28.1.7 to carry out an examination of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 28.1.8 to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 28.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this Clause 28 more than twice in any calendar year.
- 28.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 28.4 Subject to the Authority's obligations of confidentiality, the Service Provider shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 28.4.1 all information requested by the above persons within the permitted scope of the audit;
- 28.4.2 reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
- 28.4.3 access to the Service Provider's Personnel.
- 28.5 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 28.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 28, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Service Provider in which case the Service Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 28.7 If an audit identifies that:
- 28.7.1 the Service Provider has failed to perform its obligations under this agreement in any material manner: the Parties shall agree and implement a remedial plan. If the Service Provider's failure relates to a failure to provide any information to the Authority about the Contract Price or Price, proposed Price or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
- 28.7.2 the Authority has overpaid any Price: the Service Provider shall pay to the Authority the amount overpaid within twenty (20) Working Days. The Authority may deduct the relevant amount from the Price if the Service Provider fails to make this payment; and
- 28.7.3 the Authority has underpaid any Price: the Authority shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Service Provider in relation to invoicing within twenty (20) Working Days.
- 28.8 The Service Provider shall retain all records from which monthly passenger, revenue and mileage returns for this agreement required by the Authority have been compiled, for a period of not less than two (2) years from the date of each return.
- 28.9 The Service Provider shall allow the Authority and its Authorised Representative access to, and permission to take copies of, all records relevant to this agreement and its performance at the Service Provider's premises at any reasonable time and shall give such explanations of records as may be required.

28.10 Records relevant to this agreement shall include, without limitation:

28.10.1 Vehicle maintenance records;

28.10.2 Drivers' rosters and duties;

28.10.3 records of checks made on driving licences;

28.10.4 Not Used;

28.10.5 health and safety documents;

28.10.6 complaint and suggestion records;

28.10.7 Route Instruction risk assessments;

28.10.8 Driver and Passenger Assistant training records; and

28.10.9 (for a Service Provider operating a PSV under an "O" licence, the current Operator Compliance Risk Score (OCRS)).

28.11 The Service Provider shall supply within ten (10) Working Days any information that the Authority requires for any national or local performance indicators. Failure to provide the information will be considered as a breach counting towards a Consistent Failure for the purposes of Clause 30.1.4 (Termination for breach).

## **29 Intellectual property**

29.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property created by the Service Provider or any employee, agent or Sub-Contractor of the Service Provider:

29.1.1 in the course of performing the Services; or

29.1.2 exclusively for the purpose of performing the Services,

shall vest in the Authority on creation.

29.2 The Service Provider shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

## **30 Termination for breach**

30.1 The Authority may terminate this agreement in whole or part with immediate effect by the service of written notice on the Service Provider in the following circumstances:

30.1.1 if the Service Provider is in breach of any material obligation under this agreement it may terminate the Contract forthwith:

30.1.1.1 (subject to Clauses 30.1.1.2 and 30.1.1.3) provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this Clause 30.1.1 if the Service Provider has failed to remedy such breach within fourteen (14) days (or such other longer period if stipulated by the Authority in writing) of receipt of notice from the Authority (a "**Remediation Notice**") to do so;

30.1.1.2 further provided that, without limitation, where the Authority considers the breach to be of such a serious nature that the safety of Clients, passengers, customers or the general public has been endangered such breach shall be regarded as an irremediable material breach of this agreement and if the Authority considers such a breach may affect the Service Provider's ability or suitability

to perform other Authority Contract for Route Instructions then it reserves the right to terminate some or all of those Contract for Route Instructions according to their terms; and

- 30.1.1.3 where the Authority has specified in this agreement such a breach as an irremediable material breach for the purposes of this Clause 30.1.1;
- 30.1.2 if the Service Provider 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;
- 30.1.3 if the Service Provider purports to assign or sub-contract this agreement in breach of the terms of this agreement;
- 30.1.4 if a Consistent Failure has occurred;
- 30.1.5 if a Catastrophic Failure has occurred;
- 30.1.6 if a resolution is passed or an order is made for the winding up of the Service Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Service Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Service Provider's property or equipment (or has anything similar or analogous happen in relation to it in any jurisdiction outside England and Wales);
- 30.1.7 if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom;
- 30.1.8 (unless previously approved in writing by the Authority) if there is a change of control (where the Service Provider is a company as defined in section 574 of the Capital Allowances Act 2001) of the Service Provider to which the Authority reasonably objects;
- 30.1.9 notwithstanding the occurrence of any Consistent Failure the Service Provider persistently, and without reasonable cause, fails to operate the Services in accordance with this agreement and/or the relevant Contract for Route Instruction and to the entire satisfaction of the Authority; or
- 30.1.10 the Service Provider has, at the time of award of the agreement or any Contract for Route Instruction, been subject to a conviction as proscribed by regulation 57(1), including as a result of the application of regulation 57(2) of the Procurement Regulations, and should therefore have been excluded from the procurement procedure.
- 30.2 The Authority may terminate this agreement in accordance with the provisions of Clause 33 (Prevention of bribery and modern slavery).
- 30.3 The Service Provider may terminate this agreement in the event that the Authority commits a Termination Payment Default by giving thirty (30) days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the thirty (30) day notice period, the Service Provider's notice to terminate this agreement shall be deemed to have been withdrawn.

### **31 Termination on notice**

- 31.1 Subject to Clauses 31.2, 31.7 and 31.8, the Authority may terminate this agreement at any time by giving not less than four (4) weeks' written notice to the Service Provider.
- 31.2 Where Clients' transport is no longer required by the Authority acting reasonably (for reasons including but not limited to death, serious injury or temporary or permanent relocation or absence of the Clients) the Authority may terminate this agreement by giving immediate notice to take effect at any time.
- 31.3 The Service Provider may terminate this agreement at any time by giving not less than four (4) weeks' written notice to the Authority.
- 31.4 This agreement shall terminate at any time by mutual consent.
- 31.5 The Authority may terminate this agreement following a Force Majeure Event in accordance with the provisions of Clause 32 (Force majeure).

- 31.6 The Authority may terminate this agreement if:
- 31.6.1 this agreement has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Procurement Regulations; or
- 31.6.2 this agreement should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive (both as defined in the Procurement Regulations) that has been declared as such by the Court of Justice of the European Union pursuant to Article 258 of TFEU (as defined in the Procurement Regulations).
- 31.7 Without prejudice to Clauses 31.1 and 31.3, the Authority or Service Provider may terminate a Contract for Route Instruction for Services in accordance with the termination period stated on the Specification for such Route Instruction. The Authority may agree a shorter period subject to the Service Provider agreeing to pay any additional costs incurred by the Authority for the provision of transport between the earlier termination date and the date required by the notice period. Where the Service Provider terminates a Contract for Route Instruction within two (2) years of the Contract for Route Instruction start, the Authority will not accept any bid from the Service Provider for any replacement Route Instruction (being the same as or substantially similar to the terminated Route Instruction) which the Authority tenders within six (6) months unless the Authority gives prior approval.
- 31.8 The Authority may terminate this agreement where permitted by paragraph 5.7 of Schedule 1 (General Specification) to this agreement.
- 31.9 Where the Authority makes a payment to the Service Provider in lieu of notice following termination of a Contract for Route Instruction the Service Provider's Driver and Vehicle shall remain available to the Authority for the duration of the notice period should a similar Route Instruction be required by the Authority to be fulfilled by the Service Provider.

## **32 Force majeure**

- 32.1 Subject to the remaining provisions of this Clause 32, neither Party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such delay or non-performance is due to a Force Majeure Event.
- 32.2 In the event that either Party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such Party shall:
- 32.2.1 give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- 32.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
- 32.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 32.3 A Party cannot claim relief if the Force Majeure Event is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 32.4 The Service Provider cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.
- 32.5 As soon as practicable following the affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Service Provider is the affected Party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.



- 32.6 The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 32.7 The Authority may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Service Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than thirty (30) Working Days.

### **33 Prevention of bribery and modern slavery**

33.1 The Service Provider:

- 33.1.1 shall not, and shall procure that any Service Provider Party and all Service Provider Personnel shall not, in connection with this agreement commit a Prohibited Act;
- 33.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this agreement.
- 33.2 The Service Provider shall:
- 33.2.1 if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- 33.2.2 within ten (10) Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Service Provider) compliance with this Clause 33 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this agreement. The Service Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.
- 33.3 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Service Provider Party or Service Provider Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 33.4 If any breach of Clause 33.1 is suspected or known, the Service Provider must notify the Authority immediately.
- 33.5 If the Service Provider notifies the Authority that it suspects or knows that there may be a breach of Clause 33.1, the Service Provider must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for seven (7) years following the expiry or termination of this agreement.
- 33.6 The Authority may terminate this agreement by written notice with immediate effect if the Service Provider, Service Provider Party or Service Provider Personnel (in all cases whether or not acting with the Service Provider's knowledge) breaches Clause 33.1. In determining whether to exercise the right of termination under this Clause 33.6, the Authority shall give all due consideration, where appropriate, to action other than termination of this agreement unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by an employee, Sub-Contractor or supplier not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a Sub-Contractor) means and shall be construed as acting:

33.6.1 with the authority; or

33.6.2 with the actual knowledge;

of any one (1) or more of the directors of the Service Provider or the Sub-Contractor (as the case may be); or

33.6.3 in circumstances where any one (1) or more of the directors of the Service Provider ought reasonably to have had knowledge.

33.7 Any notice of termination under Clause 33.6 must specify:

33.7.1 the nature of the Prohibited Act;

33.7.2 the identity of the Party whom the Authority believes has committed the Prohibited Act; and

33.7.3 the date on which this agreement will terminate.

33.8 Notwithstanding the provisions of Clause 20 (Dispute resolution and assistance in legal proceedings), any dispute relating to:

33.8.1 the interpretation of Clause 33; or

33.8.2 the amount or value of any gift, consideration or commission,

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

33.9 Any termination under Clause 33.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

33.10 The Authority may, following termination of this agreement pursuant to Clause 33.6 (including for committing a Prohibited Act) recover from the Service Provider any resulting loss.

33.11 The Service Provider undertakes to the Authority that:

33.11.1 it has not and its current and former directors, officers and employees have not and shall not engage in activity which would amount to a breach of the Modern Slavery Legislation or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom;

33.11.2 it has not and its current and former directors, officers and employees have not and shall not engage in any activity, practice or conduct which could or would place the Authority in breach of the Modern Slavery Legislation or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom;

33.11.3 it has and shall maintain and implement:

33.11.3.1 procedures to ensure compliance with the Modern Slavery Legislation; and

33.11.3.2 adequate procedures designed to prevent conduct that would give rise to an offence under the Modern Slavery Legislation;

33.11.4 it shall include undertakings similar to those contained in these Clauses 33.11 and 33.14 in any contract it may enter into with sub-consultants and/or sub-contractors and provisions similar to those contained in Clauses 33.13 and 33.14; and

33.11.5 from time to time, at the reasonable request of the Authority, it will confirm in writing that it has complied with its undertakings under Clause 33.11 and will provide any information reasonably requested by the Authority in support of such compliance.

33.12 The Service Provider shall maintain adequate records to assist in verifying its compliance with the provisions of this Clause 33.12 and shall permit the Authority and its third party representatives, immediately upon request during normal business hours to access and take copies of such records and to meet with the Service Provider's personnel to audit the Service Provider's compliance with its obligations under this Clause 33.12. The Service Provider shall give all necessary assistance to the conduct of such audits.

33.13 Audit access by any third party representative of the Authority in accordance with Clause 33.12 shall be subject to such representative agreeing to be bound by confidentiality obligations equivalent to those in this Contract in respect of the information obtained provided that all information obtained may be disclosed to the Authority.

33.14 In the event of breach of Clauses 33.11.1, 33.11.2 or 33.11.3 by the Service Provider and/or breach by any sub-consultant or sub-contractor of equivalent clauses required under Clause 33.11.4 and/or if the Service Provider, sub-consultant or sub-contractor is convicted of an offence under the Modern Slavery Legislation in relation to this Contract or any other Contract (whether or not the Authority is a Party to that Contract), the Parties agree that the Authority may at its sole discretion terminate the Service Provider's employment under:

33.14.1 this Contract and the provisions of Clause 33.11 shall apply; and

33.14.2 (if applicable) any other contract between the Parties (whether in relation to the Services or otherwise) and any such termination shall be deemed to be termination for default by the Service Provider.

33.15 The Service Provider further undertakes to the Authority that:

33.15.1 if required by law to do so, it shall, for each and every financial year of the Service Provider, comply with its obligations under section 54 of the Modern Slavery Act 2015 by publishing a Human Trafficking Statement; and

33.15.2 it shall include an undertaking similar to that contained in this Clause 33.15 in any contract it may enter into with sub-consultants, sub-contractors and/or suppliers.

33.16 In the event of breach of Clause 33.11.4, 33.11.5, 33.13, 33.15 and/or 33.17, the Parties agree that the Authority may by notice in writing to the Service Provider require that such breaches will be rectified within seven (7) days of receipt. If the Service Provider fails to rectify such breaches in accordance with the notice the Authority may in its sole discretion terminate the Service Provider's employment under:

33.16.1 this Contract and the provisions of Clause 33.11 shall apply; and

33.16.2 (if applicable) any other contract between the Parties (whether in relation to the Services or otherwise) and any such termination shall be deemed to be termination for Service Provider default.

33.17 The Service Provider shall indemnify the Authority against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Authority as a result of:

33.17.1 any breach of Clauses 33.11, 33.13, 33.14, 33.15, or 33.16 by the Service Provider or;

33.17.2 any breach of provisions equivalent to Clauses 33.11, 33.13, 33.14, 33.15, or 33.16 in any contract with a sub-consultant or sub-contractor; and

33.17.3 any act or omission by a sub-consultant or sub-contractor which would have amounted to a breach of the relevant sub contract had the Service Provider complied with its undertaking set out in Clause 33.11.4.

#### **34 Consequences of termination**

34.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and the Service Provider shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Service Provider.

34.2 On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Service Provider shall:

34.2.1 procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be

delivered to the Authority forthwith and the Service Provider's Authorised Representative or Chief Executive Officer] (or equivalent) shall certify full compliance with this Clause 34;

- 34.2.2 return all documentation, manuals, statements and other materials (and all copies thereof) supplied under or in connection with performance or receipt of the Services 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;
- 34.2.3 agree 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 Price payable by the Authority under this agreement). For the avoidance of doubt, the Service Provider shall not be restricted from making any claim in respect of such Price to the extent it is outstanding, due and payable; and
- 34.2.4 (subject to Clause 26 (Data protection), Clause 27 (Confidentiality) and Clause 28 (Audit)) retain all papers, files and records relating to the provision of the Services for the period of seven (7) years after the date of the termination of this agreement and thereafter shall not destroy them but where requested by the Authority deliver them to the Authority.
- 34.3 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.
- 34.4 Termination or variation of this agreement shall not prejudice the rights, duties or liabilities of either Party that have arisen on or before the date of termination or the date of the Change.
- 34.5 If this agreement is terminated the Authority shall:
  - 34.5.1 cease to make use of the Services (and the Service Provider shall cease to provide the Services);
  - 34.5.2 cease to be under any obligation to make payment in respect of any period after the date of termination;
  - 34.5.3 cease to be under any obligation to make payment in respect of any period prior to the date of termination until the costs, loss and/or damage resulting from or arising out of the termination have been calculated and provided such calculation shows a sum or sums due to the Service Provider;
  - 34.5.4 be entitled to exercise a lien over any of the materials, clothing, equipment, Vehicles or other goods belonging to the Service Provider for any sum due hereunder or otherwise from the Service Provider to the Authority;
  - 34.5.5 be entitled to employ and pay other persons to provide the Services or any part thereof; and
  - 34.5.6 be entitled to recover from the Service Provider any losses arising as a result of any antecedent breach of this agreement by the Service Provider.
- 34.6 If this agreement is terminated by the Authority for Service Provider breach in accordance with Clauses 30.1 (Termination for breach) or 30.2 (Termination for breach) such termination shall be at no loss or cost to the Authority and the Service Provider hereby indemnifies the Authority against any such losses or costs resulting from or arising out of the termination which the Authority may suffer (and which the Authority shall be entitled to deduct from any sums which would have been due from the Authority to the Service Provider under this agreement or any other contract or recover from the Service Provider as a debt) including:
  - 34.6.1 the reasonable cost to the Authority of the time spent by its officers in terminating this agreement and in making alternative arrangements for the provision of the Services or any part thereof; and

34.6.2 the additional cost to the Authority of providing a replacement service or any alternative arrangements provided under Clause 34.6.1 above for a maximum period of four (4) calendar weeks following the date on which the termination takes effect.

34.7 The provisions of Clause 6.3 (provision of records), Clause 22 (Indemnities), Clause 24 (Insurance), Clause 25 (Freedom of Information), Clause 26 (Data Protection), Clause 28 (Audit), Clause 30 (Termination for Breach) and this Clause 34 (Consequences of termination) and any other clauses in this agreement which expressly or impliedly have effect after termination or expiry shall survive termination or expiry of this agreement.

### **35 Non-solicitation**

35.1 Neither Party shall (except with the prior written consent of the other) during the term of this agreement, and for a period of one (1) year thereafter, solicit the services of any senior staff of the other Party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other Party.

### **36 Waiver**

36.1 No forbearance or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

36.2 Failure by the Authority at any time to enforce the provisions of this agreement or to require performance strictly or otherwise by the Service Provider of any provisions of this agreement or any failure or delay by the Service Provider to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such provisions and shall not affect the validity of this agreement or any part thereof or the right of the Service Provider to enforce any provision.

36.3 In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Authority to the Service Provider in respect of the Services or any omission on the part of the Authority to communicate such prior acceptance or approval shall not relieve the Service Provider of its obligations to deliver the Services in accordance with the provisions of this agreement.

### **37 Cumulation of remedies**

37.1 Subject to the specific limitations set out in this agreement, no remedy conferred by any provision of this agreement is intended to be exclusive of any other remedy except as expressly provided for in this agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

### **38 Severability**

38.1 If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

### **39 Partnership or agency**

39.1 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 or an employee of the other Party. Neither the Service Provider nor its Personnel shall in any circumstances hold itself or themselves out as:

39.1.1 being the servant or agent of the Authority otherwise than in circumstances expressly permitted by this agreement;

39.1.2 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

39.1.3 having the power to make, vary, discharge or waive any by-law or any regulation of any kind.

#### **40 Third party rights**

40.1 No term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a Party to this agreement.

40.2 The Authority and the Service Provider agree that they do not intend that any third party which may benefit from this agreement or any part of it shall have any rights of enforcement under the terms of the Contracts (Rights of Third Parties) Act 1999.

#### **41 Publicity**

41.1 The Service Provider shall not:

41.1.1 make any press announcements or publicise this agreement or its contents in any way; or

41.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders, without the prior written consent of the Authority.

#### **42 Notices**

42.1 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, delivered by hand (for which a receipt has been obtained) or by e-mail (with a hard copy confirmation letter to follow):

42.1.1 in the case of the Service Provider to the address stated at the head of this agreement and by e-mail to the address stated by the Service Provider in its response to the invitation to participate in the Authority's DPS for passenger transport services (as amended by Service Provider notification to the Authority from time to time); and

42.1.2 in the case of the Authority to the Manager of the Integrated Transport Service, Lancashire County Council Fleet Services HQ, Gate 1, Dewhurst Row, Bamber Bridge, Lancashire PR5 6BB and by e-mail to itsoperatorclaimform@lancashire.gov.uk.

Any e-mail notice shall be deemed to have been properly given by a Party after four (4) hours or sooner where the e-mail receipt has been acknowledged by the other Party. Notices posted shall be deemed to have been properly given after five (5) days in the case of notices sent inland and ten (10) days in the case of notices sent overseas.

#### **43 Entire agreement**

43.1 This agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the Parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the Parties relating to that subject matter.

#### **44 Counterparts**

44.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each Party has executed at least one (1) counterpart.

#### **45 Governing law and jurisdiction**

45.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

45.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

#### **46 Assistance in legal proceedings**

46.1 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:

46.1.1 any legal inquiry, arbitration, court proceedings or hearings in which the Authority may become involved (and the Service Provider shall, if required, give evidence in such inquiries, arbitrations, court proceedings or hearings);

46.1.2 any disciplinary hearing internal to the Authority; or

46.1.3 arising out of the provision of the Services and/or the Service Provider's presence on a bus route.

46.2 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, the Service Provider 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.

46.3 Information provided or assistance rendered pursuant to the obligation in Clause 46.1 and/or Clause 46.2 respectively, in whatever form, shall be at no cost to the Authority.

#### **47 Parent company guarantee**

47.1 If required by the Authority, where the Service Provider is a subsidiary company within the meaning of section 1159 of the Companies Act 2006, it shall also provide a parent company guarantee by its ultimate holding company or companies (as defined by section 1159 of the Companies Act 2006) in favour of the Authority as beneficiary to secure the performance by the Service Provider of its obligations to the Authority.

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

#### **48 Sole Hirer**

48.1 The Authority shall be the sole hirer of any Vehicle during any period when it is used in the performance of this agreement, unless otherwise stated in this agreement or agreed with the Authority.

## **Schedule 1: General Specification**

- Main body
- Appendix 1: CCTV Guidelines
- Appendix 2: Health and Safety
- Appendix 3: Dress Code
- Appendix 4: Safeguarding, Contract Compliance and Driver's Safety Code
- Appendix 5: Contingency Arrangements
- Appendix 6: Vehicle Specification
- Appendix 7: Guidelines on Physical Restraints
- Appendix 8: Standards of Behaviour

(Schedule 1 (General Specification) is a separate document to be incorporated by reference from the DPS Agreement).



## **Schedule 2: Individual Specification**

(Schedule 2 (Individual Specification) is a separate document to be incorporated by reference from the Route Instruction).

## Schedule 3: Policies

### ENVIRONMENTAL POLICY STATEMENT

The Authority has adopted a positive stance with regard to the protection of the environment. Details can be found at:

<http://www.lancashire.gov.uk/council/strategies-policies-plans/environmental/environmental-policy-statement.aspx>

### EQUALITY AND DIVERSITY

The Authority wishes to put its values into practice by being an exemplary employer and to take a lead in combating discrimination and promoting equality of opportunity throughout Lancashire. To do that we will embrace equality and diversity as a central part of all that we do. Details can be found at:

<http://www.lancashire.gov.uk/corporate/web/?siteid=5580&pageid=30516&e=e>

### SOCIAL VALUE

The Public Services (Social Value) Act 2012 places an obligation on the Authority to consider how what is being procured will improve the economic, social and environmental well-being of our local area. The Authority is seeking to increase social value in all goods, works and services that it procures and therefore social value may form part of the award criteria evaluation. Details about what social value means to the Authority can be found [here](#).

### HEALTH AND SAFETY

Suppliers shall take note and adhere to the Authority's health and safety guidelines as detailed in the attached document at Appendix 2 (Health and Safety) to Schedule 1 (General Specification) of this agreement.

### SMOKE-FREE POLICY

**(Last updated September 2017: Lancashire County Council, County Council or Council, county council or council each mean Authority)**

#### 1. Purpose

This policy sets out the County Council's response to smoke-free legislation. In addition this policy contributes to one of the council's corporate objectives of improving health and wellbeing.

Lancashire County Council now encompasses Public Health, and one of the key Public Health priorities is to support people to stop smoking. The County Council is committed to reducing rates of smoking and promoting a smoke free lifestyle to all employees, contractors and visitors. Lancashire County Council's No Smoking Policy therefore supports this approach.

#### 2. Scope

The policy applies to all employees of the council and other workers (including casual workers, agency workers and volunteers). The policy also applies to visitors to council owned or controlled premises, buildings and workplaces, people who use the council's services, elected members and contractors.

The safety of electronic cigarettes (e-cigarettes) has not been fully clinically tested (footnote 1) and therefore the World Health Organisation advises that their use should be prohibited anywhere that the use of conventional cigarettes is banned (footnote 2). In view of this, the policy applies to both tobacco cigarettes and e-cigarettes.

#### 3. The Council's Smoke-free Policy

- Smoking is not permitted at any time when employees (or workers) are at work or elected members are attending council establishments on business or involved in civic functions on council owned or controlled premises.
- Smoking is not permitted when driving whilst on duty or travelling to and from meetings.
- Smoking is not permitted in any council owned or controlled premises, establishments and vehicles, and private or hired vehicles when used for transporting people who receive council services or employees (or workers).
- Smoking, by employees or others, is not permitted on land owned or controlled by the council e.g., car parks, playing fields and playgrounds. This applies whilst on duty and off duty (for example the policy applies to someone smoking in their car on a council owned or controlled car park at lunchtime).
- Smoking is not permitted near any windows or entrances to council buildings at any time.
- Smoking breaks are not permitted during working time.
- Visitors are reminded that the council is a smoke-free local authority and are requested not to smoke near any access point, doorway or window fronting onto public roads or land that the council does not own.
- This Smoke-free Policy will be brought to the attention of partnership organisations, businesses providing services and other stakeholders who may interact with the council's employees (or workers), services or people who receive council services, and their co-operation in implementing both the spirit and letter of the policy is requested and accepted as part of the partnership, business or working arrangements.
- Any special arrangements in place with regard to private individuals living in council owned or controlled residential establishments must comply with both the legislation and guidance from the appropriate regulatory bodies. These arrangements must be updated in accordance with changes to the legislation or guidance. Managers with responsibility for employees or volunteers working with people who receive council services in residential properties, or who live in council provided facilities, should refer to the relevant guidance.
- All council owned or controlled buildings and vehicles must display the appropriate smoke-free signage.
- Enforcement of the council's policy is by management action and disciplinary procedures.

#### 4. Implementation

Managers should ensure that appropriate arrangements exist for implementing the policy within their own service areas and/or areas of responsibility.

##### *Information*

Quitting cigarettes, shisha and e-cigarettes completely and being addiction-free is the best way to protect health. With support from a local stop smoking service, tobacco and nicotine users are four times more likely to quit than going it alone. They can help with one to one support and access to licensed medicines that can be used to help to beat the cravings.

Information on smoking cessation is available on the NHS choices website and from district council's locally. For help to quit smoking, shisha and e-cigarettes call your local service:

East: 0800 328 6297  
 Central: 0800 328 6297 or 01772 644474  
 West: 01695 588047

Information on the mandatory signage that must be displayed at entrances to smoke-free premises and within vehicles and frequently asked questions about the Smoke-free Policy can be downloaded from the inserted links.

##### *Breaches of the Policy*

Managers need to take action if an employee or worker smokes in contravention of this policy. A record of any action taken should be recorded.

Breaches of the policy by employees may lead to disciplinary action.

Visitors smoking will be asked to leave buildings/grounds.

## 5. Monitoring of the Policy

The operation of the policy will be monitored and reviewed as required.

### *Review Period*

This policy will be reviewed on a regular basis or in the event of any changes in legislation.

---

[1] Grana R, Benowitz N & Glantz S (2014) E-Cigarettes: A Scientific Review. *Circulation* 129:1972-1986. doi: 10.1161/CIRCULATIONAHA.114.007667.

[2] World Health Organisation (2014) Electronic nicotine delivery systems. FCTC/COP/6/10 21 July 2014.

## Schedule 4: Service Levels

### Part 1: Service Levels

#### 1. THE SERVICE LEVELS

Services	Method of calculating Services delivery	Service Level
Services delivered by Route Instructions for all Categories as described by Specification	Compliance with Specification	One hundred per cent (100%)
Services delivered by Route Instructions for all Categories as described by Specification	Compliance with Policies	One hundred per cent (100%)

#### 2. CONSISTENT FAILURE

In this agreement, **Consistent Failure** shall mean:

- (a) a failure rate of three (3) or more instances of failure to deliver the Services in a manner that is consistent with the Specification and/or Policies (for any of the example breaches of this agreement as set out in the table below) in every rolling six (6) month period for this Contract for Route Instruction;
- (b) the Authority serving two (2) Remediation Notices in a rolling six (6) month period; or
- (c) the Authority serving three (3) or more Default Notices for instances of failure to deliver the Services in a manner that is consistent with the Specification and/or Policies (for any breaches which are not included in the example breaches of this agreement as set out in the table below) in a rolling six (6) month period.

#### Examples of breach of this agreement which count towards a Consistent Failure for paragraph 2(a)

Failure to have correct licences in place

Failure to make alternative arrangements to undertake this agreement

Failure to collect all passengers due to travel

**Examples of breach of this agreement which count towards a Consistent Failure for paragraph 2(a)**

Failure to notify of sub-contracting arrangements

Failure to undertake a route risk assessment or have a copy available for inspection

Failure to provide proof of insurance when requested

Failure to use the correct Vehicle (as specified in this agreement or as otherwise agreed)

Issue of an Immediate Prohibition, issued by DVSA or an Authority inspector, whilst performing this agreement

Failure to provide first aid kit or fire extinguisher(s) (where applicable)

Use of a Vehicle without the specified capacity (unless otherwise agreed in advance) - if passengers left behind

Failure to turn off engine when idle after a period of two (2) minutes

Failure to provide a clean and tidy Vehicle

Failure to provide a Driver of smart appearance in accordance with the agreed dress code

Failure of Driver to wear Authority-issued identity badge (where issued)

Failure to comply with the procedure for dealing with unacceptable behaviour in Appendix 7 (Guidelines on Physical Restraint) and Appendix 8 (Standards of Behaviour) to Schedule 1 (General Specification)

No Vehicle to base communication equipment

Failure to operate

Failure to operate to timetable specified in Route Instruction

Failure to inform the Authority of non-operation or late operation

Failure to provide a Driver having a command of the English language sufficient to allow effective communication with passengers, parents, Establishments or Passenger Assistants

Failure to have correct securing equipment for passengers and their wheelchairs

<b>Examples of breach of this agreement which count towards a Consistent Failure for paragraph 2(a)</b>
Failure to provide sufficient seating capacity for passengers
Carriage of unauthorised passengers
Failure to demonstrate evacuation procedure (where applicable)
Failure to display licence plates or discs
Failure to provide an Authority DBS-cleared Driver on unescorted journeys
Failure to supply passenger or journey data, as requested by the Authority
Failure to advise the Authority of Complaints and the responses thereto
Failure to be contactable by telephone
Failure to provide TUPE information
Failure to submit to the Authority an accurate Claim Form (invoice) in a timely manner (within thirty (30) days of end of previous month).

## Schedule 4: Service Levels

### Part 2: Service Credits

The Service Provider shall pay a Service Credit when:

- the Authority notifies the Service Provider of a Remediation Notice, termination notice or following a Consistent Failure, such sum to represent the administrative expense caused to the Authority as a result of preparing and issuing notifications of a Remediation Notice, termination notice or following Consistent Failure; or
- for the Authority's costs of a Vehicle inspection,

each as calculated using the rates set out below (as annually reviewed and as a minimum indexed in accordance with the Consumer Price Index on each anniversary of 1 July 2019) as applied to the number of hours reasonably and properly expended by Authority officers in monitoring, calculating, establishing and notifying to the Service Provider any Remediation Notice, termination notice or Consistent Failure caused by the Service Provider's breaches of this agreement or conducting a Vehicle inspection. Any part hour shall be rounded up to a full hour:

	<b>Hourly rate (£) excluding VAT as at 1 July 2019</b>	<b>Comments</b>
Blended rate for Authority officer job title administrative time	Twenty pounds (£20)	
Blended rate for "Fleet Management Unit" Authority officer job title Vehicle inspection time	Forty pounds (£40)	Rate applies per Authority officer (may be more than one (1) conducting Vehicle inspection)



## **Schedule 5: Charges and Payment**

Details of payment to the Service Provider by the Authority will be set out in the Route Instruction.

### **Appendix 1: Operator Claim Form**

Please see the attached Authority's template Claim Form to be submitted monthly by the Service Provider as its invoice.

**Lancashire County Council  
OPERATOR'S MONTHLY CLAIM FORM**

**Operator's Name & Address:**

**Contract Number:**

**VAT No. (if registered):**

**Month:**  **Year:**

Adult Transport			
Day	Price	No. of days	Basic cost (price x no. of days)
Monday	£		£
Tuesday	£		£
Wednesday	£		£
Thursday	£		£
Friday	£		£
Saturday	£		£
Sunday	£		£
Total Basic Cost			£

Student Transport	
1. Contract Price	£
2. Days (tick relevant days below)	
3. Basic Cost (1) x (2)	£
4. Variation	£
5. Net Claim (3) + (4)	£
6. VAT (if applicable)	£
7. Total Claim (5) + (6)	£

Please identify the journeys that were completed by placing a tick (✓) in the box below. If a journey did not take place, enter the code from the following list:-

A) Passenger did not travel      B) Adverse weather conditions      C) Vehicle breakdown

Date	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	
a.m																																
p.m																																

Date	Variations (explain reason)	Authorised by (transport officer's name)	Miles or price agreed

I certify that the details on this form are accurate and that the amount is correct

Signed.....Date.....

Name of Signatory (please print).....

Total mileage (if applicable)	
Rate per mile (if applicable)	
Total variation claimed	

**For L.C.C use only**

\_\_\_\_\_

\_\_\_\_\_

Satisfactory service received in accordance with claim	
Prices Correct	
Invoice not previously certified	

<b>Return To:-</b> Lancashire County Council Integrated Transport Service Dewhurst Row, Off Lostock Lane
---

Certified for payment	
-----------------------	--

Bamber Bridge, Preston, PR5 6BB
---------------------------------

## Filling in Operator Claim Forms

- Complete the form in black ink

Complete trading name and address

Month you are claiming for

Complete Contract no in clear bold writing

Enter Vat No if applicable

Tick which days you have worked – am and pm

-Complete the Daily contract Price you have been given.  
-number of days worked (totalling ticked entries)  
-variations worked in the month  
- VAT if applicable  
-Gross total

Explain any variations claimed for with dates and prices

**Transport for Pupils with Special Educational Needs**

**OPERATOR'S MONTHLY CLAIM FORM**

Contract Number: \_\_\_\_\_

Month: \_\_\_\_\_

Operator's Name & Address: \_\_\_\_\_

VAT No. (if registered)	_____
Tax Point Date	_____
Your Reference (optional)	_____

1. Contract Price	£
2. Days (tick relevant days below)	
3. Basic Cost (1) x (2)	£
4. Variation	£
5. Net Claim (3) + (4)	£
6. VAT (if applicable)	£
7. Total Claim (5) + (6)	£

Date	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	
a.m.																																
p.m.																																

Date	Variations (explain reason)	Authorised by (Transport Officer's Name)	Miles or price agreed
19/4/12	(ie) respite journey at 5 extra miles	B.D	5

Total Mileage (if applicable)	
Rate per Mile (if applicable)	
Total Variation Claimed (transfer to 4. above)	£

I Certify that the details on this form are accurate and that the amount claimed is correct

Signed ..... Date .....

Name of Signatory (please print).....

Sign and date claim form

**For L.C.C use only**

Satisfactory service received in accordance with claim	
Prices correct	
Invoice not previously certified	
Certified for payment	

INVOICE IDENTIFICATION OR NUMBER

IF NOT ON BATCH HEADER

ORDER No	SOURCE	PERIOD	Y/R
----------	--------	--------	-----

CMT	OBJECTIVE	SUBJECTIVE	£	P	PIC	ITEM	QUANTITY
X	P1U1CA110010	2351101010					
CMT	OBJECTIVE	SUBJECTIVE	£	P	PIC	ITEM	QUANTITY
	OBJECTIVE		£	P			
	VAT11						

**Return to:** Lancashire County Commercial Group  
Transport Division  
Dewhurst Row  
Bamber Bridge  
Preston  
PR5 6BB

All completed form(s) to this address

Do not fill out – for office use

61

## Schedule 6: Contract Management and Authorised Representatives

### Part 1: Contract Management

The Authority's "Integrated Transport Services" team contract management structure for administering and performance monitoring the DPS Agreement and any Contract for Route Instruction has this hierarchy:

- Authorised Officer      Brian Derbyshire  
   Compliance Manager  
   Integrated Transport Services  
   Lancashire County Council  
   Gate 1, Dewhurst Row (off Lostock Lane)  
   Bamber Bridge  
   Lancashire  
   PR5 6BB  
  
   Telephone 01772 538 446  
   brian.derbyshire@lancashire.gov.uk
- Area Manager              Per Area Office
- Contract Manager        Supporting Area Manager

The Authority's "Integrated Transport Services" Area Offices first point of contact for the Service Provider notifying contingency arrangements for any Contract for Route Instructions to Establishments are set out below:

Lancaster & Morecambe	Telephone 01524 425 902
Fylde & Wyre	Telephone 01772 685 504
Burnley, Pendle, Hyndburn, Ribble Valley & Rossendale	Telephone 01282 831 858
Preston & South Ribble	Telephone 01772 705 055
Chorley & West Lancashire	Telephone 01695 587 420

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

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

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

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

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

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

**Schedule 6: Contract Management and Authorised Representatives**

**Part 2: Authorised Representatives**

The Authority's initial Authorised Representative:

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

The Service Provider's initial Authorised Representative is the person whose contact details are as shown in the "Contact Details" box as set out in Part 1 of the standard selection questionnaire (which was submitted by the Service Provider to the Authority leading to selection of the Service Provider by the Authority to be an eligible service provider to join the Authority's DPS for passenger transport services).

## **Schedule 7: Change Control**

### **1. GENERAL PRINCIPLES**

- 1.1 (Subject to the Price variation procedure set out in Clause 10 (Price) and Clause 19 (Change control, benchmarking and continuous improvement)), where the Authority or the Service Provider sees a need to vary this agreement, the Authority may at any time request, and the Service Provider may at any time recommend to the Authority, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 7. For the avoidance of doubt the Authority is not obliged to pursue any Service Provider recommendation for a Change.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Service Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.
- 1.4 Any work undertaken by the Service Provider and the Service Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 7, shall be undertaken entirely at the expense and liability of the Service Provider.

### **2. PROCEDURE**

- 2.1 Discussion between the Authority and the Service Provider concerning a Change requested by the Authority or for a Change recommended by the Service Provider which the Authority agrees to consider as a Change shall result in any one of the following:
- (a) no further action being taken;
  - (b) a request to change this agreement by the Authority; or
  - (c) a recommendation to change this agreement by the Service Provider.
- 2.2 Where an electronic written request for an amendment is received from the Authority, the Service Provider shall, unless otherwise agreed, submit a Change Control Note electronically signed by the Service Provider to the Authority within three (3) Working Days of the date of the request.
- 2.3 A recommendation to amend this agreement by the Service Provider shall be submitted directly as an electronic written request to the Authority in the form of a Change Control Note electronically signed by the Service Provider at the time of such recommendation. The Authority shall give its response electronically in writing to the Change Control Note within three (3) Working Days.
- 2.4 Each Change Control Note shall contain:
- (a) the title of the Change;
  - (b) the originator and date of the request or recommendation for the Change;
  - (c) the reason for the Change;
  - (d) full details of the Change, including any specifications;
  - (e) the price, if any, of the Change;
  - (f) a timetable for implementation, together with any proposals for acceptance of the Change;
  - (g) a schedule of payments if appropriate;



- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
  - (i) the timetable for the provision of the Change;
  - (ii) the personnel to be provided;
  - (iii) the Price;
  - (iv) the Documentation to be provided;
  - (v) the training to be provided;
  - (vi) working arrangements;
  - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Authority and the Service Provider.

2.5 For each Change Control Note submitted by the Service Provider the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
  - (i) request further information;
  - (ii) arrange for the Change Control Note to be electronically signed by or on behalf of the Authority and returned to the Service Provider; or
  - (iii) notify the Service Provider of the rejection of the Change Control Note.

2.6 A Change Control Note electronically signed by both the Authority and by the Service Provider shall constitute an amendment to this agreement.

## Schedule 8: TUPE

### Appendix 1: TUPE drafting

- 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 in the event that services equivalent to the Services:
  - a. continue to be provided by the Authority acting in its own capacity; or
  - b. are to be provided by another service provider following a public procurement exercise, in which case it is accepted that contracts of employment in respect of any employees of the Service Provider shall not transfer to the Authority but may transfer to any new service provider for the services equivalent to the Services.
- 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.
- 3 For the avoidance of doubt, it is expressly agreed that the Service Provider shall use its best endeavours to redeploy any relevant employees of the Service Provider in relation to the provision of the services equivalent to 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 and/or any successor service provider of the services equivalent to the Services 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.
- 4 The Service Provider shall indemnify the Authority and/or any successor service provider of services equivalent to the Services against all costs, claims, liabilities and expenses (including legal expenses) incurred by the Authority and/or any successor provider of services equivalent to the Services in connection with or as a result of:
  - a. any claim or demand by any employee (whether in contract, tort, under statute, pursuant to EU 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 the protected characteristics listed in the Equality Act 2010 or 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 date of expiry or termination of this agreement;
  - b. any failure by the Service Provider to comply with its obligations under Regulation 13 of TUPE, or any award of compensation under Regulation 15 of TUPE (save where such failure arises from the failure of the Authority and any successor provider of services equivalent to the Services to comply with its or their duties under Regulation 13 of TUPE); or
  - 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.
- 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 such Services. The Service Provider shall comply with such request as soon as reasonably practicable and, in any event within twenty-one (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.

- 6 The Service Provider shall enable and assist the Authority along with any future tenderer for the services equivalent to the Services to communicate with and meet the Service Provider's employees and relevant trade unions and/or elected employee representatives.
- 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 paragraphs 5 and 6.
- 8 The Service Provider shall provide by e-mail to the Authority, within ten (10) days of any request, the workforce information set out at Appendix 2 (Employee Liability Information) to this Schedule 8 (TUPE) below and any additional information reasonable required by the Authority, in connection with any re-tender of the Services (or a tender for Services similar to those set out in this agreement) to which TUPE may apply.

## Schedule 8: TUPE

### Appendix 2: Employee Liability Information

The workforce information required is, in relation to the Service Provider's employees used in the provision of the Services, the following:

- Job title
- Work location
- Age
- Gender
- Continuous service date (dd/mm/yy)
- Date employment started with existing employer
- Contractual weekly hours
- Regular overtime hours per week
- Salary (or hourly rate of pay)
- Payment interval
- Bonus payments
- Pay review method
- Frequency of pay reviews
- Agreed pay increases
- Next pay review date
- Any existing or future commitment to training that has a time-off or financial implication
- Car allowance (£ per year)
- Lease or company car details
- Any other allowances paid
- Any other benefits in kind
- Type of pension provision
- Current employer contribution rate
- Private health insurance
- Annual leave entitlement (excluding bank holidays)
- Bank holiday entitlement
- Mobility or flexibility Clause in contract (if appropriate)
- Contract end date (if fixed term contract or temporary contract)
- Maternity or paternity leave
- Sick leave entitlement
- Sick pay entitlement
- Notice
- Any collective agreements
- Employment status (for example, employee, self-employed, agency worker)
- % of working time dedicated to the provision of services under this agreement.

**Schedule 9: Commercially Sensitive Information**

<b>Section</b>	<b>Clause or Schedule</b>	<b>Description</b>	<b>Freedom of Information Act 2000 (FOIA) exemption</b>	<b>Exemption period to be applied</b>
Tender	Service Provider's response to mini-competition Route Instruction	Tender	The documents contain commercially confidential information which if made available under a FOIA request harm the Service Provider's competitive position.	Term
Service delivery plan within the Service Provider's Request to Participate	Schedule 10 (Service Provider's Request to Participate)	Service delivery plan	The documents contain commercially confidential information which if made available under a FOIA request harm the Service Provider's competitive position.	Term

### **Schedule 10: Service Provider's Request to Participate**

(Schedule 10 (Service Provider's Request to Participate) is a separate document to be incorporated by reference from the standard selection questionnaire submitted to the Authority and selected by the Authority to be an eligible service provider to join the Authority's DPS for passenger transport services).

### **Schedule 11: Exit Management**

The Parties agree that this is a finite agreement for a specific set of defined Services and that the agreement will terminate upon completion of the provision of the Services. On this basis, the Parties agree that there is no need to set out exit requirements or prepare an Exit Management Plan.