



LANCASHIRE COUNTY COUNCIL

and

SERVICE PROVIDER

Call-off Terms and Conditions for a
Contract for Service Instruction for the
Provision of Local Bus Services and School Bus Services

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

Ref: PH/CORP/LCC/19/916

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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 Local Bus Services and School Bus Services (the “**Service Provider**”).

Background

- (A) The Services shall include the provision of Local Bus Services and School Bus Services in Lancashire.
- (B) 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 Service Instructions which may be awarded by the Authority following a mini-competition (between eligible service providers appointed to the Authority's Local Bus Services and School Bus Services DPS)). Each Service 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 Service Instruction then the Service Instruction, Tender and these Call-off Terms shall describe the terms and conditions applicable to the Service Provider.
- (C) The Contract for Service 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 Local Bus Services and School Bus Services.
- (D) These Call-off Terms do not contain pricing information. Each Service Instruction shall be awarded to an eligible service provider at the Price set out in its Tender 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.

Accredited Supplier: means a supplier who has been accepted onto the Authority's DPS for Local Bus Services and School Bus Services or otherwise approved by the Authority.

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

AIS: means an Accessibility Information System with audible and visible display units fitted on a PSV to assist passengers, providing bus service and stop information and to provide announcements for next bus stops.

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.

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.

AVL: means automatic vehicle location and is a means for determining the geographic location of a Vehicle and transmitting this information to a point where that data can be used.

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.

Bus Service Operators' Grant: means the relief from fuel duty which the Service Provider can claim for mileage operated on a registered local bus service.

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 Local Bus Services and School Bus 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: means as defined in Clause 22.3 (Indemnities).

Closed Contract: means a Contract for the exclusive transport of Students and/or Passengers.

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 Local Bus Services and School Bus Services.

Commercially Sensitive Information: means (subject to the provisions of the Transport Act 1985) 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).

Consumer Price Index or CPI: means the index published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree, or such adjustments to the index as the Parties may agree (in each case with the intention of putting the Parties in no better nor worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure.

Contract: means these Call-off Terms 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 Tender response to any Service Instruction mini-competition for Services applicable to each Service Instruction awarded under the DPS.

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.

De Minimis Contract: means an agreement to implement what is commonly known as the de minimis rules/exceptions as defined by The Service Subsidy Agreements (Tendering) (England) (Amendment) Regulations 2004 (SI 2004/609) made under the Transport Act 1985 (as amended by the Transport Act 2000).

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

DERV: means diesel oil used in buses with diesel engines (diesel engine road vehicle).

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 Local Bus Services and School Bus Services (following the Service Provider's submission of the standard selection questionnaire submitted to the Authority).

Driver: means Vehicle driver.

Driver's Handbook: means the Authority's guidance to Drivers for operating the Services set out at Appendix 7 (Driver's Handbook) to Schedule 1 (General Specification).

Electronic Ticket Machine: means an electronic device designed to allow the issue of tickets and the recording of Passengers, revenue, tickets issued and tickets and travel passes accepted on an individual journey and the transfer of this data to a computer.

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 Best 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 Service Instruction mini-competition or direct award.

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

Initial Term: means the period commencing on the date specified in the Service Instruction 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.

ITSO: means ITSO Limited, a company registered in England and Wales with company number 04115311 whose registered office address is at Aurora House, Deltic Avenue, Milton Keynes MK13 8LW (previously Integrated Transport Smartcard Organisation), the UK government-backed organisation which defines and develops the UK-wide technical specification for smart ticketing in the UK.

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 PSV Operator's Licence, a community bus permit, a small bus permit, a large bus permit or any other licence or permit required by law in order to provide the Services in accordance with this agreement.

Local Bus Contract: means a Service registered as a Local Bus Service.

Local Bus Service: means a bus transport service, using one (1) or more PSVs, for the carriage of Passengers at separate fares over a given route.

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.

Lost Mileage: means as defined in paragraph 5.1 of Schedule 5 (Charges and Payment).

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.

Minimum Cost Contract means a Local Bus Contract where the Service Provider returns all fares revenue to the Authority.

Minimum Subsidy Contract: means a Local Bus Contract where the Service Provider keeps all fare revenue.

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 Services.

NoWcard: means the joint project between the Authority, Cumbria County Council, Blackburn with Darwen Borough Council and Blackpool Borough Council managed in conjunction with such local authorities which are statutorily responsible for the provision of concessionary travel.

Operating Days: means the days when a Local Bus Service or School Bus Service operates as set out in the Service Instruction.

Operators Invoice: means the Authority's Passenger Transport Services team's "Operators Invoice", provided to the Authority by the Service Provider on a period basis in order to invoice the Authority for payment of the Price for various Contracts for Service Instruction, in substantially the form attached at Appendix 1 (Operators Invoice) to Schedule 5 (Charges and Payment).

Operator's Licence: means an operator's licence granted by the Traffic Commissioner.

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

Passenger: means the service users (including Students) of the Authority's Local Bus Services and School Bus Services.

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

Payment Operating Days: means days where payments due to the Service Provider in respect of the School Bus Contract shall not be varied in respect of any adjustment of the number of schooldays operated within the range of one hundred and eighty-two (182) to two hundred (200) days per annum (for School Bus Contracts serving schools) or one hundred and seventy-two (172) to one hundred and ninety (190) days per annum (for School Bus Contracts serving colleges) unless the School Bus Contract is terminated in accordance with Clause 30 (Termination for breach) and Clause 31 (Termination on notice) and where details of the schooldays shall be supplied by the Authority provided that within these schooldays ranges the School Bus Service may be withdrawn on up to six (6) days (to be advised by the Authority and the afternoon journey (where this is operated) may be required to operate up to four (4) hours earlier on up to six (6) days per annum, that the Service Provider shall receive seven (7) days' advance notice of cancelled or amended operation and further provided that if the number of days operated is less than one hundred and eighty-two (182) days or more than two hundred days (for School Bus Contracts serving schools) or less than one hundred and seventy-two (172) days or more than one hundred and ninety (190) days per annum (for School Bus Contracts serving colleges) the payments made by the Authority in respect of the School Bus Contract shall be adjusted: the adjustment shall only be made on the termination or expiry of the School Bus Contract and if the total days operated fall outside of the range 182/200 x years of operation (for School Bus Contracts serving schools) or 172/190 x years of operation (for School Bus Contracts serving colleges) where the price base for calculating any change to payments shall be the weighted annual average price during the period of the School Bus Contract whereby any change to payments due shall be

calculated as follows: total Price divided by 190 (for School Bus Contracts serving schools) or 180 (for School Bus Contracts serving colleges) days x years of operation x total days operated/payments made.

Payment Period or Period: means a four (4) week accounting period.

PCV: means a passenger-carrying vehicle.

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 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.

Policies: shall mean the Authority's corporate policies listed in Schedule 3 (Policies), as amended from time to time.

Price: means the sum specified in (or calculated by reference to) the Tender or such variation of such sums as may be provided for or agreed in accordance with these Call-off Terms.

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; and
- (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.

PSV: means a public service vehicle.

PSV Regulations: means regulations issued from time to time pursuant to the Public Passenger Vehicles Act 1981 or similar legislation relating to PSVs.

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

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.

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).

RTPI: means a Real Time Passenger Information system where information is made available to service providers or customers about the current status of vehicles, including approximate locations and predictive arrival times.

School Bus Contract: means a Service delivered as a School Bus Service.

School Bus Service: means a bus transport service, using one (1) or more PSVs, for the carriage of Students at specific fares over a given home to school route.

Service Credits: means the sums attributable to a Service Failure as specified in Part 2 (Service Credits) of Schedule 4 (Service Levels) (but shall not include sums for Lost Mileage).

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

Service Instruction: means (that for all eligible service providers appointed to the Authority's DPS for Local Bus Services and School Bus Services and invited to tender by the Authority) the Authority's bus service instruction specification and request for a Tender which shall be issued by the Authority according to the procedure set out in such DPS as a Service Instruction Form A, B or C (as the case may be) based on the template forms set out in Schedule 4 (Service Instruction Form) of the DPS Agreement.

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

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 Local Bus Services and School Bus 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).

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

ST11 Tenders for the Provision of School Transport Services or ST11 Passes: means the transport of Students by purchasing groups of seats on commercial bus services (as a Contract for the provision of seats on a local bus service or train service available to the general public and not otherwise operating under contract to the Authority).

ST12 Quotes for the Provision of Individual Student Travelpasses on Commercial Bus Services or ST12 Passes: means the transport of Students by purchasing individual seats on commercial bus services (as a Contract for the provision of seats on a local bus service or train service available to the general public and not otherwise operating under contract to the Authority).

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 Service Instruction.

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

- (a) any extensions to a Contract for Service Instruction which are agreed pursuant to Clause 2 (Term and extending the Term); or
- (b) the earlier termination of a Contract for Service 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 Operators Invoice) where the Service Provider has also issued a notice requesting payment after thirty (30) days from the date of the Operators Invoice 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 properly invoiced and undisputed 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.

Vehicle: means a PCV, PSV, vehicle operating under a permit, ferry or any other vehicle as detailed in this agreement, its Specification or subsequent variation, being used by the Service Provider in the performance of this agreement.

Waybill: means an auditable document completed on bus, and used alongside manual ticket machines or written ticket systems, showing tickets issued, revenue taken and passes accepted for each single journey.

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 e-mail 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 Service Instruction to implement a Service Instruction.

2 Term and extending the Initial Term

- 2.1 The Contract for Service Instruction shall take effect on the date specified in the Service Instruction and shall continue for the Term.

- 2.2 The Authority may extend the Contract for Service Instruction beyond the Initial Term by a further period or periods up to a maximum of eight (8) years (including the Initial Term) (the "**Extension Period**") where mutually acceptable to the Service Provider and on the same terms and conditions. If the Authority wishes to extend the Contract for Service 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 and the Service Provider agrees to the Extension Period 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 Service Instruction beyond the Initial Term the Contract for Service 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 Services 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 The Service Provider shall ensure that any Local Bus Service that is required to fulfil a Contract for Service Instruction is correctly registered at all times. Should any Local Bus Service not be properly registered the Authority may terminate the Contract for Service Instruction in accordance with Clause 30.1.1.
- 3.7 The Vehicles and Drivers shall normally be licensed in accordance with PSV regulations. In circumstances where the Contract for Service Instruction could be undertaken legally outside these licensing regulations, such licences 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 an Operator's Licence, the Driver should hold a full Category D or D1 driving licence and shall also carry their Driver's Qualification Card (DQC) whilst driving on a PCV Vehicle in provision of the Services.

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 of the Services; 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 Subject to Clause 7 (Service standards), 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 date specified in the Service Instruction 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:

- 5.2.1 serve the Service Provider with a notice in writing setting out the details of the Service Provider's default (a "**Default Notice**"); and
- 5.2.2 request that the Service Provider attends a meeting (at its own cost) with the Authority at a location and time to be notified by the Authority to the Service Provider as soon as reasonably practicable following issue of the Default Notice (but on reasonable prior notice) to discuss the Default Notice and identify a rectification plan to prevent or minimise the risk of the Service Provider committing the same breach or a similar breach of Clause 5.1 (and failure by the Service Provider to attend such a meeting or to provide a rectification plan or failure to implement a rectification plan as agreed with the Authority shall be an irremediable material breach allowing the Authority to terminate the relevant Contract for Service Instruction(s) in accordance with Clause 30.1.1 (Termination for breach).
- 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.
- 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 Service 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 shall 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 shall 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 4.3 (Service Provider's warranty and due diligence) and 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 shall 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 Policies (including, when on any premises of the Authority or on any other premises where it works alongside the Authority's staff, any racial discrimination and equal opportunities policies, rules, procedures and the quality standards of the Authority as amended from time to time);
- 7.1.3 in accordance with all Applicable Laws 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 Local Bus Services and School Bus Services);
- 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 Passengers) and provide the Services in a manner which is calculated to minimise such risks;
- 7.1.14 notwithstanding the contents of the Specification and the Policies, 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 at all times and its own expense during the period of this agreement provide and maintain sufficient machinery, Vehicles, equipment, materials and consumables as are required for the proper and efficient performance of the Services.
- 7.3 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 shall 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.
- 7.4 The Service Provider shall ensure that all Vehicles and all other equipment used by the Service Provider during the provision of the Services complies with the latest relevant British Standard, European Standard or Directive or other appropriate specification.
- 7.5 The Service Provider shall, at its own expense, put, keep and maintain all machinery, Vehicles and equipment in proper repair and condition, in order that it shall perform the Services throughout the life of this agreement and comply with all Applicable Laws. On request, the Service Provider shall provide details of arrangements made for maintenance of all such machinery and equipment, together with a schedule of maintenance completed to the date of request.
- 7.6 The Service Provider shall ensure that all Vehicles used in the provision of the Services:
 - 7.6.1 are clean and are maintained in such a serviceable condition that they present a professional image to the public;
 - 7.6.2 have either a current MoT certificate, or the equivalent certificate for PSVs; and
 - 7.6.3 clearly display the name and address of the Service Provider.
- 7.7 The Service Provider shall keep all records of the maintenance of any Vehicle(s) being used in the operation of the Services during the terms of this agreement and for seven (7) years thereafter. Such records, the maintenance facilities and Vehicles shall be made available for inspection by the Authority in accordance with the provisions of Clause 28 (Audit).
- 7.8 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):

- 7.8.1 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
- 7.8.2 not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.
- 7.9
- 7.9.1 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 Passengers, Personnel or others or is derived from threatened species or environments.
- 7.9.2 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.
- 7.9.3 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.
- 7.9.4 The Service Provider shall provide on request evidence of practices and procedures as they relate to the protection of the environment.
- 7.9.5 The Service Provider at all times during delivery of the Services shall use its best endeavours to minimise any negative impact upon 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 Personnel 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 person 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 Service Instruction awarded to the Service Provider, and thereafter at such times as the Authority may require.
- 8.5 Where the Authority considers that the Service Provider's health and safety policy is deficient the Authorised Officer may notify the Service Provider of the reasonable revisions required and the Service Provider shall as soon as reasonably practicable revise the policy in accordance with such reasonable revisions and send a copy of such revised policy to the Authority.
- 8.6 For each Contract for Service Instruction the Service Provider shall carry out a risk assessment of the route for any Service Instruction annually and prior to any variations to any route for any Service Instruction, including at bus stops (both formal and informal), 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 Service

Instruction, and shall report any concerns to the Authority prior to commencement of the Service, Contract for Service Instruction or route variation.

- 8.7 For urgent and short term Service Instructions, the Service Provider should carry out and maintain a risk assessment of the route of the Service Instruction and any variations as soon as practicable but not later than one (1) week after the commencement of the Service Instruction. The Service Provider shall report any concerns to the Authority within one (1) week of the start of the Contract for Service Instruction or not later than one (1) week following any route variation.
- 8.8 For each Contract for Service Instruction, should any factor arise following the date of commencement of the Services set out in the Service Instruction 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 shall consider this information and the Service Provider shall not compromise the health and safety of its Passengers or employees.
- 8.9 In the event of concerns arising regarding the safe operation of this agreement, (including allegations made against the Driver and/or any 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.
- 8.10 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.
- 8.11 The Service Provider shall keep records of Service 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 shall comply and co-operate 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 from the date of commencement of the Services set out in the Service Instruction (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 Details of payment to the Service Provider by the Authority shall be as set out in Clause 11 (Payment) except where amended by the Service Instruction.

- 10.2 Subject to Clauses 10.3, 10.4, 10.5 and 10.6, the Price submitted by the Service Provider shall for each Service Instruction remain fixed for the Service Provider's period of operation for such Service Instruction.
- 10.3 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.
- 10.4 Where the Initial Term has been extended by an Extension Period a Price increase shall not be given for the remaining Term unless agreed at the point of extending the Term.
- 10.5 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.
- 10.6 The Authority shall review the Price payable for Services under any Contract for Service Instruction as follows:
- 10.6.1 for any "total price" Contract for Service Instruction let as Minimum Cost Contracts, Minimum Subsidy Contracts or ST11 Passes Contracts, where all elements comprising the Price are combined into a single figure, then the Price detailed within the Pricing Schedule shall:
- 10.6.1.1 be reviewed by 1 January each Year;
- 10.6.1.2 be amended by reference to the percentage change since the published previous summer figures of the Confederation of Passenger Transport UK (CPT) Cost Index provided that any potential increase or decrease in the Price may be limited to the percentage change in CPI over the period since the last scheduled Price review and which shall in any event require the Authority's prior written consent (not to be unreasonably withheld or delayed);
- 10.6.1.3 where amended, be notified in writing to the Service Provider by the Authority on or before 1 March in a Year; and
- 10.6.1.4 apply from the four (4) week Payment Period containing 1 April;
- 10.6.2 for any "total price" Contract for Service Instruction for ST12 Passes the Authority and the Service Provider shall use all reasonable endeavours to negotiate a Price review, in line with commercial fare rates, and agree a Price adjustment at intervals of no less than twelve (12) months measured from the date of commencement of the Services as set out in the Service Instruction;
- 10.6.3 for any "split price" Contract for Service Instruction let as Minimum Cost Contract, Minimum Subsidy Contract or ST11 Passes, where the fuel element and all other elements comprising the Price are indicated separately, then the Price detailed within the Pricing Schedule shall:
- 10.6.3.1 for the fuel element of the Price, be reviewed each four (4) week Payment Period and amended by reference to the unleaded diesel price (excluding VAT) set out at the following UK government's weekly road fuel prices website or, failing such publication such other data source as the Authority and Service Provider may agree, or such other adjustments to the diesel fuel price as the Authority and Service Provider may agree (in each case with the intention of putting the Authority and Service Provider in no better no worse position than they would have been had the website data not ceased to be published) or, in the event that no such agreement is reached, as may be determined in accordance with Clause 20 (Dispute resolution and assistance in legal proceedings):
- <https://www.gov.uk/government/statistical-data-sets/oil-and-petroleum-products-weekly-statistics>
- 10.6.3.2 for all other elements of the Price, be reviewed in accordance with Clause 10.6.1;

- 10.6.4 for any Contract for Service Instruction let as Minimum Subsidy Contracts, Price reviews, applicable where the Authority amends the Specification's schedule of fares and charges, shall also be permitted and the net Price of the Contract for Service Instruction shall be adjusted in accordance with the fare increase (in accordance with paragraph 2.5 of Schedule 5 (Charges and Payment)); and
- 10.6.5 for any Contract for Service Instruction let as De Minimis Contracts, Price reviews shall not be permitted (in accordance with paragraph 3 of Schedule 5 (Charges and Payment)).
- 10.7 Where a Local Bus Contract has been awarded on a Minimum Cost Contract, the Authority shall, without prejudice to Clauses 11.1 to 11.4 (Payment), pay to the Service Provider this agreement Price for each Operating Day, less the revenues accruing from Passenger fares, season tickets, concessionary travel schemes and any other source. The Authority may offset any surplus of revenue over costs in any one period against the deficit incurred during the remainder of the Authority's financial year.
- 10.8 For any Contract for Service Instruction other than a Local Bus Contract awarded on a Minimum Cost Contract, the Authority shall, without prejudice to Clauses 11.1 to 11.4 (Payment), pay to the Service Provider the Price for each Operating Day.
- 10.9 Payment for any Contract for Service Instruction let as an ST11 Passes or ST12 Passes bus service shall be on the basis of a price per Student per day. If a price per day rather than a price per Student was submitted then the tendered daily price divided by the minimum seating capacity required shall be used to calculate a price per Student per day. The Authority shall make payment for the Contract for Service Instruction based on the number of students allocated to the Contract for Service Instruction on the 24th of each month. For July the last day of term shall be used if this is before the 24 July.

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 (subject to the satisfactory provision of the Services and to the other provisions of any Contract for Service Instruction which provide to the contrary) pay the Price (as specified in the Contract for Service Instruction and as set out in the Tender, as is adjusted in accordance with Clause 10 (Price)) to the Service Provider in accordance with any provisions set out in this Clause 11.
- 11.2 The Authority shall 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.
- 11.3 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 Service Provider's Operators Invoice. Failure to agree the Price in advance shall mean the Service Provider's claim is in dispute and shall require further investigation.
- 11.4 The Authority shall make payment of the Price to the Service Provider in arrears on a four (4) week Payment Period basis or other period agreed with the Service Provider where the Operators Invoice is correctly completed containing all of the information specified by the Authority in accordance with Clause 11.7. Notwithstanding payments to be made following termination of the Contract for Service Instruction for any School Bus Service then any and all deposits or pre-payments made by the Authority to the Service Provider shall be repaid to the Authority within ten (10) Working Days of termination.
- 11.5 The Payment Periods shall be based on four (4) week periods irrespective of when during the four (4) week period the contracted Services commenced. Operators Invoices must be submitted within thirty (30) days of the end of a Payment Period. Operators Invoices received more than thirty (30) days after the end of the Payment Period shall be deemed to be in dispute.
- 11.6 The Authority shall make payment either:
- 11.6.1 following receipt by e-mail (unless otherwise agreed) directed to the Authority's Representative at busservices@lancashire.gov.uk of the Service Provider's Operators Invoice (in the form based on the template shown in Appendix 1 (Operators Invoice) 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 Operators Invoice have been

carried out and any such invoice shall take into account any Service Credits and Lost Mileage which have been accrued in the previous calendar month(s); or

- 11.6.2 (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 and/or Lost Mileage that have been notified to the Service Provider.
- 11.7 The Operators Invoice shall be accompanied by supporting information as set out below to justify payment of the Service Provider's invoice including:
- 11.7.1 the revenue and payment details referred to in Schedule 5 (Charges and Payment) for Minimum Cost Contract, Minimum Subsidy Contract or De Minimis Contract bus service Contracts for Service Instruction;
- 11.7.2 any calculation of Lost Mileage in accordance with paragraph 5 of Schedule 5 (Charges and Payment);
- 11.7.3 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 (which records 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);
- 11.7.4 failures in the achievement of the Service Levels specified in the Contract for Service Instruction during that four (4) week period;
- 11.7.5 those journeys that did not operate in accordance with the Specification (which shall include where Electronic Ticket Machines and/or smartcard equipment failed or was not used);
- 11.7.6 the revenue and Passenger data for the relevant four (4) week period;
- 11.7.7 numbers of Passengers exempted from paying by reason of the possession of a valid permit; and
- 11.7.8 such other reasonable information as the Authority may from time to time specify.
- 11.8 Any invoices for payment submitted by the Service Provider shall be considered and verified by the Authority in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed.
- 11.9 Subject to Clause 11.6.2, the Authority shall pay within thirty (30) days of receipt of an undisputed invoice from the Service Provider.
- 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 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.
- 11.14 If the Service Provider fails to pay any invoice within a period of thirty (30) days from the date of the issue of such invoice, the Authority shall be entitled to deduct such monies from any sum then due, or which at any time thereafter may become due, or which at any time thereafter may become due to the Service Provider under this agreement or under any other agreement with the Authority.
- 11.15 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.

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 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 Price.
- 12.3 Where the Authority issues a Default Notice, 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 shall be subject to annual review by the Authority to be effective from 1 January each year and Part 2 (Service Credits) of Schedule 4 (Service Levels) may be revised accordingly.
- 12.4 The Authority shall 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 shall 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 The Authority reserves the right to advise the Traffic Commissioner of any material or continuing breach perpetrated by the Service Provider or its Personnel.
- 12.7 Any journeys operating more than one (1) minute early or more than five (5) minutes late, without good cause, shall be deemed by the Authority as not to have operated to timetable.
- 12.8 If due to any cause the Service Provider is unable to operate any part of this agreement, or a contracted journey shall operate more than fifteen (15) minutes late, or outside of the agreed pick up/drop off times, the Service Provider must immediately inform by telephone all Establishments (including Authority schools, colleges and Authority social services establishments) served by the journeys and the Authority's Public Transport Team concerned. Details of and reasons for any journeys not operated should be submitted with the Service Provider's invoice. Where the Service Provider is unable to operate or is more than fifteen (15) minutes late then the Authority shall deduct from an Operators Invoice or set off a sum equal to the Lost Mileage.

- 12.9 The Service Provider shall make every reasonable effort to operate the Services in severe adverse conditions of snow, ice or flood, or any other extraordinary circumstances. In the event of adverse weather the Service Provider should check the Authority's school closure website. If the Service Provider assesses that it is not safe or practicable to operate the Services due to adverse weather conditions or other circumstances beyond the control of the Service Provider, it shall inform the Authority at the earliest opportunity. If the school closes the Authority shall pay the full Price for a period of up to one (1) week. Where Service Providers decide themselves not to operate the Authority shall reserve the right to negotiate a reduced payment dependent on the reasons given for non-operation. Details of and reasons for any journeys not operated must be submitted with the Service Provider's invoice.
- 12.10 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):
- 12.10.1 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
- 12.10.2 in the event of Vehicle breakdown, staff shortage or other emergency preventing use of its own Vehicle, Personnel or other resources:
- 12.10.2.1 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 Operators Invoice. Sub-contracting shall otherwise be prohibited, except as outlined in Clause 21.1 (Sub-contracting and assignment); and
- 12.10.2.2 if the Service Provider is unable to make alternative arrangements satisfactory to the Authority to fulfil its obligations under this agreement then the Authority shall 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.
- 12.11 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 Service 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:
- 12.11.1 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; and/or
- 12.11.2 in its absolute discretion and in accordance with the terms of the DPS Agreement, not include the Service Provider as an eligible service provider to be invited to bid for any future Service 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 Service Instructions.
- 12.12 For the avoidance of doubt, the arrangements made by the Authority pursuant to Clause 12.11.1 may include:
- 12.12.1 arranging for the provision of appropriate management or supervisory staff to enable the provision of the Services; or
- 12.12.2 the provision of adequate equipment, materials and consumables to be used in the performance of the Services.
- 12.13 In the event that the Authority provides any of the items referred to in Clause 12.12.1 or Clause 12.12.2, 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.

12.14 In the circumstances described in Clause 12.12.2, the Authority may use all or any part of the Service Provider's equipment that was allocated for the performance of the Services.

12.15 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.

12.16 The Authority reserves the right to advise the Traffic Commissioner (in respect of PSV 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 Working Days 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. 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 Personnel 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 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 shall 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 Authority who shall inform 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 Passengers, 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 Passengers.

15.7 The Authority shall provide the Service Provider in accordance with Appendix 3 (Safeguarding and Contract Compliance) of Schedule 1 (General Specification) with details of the Authority's safeguarding policy document dated August 2019 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 shall apply in relation to the provision of the Services under any Contract for Service Instruction. However, where a Relevant Transfer does apply the Parties agree that the provisions of Part 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 ten (10) Working 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 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 Service Instruction involves transport to any educational Establishment, customers, Passengers 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 Service 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 five (5) Working 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 on presentation of an appropriate authority to travel.

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;

19.2.3 fares (to be charged) (where appropriate); or

19.2.4 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 if the route and/or timetable needs amending for any of the following reasons:
- 19.9.3.1 due to a change in opening hours of any destination Passengers are travelling to/from;
- 19.9.3.2 to ensure punctuality and reliability are maintained;
- 19.9.3.3 to provide transport for the same purpose in the same geographical area; or
- 19.9.3.4 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 Service 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 twelve (12) 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 shall 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 Service Instruction timetable, route, Vehicle capacity and any school transport obligations are as known at the time of Tender submission. 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 Service Instruction shall need to flex in line with these changing requirements, although the overall intention of the agreement cannot be altered. Each operational change shall be agreed between the Authority and Service Provider, but any variation in Price must be in line with the original Contract for Service 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 [] 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; or
- 20.9.3 arising out of the provision of the Services and/or the Service Provider's presence on a bus route.

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:

21.1.1 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;

21.1.2 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;

21.1.3 the Service Provider shall not sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority;

21.1.4 in particular if the Service Provider wishes to enter into a factoring arrangement with a factoring company then before payment of any more invoices the Service Provider shall first request prior written consent from the Authority pursuant to clause 21.1 and provide the Authority with:

21.1.4.1 a copy of the factoring agreement proposed to be entered into between the Service Provider and the factoring company;

21.1.4.2 confirmation of the dates from when invoices should be paid to the factoring company; and

21.1.4.3 confirmation of the detail which is required to be submitted on the factored invoices; and

21.1.5 where the Service Provider wishes to novate any Contract for Service Instruction to another service provider which is also appointed to the Authority's DPS for Local Bus Services and School Bus 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 January 2020 and then notified as soon as reasonably practicable to all service providers appointed to the Authority's DPS for Local Bus Services and School Bus 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 Service 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 Service Instruction Price, before making a decision on the Service Provider's request.

21.5 Any Sub-Contractor used on this agreement or any Service Instruction must be an Authority Accredited Supplier unless otherwise agreed.

22 Indemnities

22.1 Subject to Clause 22.5, the Service Provider shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of or in connection with:

22.1.1 the Service Provider's breach or negligent performance or non-performance of this agreement;

22.1.2 any claim made against the Authority arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Service Provider or Service Provider Personnel; and/or

22.1.3 the enforcement of this agreement.

22.2 Subject to Clause 22.5, the Service Provider shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with any claim made against the Authority by a third party for death, personal injury or damage to property arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Service Provider, its employees, agents or Sub-Contractors.

22.3 Liability under the indemnity at Clause 22.2 is conditional on the Authority discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Authority which may reasonably be considered likely to give rise to a liability under this indemnity (a "**Claim**"), the Authority shall:

22.3.1 as soon as reasonably practicable, give written notice of the Claim to the Service Provider specifying the nature of the Claim in reasonable detail;

22.3.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Service Provider (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Authority may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Service Provider but without obtaining the Service Provider's consent) if the Authority reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;

22.3.3 give the Service Provider and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Authority so as to enable the Service Provider and its professional advisers to examine them and to take copies (at the Service Provider's expense) for the purpose of assessing the Claim; and

22.3.4 subject to the Service Provider providing security to the Authority to the Authority's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Service Provider may reasonably request to avoid, dispute, compromise or defend the Claim.

22.4 If a payment due from the Service Provider under this Clause 22 is subject to tax (whether by way of direct assessment or withholding at its source), the Authority shall be entitled to receive from the Service Provider such amounts as shall ensure that the net receipt, after tax, to the Authority in respect of the payment is the same as it would have been were the payment not subject to tax.

22.5 The indemnities provided under Clause 22.1 and Clause 22.2 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Authority are directly caused (or directly arise) from the negligence or breach of this agreement by the Authority or its Authorised Representative.

22.6 Nothing in this Clause 22 shall restrict or limit the Authority's general obligation at law to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under this Clause 22.

23 Limitation of liability

23.1 Subject to Clause 22.2 (Indemnities) and 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 hundred per cent (100%) of the Price paid under or pursuant to the Contract for Service Instruction.

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 22.2 (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:

23.4.3.1 for insured losses: any liability in respect of amounts that the Service Provider is (or should be but for a breach by the Service Provider of Clause 24 (Insurance)) able to recover under the Required Insurances that the Service Provider is required to maintain in accordance with Clause 24 (Insurance) of this agreement but, for the avoidance of doubt, only to the extent such liability is below the maximum amount of cover specified for the relevant Required Insurance policy; and

23.4.3.2 (subject to Clause 23.4.3.1 for insured losses) for uninsured losses: one million pounds (£1,000,000) (indexed by the Consumer Price Index on each anniversary of 1 January 2020) in the aggregate 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 Applicable Laws 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 Passengers. The Authority shall investigate complaints of damage to the Service Provider's Vehicle by Passengers and shall 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).

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

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 shall:
- 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 Authorised 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 Personnel 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 Personnel in or in connection with the provision of the Service under this agreement concerning Passengers, 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 Passengers, 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 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 Passengers;
 - 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 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 or set it off against any other Contract for Service Instruction held by the Service Provider or recover it as a debt; 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 Passenger and revenue data including ticket machine data and off-bus tickets sales;
- 28.10.5 health and safety documents;
- 28.10.6 complaint and suggestion records;
- 28.10.7 Service 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 Operator's 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 shall be considered as a breach counting towards a Consistent Failure for the purposes of Clause 30.1.4 (Termination for breach).
- 28.12 For any Contract for Service Instruction awarded for a Local Bus Service running five (5) days a week or more and having a contract period of more than a year, the Service Provider, if they do not already have a punctuality improvement partnership with the Authority, shall sign such an agreement within two (2) months of the start of this agreement.

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 a Contract for Service Instruction 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 the Contract for Service Instruction 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 the Contract for Service Instruction 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; and

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 Passengers or the general public has been endangered such breach shall be regarded as an irremediable material breach of the Contract for Service Instruction and if the Authority considers such a breach may affect the Service Provider's ability or suitability to perform other Authority Contract for Service Instruction then it reserves the right to terminate some or all of those Contracts for Service Instruction according to their terms; and

30.1.1.3 where the Authority has specified in the Contract for Service Instruction 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 the Contract for Service Instruction in breach of the terms of the Contract for Service Instruction;

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 the Contract for Service Instruction and/or the relevant Contract for Service Instruction and to the entire satisfaction of the Authority; or
- 30.1.10 the Service Provider has, at the time of joining the Authority's DPS for Local Bus Services and School Bus Services or award of any Contract for Service 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; or
- 30.1.11 the Service Provider does not have a valid registration for a Local Bus Service or School Bus Service required to fulfil the terms of this agreement and/or the relevant Contract for Service Instruction.
- 30.2 The Authority may terminate a Contract for Service Instruction in accordance with the provisions of Clause 33 (Prevention of bribery and modern slavery).
- 30.3 The Service Provider may terminate a Contract for Service Instruction 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 Clause 31.7, the Authority may terminate a Contract for Service Instruction at any time by giving not less than twelve (12) weeks' written notice to the Service Provider.
- 31.2 Not Used.
- 31.3 Subject to Clause 31.7, the Service Provider may terminate a Contract for Service Instruction at any time by giving not less than twenty-four (24) weeks' written notice to the Authority.
- 31.4 A Contract for Service Instruction shall terminate at any time by mutual consent.
- 31.5 The Authority may terminate a Contract for Service Instruction following a Force Majeure Event in accordance with the provisions of Clause 32 (Force majeure).
- 31.6 The Authority may terminate a Contract for Service Instruction if:
 - 31.6.1 the Contract for Service Instruction 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 the Contract for Service Instruction 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 Service Instruction for Services in accordance with the termination period stated on the Specification for such Service 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 Service Instruction within two (2) years of the Contract for Service Instruction start, the Authority shall not accept any bid from the Service Provider for any replacement Service Instruction (being the same as or substantially similar to the terminated Service Instruction) which the Authority tenders within six (6) months unless the Authority gives prior approval.

31.8 Not Used.

31.9 Where the Authority makes a payment to the Service Provider in lieu of notice following termination of a Contract for Service Instruction the Service Provider's Driver and Vehicle shall remain available to the Authority for the duration of the notice period should a similar Service Instruction be required by the Authority to be fulfilled by the Service Provider.

32 Force majeure, local incidents and major incident

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.

32.8 If a local emergency or major incident is declared by the Authority, the Authority may ask the Service Provider to make available the Vehicles(s) and Driver(s) required for the Contract for Service Instruction to the Authority and if necessary cease operation of the Services specified by the Contract for Service

Instruction. If so requested, the Vehicle(s) and Driver(s) shall operate as directed by the Lancashire County Council Tactical Emergency Co-ordinator or nominated officer for the duration of the incident or emergency. All reasonable additional costs properly incurred by the Service Provider shall be met by the Authority. The Service Provider shall supply the Authority with a telephone number and name of the person to be contacted in an emergency out of office hours.

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; and
- 33.2.2 within ten (10) Working Days of the date of commencement of the Services as set out in the Service Instruction, 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 shall 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 shall 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 shall confirm in writing that it has complied with its undertakings under Clause 33.11 and shall 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 shall 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 [] (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 twenty-four (24) 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 shall prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms shall 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 Cumulative 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 shall 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 Local Bus Services and School Bus 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 Public Transport Manager and by e-mail to busservices@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 Except in the case of an ST11 Passes or an ST12 Passes type of Contract for Service Instruction, 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 and RTPI/AVL Guidelines
 - Part 1 – CCTV Guidelines
 - Part 2 – RTPI/AVL Guidelines
- Appendix 2: Health and Safety Guidelines
- Appendix 3: Safeguarding and Contract Compliance
- Appendix 4: Standard Conditions of Carriage
- Appendix 5: Information concerning Disclosure and Barring Service (DBS) checks
- Appendix 6: Information concerning recruitment and employment records
- Appendix 7: Driver's Handbook

(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 Service 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 Service Instructions for all Categories as described by Specification	Compliance with Specification	One hundred per cent (100%)
Services delivered by Service 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 Service 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)

Operational

Failure to operate

Failure to operate in accordance with the Service Instruction

Failure to be contactable by telephone during the Working Day

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

Driver

Failure to provide a Driver of smart appearance

Failure of Driver to carry a Driver Qualification Card (DQC)

Failure to provide an Authority DBS-cleared Driver (where specified)

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

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

Vehicle

Failure to have the correct Operator's Licence on display

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

Failure to provide a clean and tidy Vehicle

Use of a Vehicle without the specified capacity (unless otherwise agreed in advance)

Use of a Vehicle without a functional CCTV system in place (where specified)

Failure to turn off engine when idle after a period of one (1) minute

Compliance

Failure to provide proof of Required Insurances when requested

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

Failure to notify of Sub-Contractor arrangements

Failure to advise the Authority of complaints and the responses thereto

Failure to submit to the Authority an accurate Operators Invoice in a timely manner (within thirty (30) days of end of previous four (4) week Payment Period).

Failure to supply Passenger or journey data, as requested by the Authority

Failure to declare Lost Mileage on the Operators Invoice

Failure to provide TUPE information.

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 Default Notice (and any accompanying meeting with the Authority), 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 Default Notice (including any accompanying meeting with the Authority), 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 January 2020) 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:

	Hourly rate (£) excluding VAT as at 1 January 2020	Comments
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

Specific terms applying to the calculation of the Price for Minimum Cost Contract, Minimum Subsidy Contract, De Minimis Contract and ST11 Passes and ST12 Passes types of Contracts for Service Instruction are set out below.

Specific terms applying to the calculation of Lost Mileage are set out below.

1. Minimum Cost Contract

- 1.1. **Revenue** – Full details of all revenue received shall be notified to the Authority on the Operators Invoice and deducted from the payment.
- 1.2. Should a Contract for Service Instruction be awarded as part of or within a commercial route, revenue shall be allocated on the following basis:
 - 1.2.1.any Passenger boarding the bus on the commercial section of the route should have their fare allocated to the commercial revenue regardless of where they disembark; and
 - 1.2.2.any Passenger boarding the bus on the Contract for Service Instruction section of the route should have their fare allocated to the Contract for Service Instruction revenue regardless of where they disembark.
- 1.3. **Payment** – The payment to be made by the Authority each full four (4) week period shall be one-thirteenth of the total annual Price, less the amount to be deducted for Lost Mileage, less the revenue received in the period covered by the Operators Invoice. Payments in respect of Contracts for Service Instructions which start, end or are assigned during a four (4) week period shall be adjusted to take account of the total Payment Operating Days up to and including the period in which the Contract for Service Instruction starts, ends, is varied or assigned in accordance with the number of Payment Operating Days.
- 1.4. **Revenue Loss** – The Service Provider shall be responsible for any loss of revenue arising out of dishonesty or negligence of their Personnel. Payments due to the Service Provider in respect of the Contract for Service Instruction shall, unless otherwise agreed by the Authority, be reduced by a sum equal to twenty (20) times any revenue loss identified by the Authority (representing the Authority's genuine pre-estimate of loss assuming twenty (20) Operating Days' worth of revenue loss) and deducted in accordance with the set off provisions in Clause 11.13.

2. Minimum Subsidy Contract

- 2.1. **Revenue** – This basis does not require revenue to be taken into account in the claim for payment. However, it is a requirement that such information is supplied on each Operators Invoice for management and review purposes, unless otherwise agreed.
- 2.2. Should a Contract for Service Instruction be awarded as part of or within a commercial route, revenue shall be allocated on the following basis:
 - 2.2.1.any Passenger boarding the bus on the commercial section of the route should have their fare allocated to the commercial revenue regardless of where they disembark; and
 - 2.2.2.any Passenger boarding the bus on the Contract for Service Instruction section of the route should have their fare allocated to the Contract for Service Instruction revenue regardless of where they disembark.
- 2.3. **Payment** – The payment to be made by the Authority each four (4) week period shall be one thirteenth of the total annual Price, less the amount to be deducted for Lost Mileage, for the period covered by the Operators Invoice. Payments in respect of a Contract for Service Instruction which starts, ends, is varied or assigned during a four (4) week period shall be adjusted to take into account the total days of operation up to and including the period in which the Contract for Service Instruction starts, ends, is varied or assigned, in accordance with the number of Payment Operating Days.

2.4. **Fare Reviews** – The Authority shall undertake periodic reviews of the schedule of maximum fares applicable to Services and such other reviews as may be necessary in the light of changes to other journeys provided along the same route.

2.5. **Price Adjustments** – On amendment by the Authority of the Specification's schedule of fares and charges the net Price of the Contract for Service Instruction shall be adjusted in accordance with the fare increase.

3. **De Minimis Contracts**

3.1. **Revenue** – This basis does not require revenue to be taken into account in the claim for payment. However, it is a requirement that such information is supplied on each Operators Invoice for management and review purposes, unless otherwise agreed.

3.2. Should a Contract for Service Instruction be awarded as part of or within a commercial route, revenue shall be allocated on the following basis:

3.2.1.any Passenger boarding the bus on the commercial section of the route should have their fare allocated to the commercial revenue regardless of where they disembark; and

3.2.2.any Passenger boarding the bus on the Contract for Service Instruction section of the route should have their fare allocated to the Contract for Service Instruction revenue regardless of where they disembark.

3.3. **Payment** – The payment to be made by the Authority each four (4) week period shall be one thirteenth of the total annual Price, less the amount to be deducted for Lost Mileage, for the period covered by the Operators Invoice. Payments in respect of a Contract for Service Instruction which starts, ends, is varied or assigned during a four (4) week period shall be adjusted to take into account the total Operation Days up to and including the period in which the Contract for Service Instruction starts, ends, is varied or assigned, in accordance with the number of Payment Operating Days.

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

3.5. **Price Adjustments** – On amendment by the Service Provider of fares and charges there shall be no change to the net Price of the Contract for Service Instruction.

4. **Carriage of Students on Commercial Services**

4.1. Please refer to Part D (Applicable to ST11 Passes and ST12 Passes) of Schedule 1 (General Specification) for full details of ST11 Passes and ST12 Passes.

4.2. ST11 Passes will generally be awarded for a five (5) year period and, for the purposes of an annual Price review, will be regarded as a "total price" Contract for Service Instruction, with an annual Price review conducted in accordance with Clause 10.6.1 and 10.6.3 (Price).

4.3. ST12 Passes will generally be awarded for a five (5) year period and will be subject to an annual Price review conducted in accordance with Clause 10.6.2 (Price).

4.4. With regard to ST12 Passes, payment for each Student allocated to a commercial bus service will be calculated as follows:

4.4.1.in the case of an under sixteen (16) years school Student, the price quoted for the journey;

4.4.2.in the case of an over fifteen (15) years Student, the price quoted for the journey;

4.4.3.in the case of further education college Students (the college academic year is ten (10) days less than the school academic year) the price quoted for an over fifteen (15) years Student x 0.95;

4.4.4.in the case of Students reaching their sixteenth birthday during the academic year (the average sixteenth birthday date for an academic year is 1 March) the price quoted will be calculated on the under sixteen (16) years Student price x 0.56 plus the over fifteen (15) years Student price x 0.44; and

4.4.5.in the case of a Student issued with an "am only" or a "pm only" pass, half the price quoted calculated on the above.

5. **Lost Mileage**

5.1. Notwithstanding the requirements to provide the Services in strict accordance with this agreement and the Contract for Service Instruction, the Service Provider shall provide the Authority with a list of any journeys not operated, operated early or operated over fifteen (15) minutes late which describe lost mileage (the **Lost Mileage**). Such information shall be recorded on the Operators Invoice submitted by the Service Provider. For each journey the following information shall be recorded:

5.1.1.date;

5.1.2.service number;

5.1.3.departure point;

5.1.4.scheduled departure time;

5.1.5.actual departure time;

5.1.6.number of miles not operated or operated early or over fifteen (15) minutes late; and

5.1.7.reason for non-operation, early operation or late (over fifteen (15) minutes) operation classified into Personnel shortage, Vehicle shortage, breakdown, Vehicle replacement, traffic congestion, weather or other (to be specified by the Service Provider).

5.2. If there is no Lost Mileage during any four (4) week period, then a nil return shall be submitted by the Service Provider noted on the Operators Invoice.

5.3. The Service Provider shall have an auditable system for recording and declaring any Lost Mileage.

5.4. Payments due to the Service Provider in respect of the Contract for Service Instruction shall, unless otherwise agreed by the Authority, be reduced by an amount equal to twice the average price per mile for each journey mile not operated due to breakdown or failure to provide Service Provider's Personnel or Vehicles.

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

5.6. The Service Provider shall make every reasonable effort to run the service in adverse traffic and exceptional weather conditions or in any other extraordinary circumstances beyond his control. When the Service Provider is unable to provide the Services for reasons beyond his reasonable control, Payments due to the Service Provider in respect of the Contract for Service Instruction shall be reduced for the period concerned. Payments shall be reduced in the case of Minimum Subsidy Contracts by twenty-five per cent (25%) of the average price per mile for each mile not operated. In the case of Minimum Cost Contracts, payments shall be reduced by fifty per cent (50%) of the average price per mile for each mile not operated. Details of, and reasons for, any journeys not run should be included on the Lost Mileage return for the relevant period.

5.7. The average price per mile shall be calculated by dividing the total annual Price by the total live annual mileage. The Authority reserves the right to make deductions for Lost Mileage where the reasons for

the loss are other than those mentioned above, except in cases where mileage is lost due to circumstances beyond the control of the Service Provider.

- 5.8. The Authority shall be entitled to recover from the Service Provider the amount of any additional loss resulting from a Service failure due to Lost Mileage. For the avoidance of doubt, the Authority shall be entitled to recover from the Service Provider the additional cost incurred by the Authority in providing a replacement service.
- 5.9. Where the Service Provider innocently or negligently fails to declare any mileage not operated, the Authority may consider this a Default under the Contract and invoke Clause 5.2 (and, where the Service Provider's failure is fraudulent that shall constitute an irremediable material breach and Clause 30.1.1 (Termination for breach) shall apply to the relevant Contract for Service Instruction(s)).

Please see the attached Authority's template Operators Invoice which the Authority will forward to the Service Provider on a Period basis which is to be completed and submitted by the Service Provider as its invoice.

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NOTES FOR COMPLETION OF LOST MILEAGE AND OUT OF TIME OPERATION RETURN

1. If any mileage has been lost or services run early or late during the Claim Period, the Lost Mileage/Out of Time Operation Return on the front of this sheet must be completed. Show the number of miles lost in the relevant column. Indicate the reason by entering the appropriate code (as set out below), after each lost mileage declaration.
2. Any lost mileage for which a deduction is due should be inserted on the claim form and deducted from the Basic Cost.
3. If there is no lost mileage to declare please state 'nil return'. Section A, B, C and D must be completed.
4. The lost mileage deduction should be calculated in accordance with clause C2 and C3 of the Conditions of Contract. (The average price per mile (APPM) is shown on the claim form).

CLASSIFICATION OF LOST-MILEAGE/OUT OF THE TIME OPERATION

A. Subject to Deduction of 2 x APPM. (C2)

Mileage not operated due to Breakdown or Failure to provide Vehicle or Staff.

B. Subject to Deduction of 1 x APPM. (C2)

- (i) Journeys not operated due to industrial dispute
- (ii) Journeys 15 minutes or more late departing from a timing point or arriving at service destination. Where mileage is lost due to a breakdown and a duplicate vehicle has been used to restore normal service please state 'VR'. In these cases Lost Mileage will apply from the point of breakdown to destination.
- (iii) Journeys operating earlier than the published timetable.

C. Mileage subject to deduction of 50% (25% for Minimum Subsidy contracts) APPM. (C3)

Whole journeys not operated due to Adverse Traffic/Exceptional Weather Conditions or any other extraordinary circumstances beyond the control of the contractor.

D. Mileage subject to no deduction

IN ALL CASES THE CODES BELOW MUST BE SHOWN

CODES TO BE USED

(i) Lost Mileage Categories A, B and C.

S	Staff Shortage
V	No Vehicle Available
B	Breakdown
VR	Vehicle Replacement
T	Traffic Congestion
W	Weather
O	Other *

(ii) Lost Mileage Category D

T	Abnormal Traffic Congestion
W	Severe Weather Conditions
O	Other *

- * For Lost Mileage classified as Other, the reason should be clearly defined. If, in the view of the County Council it has been incorrectly allocated your claim will be adjusted.

Schedule 6: Contract Management and Authorised Representatives

Part 1: Contract Management

1. Introduction

- a. Without prejudice to Clause 17 (Reporting, meetings and complaints) (which includes the provision and arrangement of Review Meetings) and Clause 18 (Monitoring), this Part 1 of Schedule 6 (Contract Management and Authorised Representatives) illustrates the agreement's monitoring, evaluation and performance requirements.
- b. The purpose of monitoring and evaluation is to review progress for each Contract for Service Instruction against the Specification which collectively deliver the Authority's requirements for Services.
- c. The purpose of performance monitoring is to monitor the Service Provider's actual performance against the Service Levels (effectively Achieved Service Levels performance against the Specification and Policies) which it self-monitors and reports to the Authority (together with any Authority monitoring notified to the Service Provider) and further to agree rectification plans to correct Default non-performance in an agreed timeframe.
- d. The performance reporting by the Service Provider to the Authorised Officer and Authority shall be used to inform any early termination of any Contract for Service Instruction, inform the Authority's subsequent performance targets and objectives for future Contracts for Service Instruction and assist in the Authority's internal annual review of the effectiveness of the Authority's DPS for Local Bus Services and School Bus Services.

2. Measuring performance – Service Levels and Achieved Service Levels

- a. The **Service Levels** are the Service Provider's performance standards set out in Part 1 of Schedule 2 (Service Levels). A **Default** shall occur when the Service Provider fails to meet the Service Levels.
- b. The Authority shall be entitled to report any Default to the Service Provider.
- c. If the Service Provider has wilfully and deliberately caused the non-reporting of a Default the Authority shall be entitled to treat such non-reporting as a material breach allowing the Authority to terminate the Contract for Service Instructions in accordance with Clause 30.1.1 (Termination for Breach).
- d. The Service Provider shall monitor and maintain records of its performance against the Service Levels by collating the date and time, description, effect and rectification plan summary of each Default (whether or not a Default Notice has been issued) which occur within a four (4) week period corresponding to the Service Provider's Payment Period covered by an Operators Invoice.
- e. The Annex to this Part 1 of Schedule 6 (Contract Management and Authorised Representatives) sets out the template report form to be used as the basis of Service Provider reporting each Payment Period. Alternatively the Service Provider's basis for reporting each Payment Period shall be in such form as the Authority and Service Provider shall agree, acting reasonably.

3. Annual review

- a. Where a Contract for Service Instruction has a term exceeding twelve (12) months then in the absolute discretion of the Authority (as notified by the Authority to the Service Provider at any time) it shall be subject to an annual Service Provider reporting requirement in addition to the Service Provider reporting requirement for each Payment Period and any Review Meeting. The Authority shall review the financial, operating and performance issues for each Contract for Service Instruction through the annual review process.

- b. The Authority's annual review shall encompass the following:
 - i. a financial, operational and performance issues review of the Contract for Service Instruction;
 - ii. a review of the resources made available by the Service Provider; and
 - iii. a review of the Service Provider's performance against Service Levels.
- c. The content and conduct of any annual review is to be agreed between the Service Provider and the Authority by the date falling nine (9) months after the commencement of the Contract for Service Instruction.

4. Summary of the Service Provider's formal meeting and reporting requirements

- a. This is a summary of the meeting regime and reporting requirements which the Service Provider shall fulfil for each Contract for Service Instruction.

Frequency of reporting	Output	Template or format
Payment Period	Service Provider performance report	Annex
Annually	Annual review report	As agreed between Authority and Service Provider

Annex

Report format to be agreed between the Authority and Service Provider

Schedule 6: Contract Management and Authorised Representatives

Part 2: Authorised Representatives

The Authority's initial Authorised Representatives are:

Local Bus Services

Ashley Weir
Principal Transportation Officer
Bus Services & Developments
Telephone - 01772 534564
ashley.weir@lancashire.gov.uk

School Bus Services

Jacqueline Day
Principal Transportation Officer
School Bus Services
Telephone – 01772 534565
jacqueline.day@lancashire.gov.uk

Lancashire County Council
County Hall
Fishergate
Preston
Lancashire
PR1 0LD

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 Local Bus Services and School Bus 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

Part 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,and the Service Provider shall notify the Authority in writing a minimum of three (3) months before the planned expiry date of this agreement where the Term exceeds three (3) months (or as soon as reasonably practicable for any agreement whose Term is less than three (3) months) or as soon as reasonably practicable after early termination of this agreement of its opinion as to whether the Service Provider considers that such expiry or termination shall be a TUPE Event.
- 2 It is further agreed that the Service Provider shall be responsible for any employees of the Service Provider at the date of such expiry or 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); and
 - 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 Part 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

Part 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

Section	Clause or Schedule	Description	Freedom of Information Act 2000 (FOIA) exemption	Exemption period to be applied
Tender	Service Provider's response to mini-competition Service 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 Local Bus Services and School Bus 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 shall 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.