

Dated []

WEST BERKSHIRE DISTRICT COUNCIL

- and -

[The Supplier]

AGREEMENT

relating to

THE PROVISION

of

TRANSPORT SERVICES

Reference **[contract number]**

Legal Services
West Berkshire District Council
Council Offices Market Street Newbury Berkshire RG14 5LD

THIS AGREEMENT is made on the [] day of [] 2022

BETWEEN:

- (1) **WEST BERKSHIRE DISTRICT COUNCIL** of Council Offices, Market Street, Newbury, Berkshire, RG14 5LD (“**the Council**”); and
- (2) **[insert name or company name]** of **[insert address (if applicable registered address and company registration number)]** of the other part (“**The Supplier**”)

WHEREAS:

- (a) On **[date]** the Council placed an Invitation to Tender on its Procurement Portal through the **Transport Services Dynamic Purchasing System** seeking tenders from Suppliers for the provision of Transport Services;
- (b) The Supplier submitted a tender on **[date]**;
- (c) On the basis of the Supplier’s tender the Council selected the Supplier to enter into an Agreement;
- (d) The Supplier has agreed to enter into this Agreement with the Council for the provision of services;

NOW IT IS HEREBY AGREED AS FOLLOWS:

- (1) The Supplier shall complete the services in accordance with the Transport Services **Dynamic Purchasing System** Conditions of Contract.

CONTRACT PARTICULARS

<i>Clause etc</i>	<i>Subject</i>	
1.1.5	Commencement Date	
1.1.13	Contract Period	
1.1.25	Extension Period	
1.1.26	Expiry Date	
1.1.45	Termination Date	
7	Authorised Officer	Name: [insert Authorised Officer name] Address: West Berkshire District Council, Transport Services Team, Council Offices, Market Street, Newbury RG14 5LD Telephone: 01635 [insert number] Email: []@westberks.gov.uk
8	Contract Manager	Name: Address: Telephone: Email:
15.4	Invoice Verification Form signed by the establishment	Required / Not required
17.3 (i)	Employers Liability Insurance	£10 million (or confirmation from the insurer if not required)
17.3 (ii)	Public Liability Insurance	£5 million
17.3 (iii)	Motor Vehicle Insurance	£5 million
Schedule 1	Contract Price	[insert pricing provisions as appropriate] [per day or per trip]

IN WITNESS of which this Agreement has been duly executed by the parties on the date and year stated at the beginning of this deed

[for contracts above £50k]

Executed as a Deed by the Council by affixing THE COMMON SEAL of WEST BERKSHIRE DISTRICT COUNCIL and authenticated by Authorised signatory	
--	--

Executed as a deed by the Supplier acting by 2 Directors or a Director and Company Secretary: Director: Director/Company Secretary:	
---	--

Executed as a deed by the Supplier acting by a single Director: Director: Witness' signature: Witness' name: Witness' address:	
--	--

[for contracts below £50k]

IN WITNESS of which this Agreement has been duly signed by the parties on the date and year stated at the beginning of this agreement

Signed by or on behalf of the Council:	
--	--

Signed by or on behalf of the Supplier:	
---	--

WEST BERKSHIRE DISTRICT COUNCIL'S TRANSPORT SERVICES **DPS**
CONDITIONS OF CONTRACT

CONTENTS

1	Definitions and Interpretation.....	6
2	Start and Duration of this Agreement	9
3	Supplier's Status	10
4	Council's Obligations	10
5	Notices	10
6	Conflicts of Interest.....	11
7	Authorised Officer.....	11
8	Contract Manager.....	11
9	Service Standard	12
10	Sufficiency of Information	12
11	Disclosure and Barring Service Disclosures.....	13
12	Staff and Staff Training.....	14
13	Statutory Requirements.....	15
14	Contract Price.....	15
15	Payment and VAT	15
16	Recovery of Sums Due	16
17	Insurance.....	16
18	Vehicles and Equipment.....	17
19	Liabilities and Indemnities	18
20	Equalities.....	18
21	The Contracts (Rights of Third Parties) Act 1999	19
22	Bribery and Corruption	19
23	Protection of Personal Data and Security of Data	19
24	Confidentiality.....	23
25	Freedom of Information	23
26	Audit.....	24
27	Waiver	25
28	Defaults	25
29	Termination	26
30	Break.....	27
31	Force Majeure and Non-Performance	27
32	Dispute Resolution	28
33	Variations	29
34	Assignment, Subletting and Emergency Cover	29
35	Monitoring of the Services	30
36	Health and Safety	30
37	TUPE.....	31
38	Governing Law and Jurisdiction	32
39	General.....	32
	SCHEDULE 1 - Contract Price	33
	SCHEDULE 2 - Default List.....	34
	SCHEDULE 3 - Processing, Personal Data and Data Subjects	36
	SCHEDULE 4 - Code of Practice.....	separate attachment
	SCHEDULE 5 - Applicant DBS Disclosure Consent Form.....	separate attachment

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires, the following provisions shall have the meanings given to them below:
- 1.1.1 “Agreement” or “Conditions” means this written agreement between the Council and the Supplier consisting of these Clauses and any attached Schedules, the Invitation to Tender and the Tender (whether accepted in whole or in part and including any tender conditions imposed by the Council).
- 1.1.2 “Approval” means the written consent of the Council.
- 1.1.3 “Authorised Officer” means the person stated in the Contract Particulars or any other representative authorised to act on their behalf.
- 1.1.4 “Code of Practice” means the Schedule (Schedule 4) which comprises the required performance level of the Supplier’s Staff carrying out the performance of the Service.
- 1.1.5 “Commencement Date” means the date stated in the Contract Particulars.
- 1.1.6 “Conditions” means the terms and conditions contained in the clauses of this Agreement including the Schedules and appendices to this Agreement.
- 1.1.7 “Confidential Information” means:
- a) Information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would likely to, prejudice the commercial interests of any person, trade secrets, intellectual Property Rights and know-how of any Party and all personal data within the meaning of the Data Protection Act 2018 and the UK General Data Protection Regulation (GDPR).
 - b) Commercially Sensitive Information.
- 1.1.8 “Consents” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory or otherwise) necessary for the provision of the Services.
- 1.1.9 “Consent Form” means the form at Schedule 5.
- 1.1.10 “Contract” means the Agreement.
- 1.1.11 “Contract Manager” means the person appointed by the Supplier to manage the delivery of the Services.
- 1.1.12 “Contract Particulars” means the particulars in the Agreement and there described as such, including entries made by the Parties.

- 1.1.13 “Contract Period” means the period starting on the Commencement Date and continuing until the date stated in the Contract Particulars unless the Agreement shall be terminated as provided in these Clauses.
- 1.1.14 “Contract Price” means the price (exclusive of any applicable VAT), payable to the Supplier by the Council under the Agreement, as set out at Schedule 1, for the full and proper performance by the Supplier of its obligations under the Agreement.
- 1.1.15 “Data Protection Legislation” means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 (iii) all applicable Law about the processing of personal data and privacy.
- 1.1.16 “Data Protection Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
- 1.1.17 “Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.
- 1.1.18 “Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
- 1.1.19 “Data Subject Access Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
- 1.1.20 “DPA 2018” means Data Protection Act 2018.
- 1.1.21 “Default” means any failure or breach, on the part of the Supplier, to carry out its obligations under this Agreement.
- 1.1.22 “Default Notice” means a notice from the Council to the Supplier as more particularly described in clause 28.
- 1.1.23 “EIR” means the Environmental Information Regulations 2004.
- 1.1.24 “Establishment” means any School, College, Resource Centre, Council Office or other educational or social care establishment requiring Services under the Agreement.
- 1.1.25 “Extension Period” means the period stated in the Contract Particulars as agreed between the Parties.
- 1.1.26 “Expiry Date” means the date stated in the Contract Particulars.
- 1.1.27 “FOIA” means the Freedom of Information Act 2000.
- 1.1.28 “GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679).

- 1.1.29 "Information" has the meaning given under Section 84 of the Freedom of Information Act 2000.
- 1.1.30 "Invitation to Tender" means an invitation for the Supplier to bid for the Services required by the Council.
- 1.1.31 "Invoice Verification Form" means the form, authorised by an Establishment, that the Council requires a Supplier to submit with their invoice.
- 1.1.32 "Legislation" means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Supplier is bound to comply.
- 1.1.33 "Party/Parties" means the Council or the Supplier.
- 1.1.34 "Persistent Default" means where the Supplier has committed more than six [6] Defaults during any consecutive period of twelve [12] months, whether or not these are the same Defaults or different Defaults and even if the Supplier remedies the default each time;
- 1.1.35 "Pricing Schedule" means the Schedule 1 containing details of the Contract Price(s).
- 1.1.36 "Quality Standards" means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule.
- 1.1.37 "Schedules" means those documents accompanying the Agreement which provide additional information and instructions in relation to the performance of the Services.
- 1.1.38 "Serious Default" means a Default on the part of the Supplier including but not limited to a Default set out in Schedule 2 of a Default which materially and adversely affects the Council or prejudices the health, safety or welfare of a Service User;
- 1.1.39 "Services" means the services to be provided by the Supplier in accordance with the Specification annexed or included in the Invitation to Tender and any subsequent variation to the Services as agreed between the Parties.
- 1.1.40 "Service User" or "Service Users" means a person who receives or who may receive the Service that the Supplier is to provide under this Agreement;
- 1.1.41 "Specification" means the requirement of the Council for the provision of the Services as set out in the Invitation to Tender.

- 1.1.42 “Staff” means any person employed or retained by the Supplier to provide any part of the Services including drivers and passenger assistants.
- 1.1.43 “Sub-processor” means any third Party appointed to process Personal Data on behalf of the Supplier related to this Agreement
- 1.1.44 “Tender” means the Supplier’s response to the Invitation to Tender (and any subsequent clarifications) and written offer to perform the Services.
- 1.1.45 “Termination Date” means the date stated in the Contract Particulars.
- 1.1.46 “Variation Notice” means a notice served in accordance with Clause 33.
- 1.1.47 “Variation” means a variation to this Agreement or to the Services, made in accordance with Clause 33.
- 1.1.48 “VAT” means Value Added Tax.
- 1.2 The interpretation and construction of this Agreement shall be subject to the following provisions:
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
- 1.2.4 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.6 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 1.2.7 headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

2 START AND DURATION OF THIS AGREEMENT

- 2.1 Subject to Clause 2.2 this Agreement will start on the Commencement Date and will continue to apply until the Termination Date, unless terminated earlier in accordance with the provisions of this Agreement which permit earlier termination.

- 2.2 The Council may offer an Extension Period and shall serve written notice on the Supplier no later than one [1] month before the Expiry Date of any intention to extend the term under this Clause 2.
- 2.3 The Supplier shall within 14 days of receiving the Council's offer of an Extension Period serve written notice on the Council indicating whether they wish to continue to discharge the Services under this Agreement.
- 2.4 If the Supplier does not accept the Council's offer pursuant to Clause 2.2 this Agreement will terminate on the Expiry Date.
- 2.5 If the Supplier does accept the Council's offer pursuant to Clause 2.2 this Agreement shall continue on these terms or on such terms as agreed in accordance with the Variations Clause of this Agreement.

3 SUPPLIER'S STATUS

- 3.1 At all times during the Contract Period the Supplier shall be an independent Supplier and nothing in the Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Agreement.

4 COUNCIL'S OBLIGATIONS

- 4.1 Save as otherwise expressly provided, the obligations of the Council under the Agreement are obligations of the Council in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Council to the Supplier.

5 NOTICES

- 5.1 Any notice or other communication under this Agreement must be in writing and can only be sent by:
- i) Pre paid post; or
 - ii) Recorded delivery post; or
 - iii) Personal delivery; or
 - iv) Email, as agreed in writing in advance by the Council.
- 5.2 For the purposes of sending notices the Council's contact details are set out in the Contract Particulars. All notices and communications must be sent to the Authorised Officer.
- 5.3 For the purposes of sending notices the Supplier's contact details are set out in the Contract Particulars. All notice and communications must be sent to the Contract Manager.

- 5.4 If either party's contact details change, it must notify the other party in accordance with this Clause 5.
- 5.5 Subject to Clauses 5.2 and 5.3 (above), all notices and communications shall be deemed to have been served:
- i) if posted first class, three [3] working days after the date when posted; or
 - ii) if posted second class, six [6] working days after the date when posted; or
 - iii) if personally delivered or emailed or via email on the date of delivery.
- 5.6 Notwithstanding Clause 5.5 (above), if by applying its provisions a notice is deemed to have been served on a day which is not a working day or it is not received between the hours of 9am to 5pm on a working day then it shall be deemed to have been served on the next immediately following working day.
- 5.7 For the avoidance of doubt, everyday operational communication between the Authorised Officer and the Supplier may be sent by email.

6 CONFLICTS OF INTEREST

- 6.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Council under the provisions of the Agreement. The Supplier will disclose to the Council full particulars of any such conflict of interest which may arise.
- 6.2 The Council reserves the right to terminate the Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Council under the provisions of the Agreement. The actions of the Council pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

7 AUTHORISED OFFICER

- 7.1 The Council shall appoint the Authorised Officer as a principal contact in respect of its rights and powers under this Agreement. This will not limit in any way any other of the Council's rights or obligations.
- 7.2 Details of the person the Council has appointed to act as Authorised Officer from the Commencement Date (their telephone number, e-mail address and postal address) are set out in the Contract Particulars.
- 7.3 All notifications of changes under this Clause will be made in accordance with Clause 5 (Notices).

8 CONTRACT MANAGER

- 8.1 The Supplier shall appoint the Contract Manager to be a principal contact in respect of the Supplier's rights and powers under this Agreement.

8.2 Details of the person the Supplier has appointed to act as Contract Manager from the Commencement Date (his telephone number, e-mail address and postal address) are set out in the Contract Particulars.

8.3 All notifications of changes under this Clause must be made in accordance with Clause 5.

9 SERVICE STANDARD

9.1 For the duration of the Agreement, the Supplier will comply with all the requirements for the provision of the Services as set out in the Agreement.

9.2 In providing the Services the Supplier will:

9.2.1 observe all requirements of the Agreement at all times when discharging its obligations under the Agreement and in all cases and at all times in performing those activities required by the Specification observe appropriate standards of professional behaviour in relation to its roles and responsibilities;

9.2.2 comply with any and all codes of practice, performance ratings and quality standards that are laid down in this Agreement or that are issued to the Supplier as part of an agreed Variation Notice;

9.2.3 comply with all Legislation relevant to the Agreement and which apply to the Service;

9.2.4 obtain, maintain and comply with all Consents;

9.2.5 allocate sufficient resources (including emergency cover) to provide the Services to the satisfaction of the Council and in accordance with the terms of this Agreement;

9.2.6 make suitable arrangements so that matters concerning this Agreement can be discussed with the Authorised Officer between 8am and 5pm on normal working days and out of hours contact arrangements are put in place for emergencies;

9.2.7 use Staff who are suitably skilled and experienced to perform tasks assigned to them and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;

9.2.8 assist the Council in the investigation of complaints, monitoring of this Agreement, disciplinary matters and claims where it is alleged that pupils have damaged Supplier's vehicle and similar matters.

9.3 The Supplier's failure to comply with this Clause can be regarded as a fundamental breach of this Agreement.

10 SUFFICIENCY OF INFORMATION

10.1 The Council will have satisfied itself that the Services can be delivered in accordance with the Specification and the terms of the Agreement.

- 10.2 The Council will, at its own expense, provide the Supplier with such information as is available to it and reasonably required by the Supplier in order to discharge its obligations under the Agreement.
- 10.3 The Supplier will be deemed to have examined the Agreement and to have satisfied itself as to the correctness and sufficiency of its Tender to cover all its obligations under the Agreement.

11 DISCLOSURE AND BARRING SERVICE DISCLOSURES

- 11.1 The Supplier shall ensure that in respect of its Staff or all potential Staff before a member of Staff begins to perform any of the Services:
- 11.1.1 each member of Staff is questioned as to whether he or she has any convictions; and
- 11.1.2 the results are obtained of a disclosure of the most extensive available kind made with the Disclosure and Barring Service in accordance with Part V of the Police Act 1997 including a check against the adults' barred list or the children's barred list, as appropriate, in respect of each member of Staff.
- 11.1.3 the disclosures referred to in clause 11.1.2 must be renewed at such intervals as directed by the Council for each member of permanent Staff and agency Staff. It is the Council's intention not to renew such disclosures on a more frequent than three [3] year basis (or agency Staff one [1] year basis). Any request for renewal will be made by the Council in writing.
- 11.2 The Supplier shall obtain written consent of the Staff referred to in 11.1 to enable the Supplier to pass the disclosures to the Council together with the Consent Form.
- 11.3 The Supplier shall procure that no person who discloses any convictions, or who is found to have any convictions following the results of a Disclosure Barring Service disclosure, is engaged by the Supplier or on the Supplier's behalf without Approval where that conviction is incompatible with the type of work being undertaken by the member of Staff in providing the Services.
- 11.4 The Supplier shall procure that the Council is kept advised at all times of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Supplier.
- 11.5 The Supplier is responsible for procuring disclosures under clause 11.1 and shall pay all costs associated with obtaining such disclosures directly.
- 11.6 The Supplier will be responsible for carrying out a Risk Assessment for positive disclosures. This should be in the format of a Disclosure and Barring Service ("DBS") Positive Disclosure Risk Assessment. A template of the same can be made available on request to the Supplier by the Council.
- 11.7 The Supplier shall share the details of such risk assessment with the Council.

- 11.8 The Council and the Supplier shall comply at all times with the DBS Code of Practice, and the Council's own DBS Policy. Copies of these documents will be provided to the Supplier on request, and may also be viewed on the Council's website.
- 11.9 When requested by the Council on reasonable grounds, the Supplier will cease to use any member of Staff specified by the Council for the provision of the Services.
- 11.10 Failure by the Supplier to comply with its obligations under this Clause may be regarded as a fundamental breach of this Agreement.
- 11.11 For the purpose of this Agreement cautions, endorsements and fixed penalties will be treated as though they were convictions.

12 STAFF AND STAFF TRAINING

- 12.1 All Staff must be able to communicate clearly and effectively in English in accordance with Part 7 of the Immigration Act 2016.
- 12.2 Any identity badge issued by the Council must be returned to the Council once Staff are no longer employed on Services
- 12.3 The Supplier shall ensure that all Staff engaged in the provision of the Services are at all times properly and sufficiently trained and instructed with regard to:
- 12.3.1 the task or tasks that they have to perform and the Specification; and
- 12.3.2 health and safety at work; and
- 12.3.3 fire risks and fire precautions; and
- 12.3.4 the need to observe the highest standards of courtesy and consideration; and
- 12.3.5 the provisions within the Code of Practice (Schedule 4); and
- 12.3.6 the need to report to the Council any situations which involve an injury or potential danger to any person during the provision of the Services; and
- 12.3.7 the need to take all reasonable steps to ensure the safety of passengers when boarding or alighting and whilst on the vehicle; and
- 12.3.8 the need to be of neat and tidy appearance, have identity badges approved by the Council and the need to wear these at all times whilst undertaking the Services; and
- 12.3.9 the need to fully co-operate with any complaint or safeguarding investigation, including attendance at meetings.
- 12.4 The Supplier shall ensure that all Staff engaged in the provision of the Services have attended, actively engaged with and successfully completed all appropriate training as required in the Specification and within any timescales stipulated by the Council. As a minimum this will include training on safeguarding, as well as that

stated within the statutory Home to school travel and transport guidance, issued by the Department for Education. This includes training on first aid, handling emergency situations, disability and discrimination.

- 12.5 Staff who refuse to attend or engage in appropriate training must not be used.
- 12.6 If the Council is not satisfied with the performance of Staff in relation to the delivery of Services, such Staff may be required to attend further specific training.
- 12.7 All costs associated with training are to be borne by the Supplier.

13 STATUTORY REQUIREMENTS

- 13.1 The Supplier shall ensure that all Staff and vehicles are licensed and insured in accordance with all the Legislation in respect of the Services to be undertaken and make available to the Council relevant documentation.
- 13.2 Vehicles and drivers shall be licensed in accordance with PSV, including permits, District Council Hackney Carriage or Private Hire Vehicle regulations. In circumstances where Services could be undertaken legally outside the licensing regulations, such licences will nevertheless be required for this Agreement. For the avoidance of doubt 'School Only' taxi plates will not be acceptable for the purposes of this Agreement.
- 13.3 The Supplier shall ensure all vehicles are maintained in a clean, safe and roadworthy condition, conforming with all statutory requirements and Legislation in respect of the Services to be undertaken.
- 13.4 Failure by the Supplier to comply with its obligations under this Clause may be regarded as a fundamental breach of this Agreement.
- 13.5 The Supplier shall comply with any local bye-laws relating to the Services.
- 13.6 The Supplier shall immediately inform the Council of any summons on the Supplier, or the Staff thereof, to appear in a Magistrates Court or before the Traffic Commissioners.

14 CONTRACT PRICE

- 14.1 In consideration of the Supplier's performance of its obligations under the Agreement, the Council shall pay the Contract Price in accordance with Clause 15 (Payment and VAT).
- 14.2 The Council shall, in addition to the Contract Price and following receipt of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Agreement.

15 PAYMENT AND VAT

- 15.1 Subject to the right of set-off the Council shall pay all sums due to the Supplier within 30 days on receipt of an accurate undisputed invoice in accordance with clause 15.4, submitted monthly in arrears, and upon the confirmation by the

Authorised Officer that the Service(s) have been provided to the Council's satisfaction.

- 15.2 No payment shall be made by the Council when the Establishment detailed in the Specification is closed, except as referred to in Schedule 1.
- 15.3 No payment shall be made by the Council when no Service is required and the Supplier has been notified in advance.
- 15.4 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice. This will include the Invoice Verification Form signed by the Establishment where this is identified as required in the Contract Particulars.
- 15.5 The Supplier shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Council at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Agreement. Any amounts due under this Clause shall be paid by the Supplier to the Council not less than 5 working days before the date upon which the tax or other liability is payable by the Council.

16 RECOVERY OF SUMS DUE

- 16.1 If the Supplier owes the Council money under this Agreement, then the Council may set off any such sum against any money it subsequently owes to the Supplier under this Agreement.

17 INSURANCE

- 17.1 For as long as this Agreement is in force the Supplier must take out and maintain as a minimum the insurances set out in Clause 17.3 (below). The Supplier must also ensure that any of its sub-contractors who are providing any or all of the Services on its behalf take out and maintain equivalent insurances, as a minimum.
- 17.2 All insurances must be taken out and maintained with a reputable insurance company.
- 17.3 The insurances referred to in Clause 17.1 are as follows:
- i) employers liability insurance with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars for each and every claim, act or occurrence or series of claims, acts or occurrences which complies with statutory requirements;
 - ii) public liability insurance with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars for each and every claim, act or occurrence or series of claims, acts or occurrences; and

iii) motor vehicle insurance which, at a minimum, protects the Supplier against third party claims (including claims by passengers being carried) which arise from or are caused by the execution of this Agreement.

17.4 The Supplier must provide the Council with a copy of the policy schedule for the insurances referred to in Clause 17.3 (above) at the Council's request together with evidence that the insurances are in force.

17.5 If the Council is of the opinion (acting reasonably) that any of the policies of insurance do not provide sufficient cover to comply with Clause 17.3 (above) then the Supplier must rectify (or if applicable, ensure that the sub-contractor rectifies) the position immediately.

18 VEHICLES AND EQUIPMENT

18.1 The Supplier shall be required to use the vehicles as detailed in the Specification by the Council for the provision of the Services. Any changes to the number, type or seating capacity of vehicles used to provide the Services must be agreed in advance with the Council. The Supplier shall ensure that seating capacity is sufficient for the provision of this Agreement.

18.2 The Supplier shall be responsible for providing all equipment, tool and vehicles and other items as are required for the provision of the Services including child car seats and wheelchair restraints. The Council may still provide specialist equipment upon request.

18.3 The Supplier shall be responsible for the security of all equipment belonging to the Council and used by the Supplier in the provision of the Services, and for the return of such equipment at the end of the Contract Period or when no longer required for the Service. A charge may be levied for the use of Council equipment, and will be levied for loss, damage or non-return.

18.4 The Supplier shall provide in the vehicle a mobile telephone (or equivalent means of communication) to permit effective communication with the driver in the event of a breakdown, accident or other emergency. This equipment must not be used by the driver whilst driving.

18.5 Passengers are not to be carried in sideways facing seats except on registered local bus services if the vehicle certification allows it. Wheelchair passengers are not to be carried sideways under any circumstances.

18.6 Standing passengers are not be permitted on any Service with the exception of registered local bus services if the vehicle certification allows it.

18.7 The Council may require the Supplier, at their own expense, to submit the vehicle for inspection by the Authorised Officer. The Council will periodically carry out checks on vehicles both internally and externally.

18.8 The Council shall be the sole hirer of any vehicle during the time that it is used to carry out the Services under the Agreement unless prior written agreement has been reached.

- 18.9 Where the Specification indicates the transport of passengers in wheelchairs or special seats, the Supplier will be required to comply with the Schedule 4 (Code of Practice) and Legislation.
- 18.10 The Supplier will be required to comply with national regulations on the fitting of seat belts on all vehicles. For vehicles certified for 8 or more passenger seats, the Supplier will ensure all seat belt installations shall have undergone an installation inspection and the vehicle shall hold an appropriate current PSV test certificate specifying the number of inspected seat belted passenger seats. All seat belts and anchorage points must meet EU defined standards.

19 LIABILITIES AND INDEMNITIES

- 19.1 Subject to Clause 19.2 (below) the Supplier shall indemnify the Council against all losses, damages, costs, expenses (including valeting), liabilities, claims or proceedings, in respect of claims by third parties made against the Council whether these arise under statute or common law, (together referred to as 'the Council's losses') which the Council suffer as a result of any negligence, default or breach of statutory duty on the Supplier's part in carrying out its obligations under this Agreement or on the part of any person it employs or engages to carry out its obligations under this Agreement.
- 19.2 The Supplier will not be liable to indemnify the Council as set out in Clause 19.1 (above) to the extent that the Council's losses are due to any negligence, default or breach of statutory duty on the Council's part.
- 19.3 The Supplier shall ensure that any information held on behalf of the Council is returned to the Council on the conclusion or termination of this Agreement,

20 EQUALITIES

- 20.1 The Supplier as an employer and provider of the Services shall take all reasonable steps to ensure elimination of all forms of discrimination within the meaning and scope of the provisions of the Equality Act 2010 (or any statutory modification or re-enactment thereof) in both its employment practice and in its delivery of the Services in accordance with an established equal opportunities policy, which policy shall include effective monitoring.
- 20.2 In complying with its obligations under clause 20.1, the Supplier shall have due regard to the Council's Equality Policy, a copy of which can be made available on request, and the Supplier shall ensure compliance with its obligation under:
- 20.2.1 The Equality Act 2010;
- 20.2.2 The Equality and Human Rights Commission's Guidance for Employers and all amendments, re-enactments, or any subsidiary legislation, enactments, regulations, codes of practice or guidance issued or in force during the Contract Period.
- 20.3 The Supplier shall take all reasonable steps to secure the observance of clause 20 by servants, employees or agents of the Supplier and all suppliers and sub-contractors employed in the execution of the Agreement.

20.4 Failure by the Supplier to comply with its obligations in this clause 20 may be regarded as a fundamental breach of this Agreement.

21 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

21.1 Neither Party intends to confer any right or benefit upon a third party and for the avoidance of doubt, the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Agreement.

22 BRIBERY AND CORRUPTION

22.1 The Council shall be entitled to immediately terminate this Agreement and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier shall:-

- i) have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done, or refrained from doing any action in relation to the obtaining for execution of this Agreement or any other agreement with the Council; or
- ii) for showing, or forbearing to show, favour or disfavour to any person in relation to this Agreement or any other agreement with the Council or if any like acts shall have been done by any person employed by the Supplier, or acting on the Supplier's behalf (whether with or without the knowledge of the Supplier); or
- iii) if in relation to any agreement with the Council, the Supplier, or any person employed by the Supplier or acting on the Supplier's behalf shall have committed any offence under the Bribery Act 2010, or any amendment of them; or
- iv) shall have given any fee or reward the receipt of which is an offence under the Bribery Act 2010, or any amendment of them.

22.2 Both Parties shall not offer or give or agree to give any representative of the other Party any gift or consideration of any kind as an inducement or reward for doing or refraining from doing any act in relation to this or any other Agreement or for showing favour or disfavour to any person in relation to this Agreement.

22.3 Any dispute relating to:

- i) the interpretation of clause 22; or
- ii) the amount or value of any gift, consideration or commission,

shall be determined by the Council and the decision shall be final and conclusive.

23 PROTECTION OF PERSONAL DATA AND SECURITY OF DATA

23.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Schedule 3 by the Council and may not be determined by the Supplier.

23.2 The Supplier shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

23.3 The Supplier shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:

- a) A systematic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

23.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- a) process that Personal Data only in accordance with Schedule 3, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
- b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
 - i) nature of the data to be protected;
 - ii) harm that might result from a Data Loss Event;
 - iii) state of technological development; and
 - iv) cost of implementing any measures;
- c) ensure that:
 - i) Suppliers' Staff do not process Personal Data except in accordance with this Agreement (and in particular Schedule 3);
 - ii) it takes all reasonable steps to ensure the reliability and integrity of any of the Suppliers' Staff who have access to the Personal Data and ensure that they:
 - A. are aware of and comply with the Supplier's duties under this clause;
 - B. are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - C. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party

unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and

D. have undergone adequate training in the use, care, protection and handling of Personal Data; and

d) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

i) the Council or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;

ii) the Data Subject has enforceable rights and effective legal remedies;

iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and

iv) Supplier complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

e) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.

23.5 Subject to clause 23.6 , the Supplier shall notify the Council immediately if it:

i) receives a Data Subject Access Request (or purported Data Subject Access Request);

ii) receives a request to rectify, block or erase any Personal Data;

iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

iv) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

v) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

vi) becomes aware of a Data Loss Event.

23.6 The Supplier's obligation to notify under clause 23.5 shall include the provision of further information to the Council in phases, as details become available.

23.7 Taking into account the nature of the processing, the Service Provide shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under

clause 23.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- i) the Council with full details and copies of the complaint, communication or request;
- ii) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- iii) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
- iv) assistance as requested by the Council following any Data Loss Event;
- v) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.

23.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 Staff, unless:

- a) the Council determines that the processing is not occasional;
- b) the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

23.9 The Supplier shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.

23.10 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.

23.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:

- a) notify the Council in writing of the intended Sub-processor and processing;
- b) obtain the written consent of the Council;
- c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 23 such that they apply to the Sub-processor; and
- d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

- 23.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 23.13 Without prejudice to the generality of clause 23 the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement indemnify the Council against any loss or damage suffered by the Council of its obligations under this clause 23.
- 23.14 The Council may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 23.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 23.16 The provisions of this clause 23 shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.
- 23.17 The provisions of this Clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

24 CONFIDENTIALITY

- 24.1 Save for information already in the public domain or the Supplier's knowledge the Supplier and the Supplier's Staff shall treat as confidential and shall not disclose to any person other than a person authorised by the Council, any written or confidential information acquired by the Supplier or the Supplier's Staff in connection with the provision of the Service concerning the passengers and associated persons (including families), Council's Premises, the Council, its staff or procedures. This provision is subject to the statutory requirements imposed on the Council under the Freedom of Information Act 2000 and the EIR.

25 FREEDOM OF INFORMATION

- 25.1 Notwithstanding the provisions of this Clause 25, the Supplier understands that the Council is a public authority to which the FOIA and the EIR applies and shall co-operate with and provide assistance to the Council at its own cost in enabling the Council to comply with the FOIA and the EIR relating to disclosure of information arising from the performance of the Service.
- 25.2 All requests to the Supplier for information in relation to the FOIA and the EIR must be passed without delay, with the Supplier's opinion on disclosure in accordance with the provisions of the FOIA and the EIR to the Council for a decision to be made as to whether disclosure of such information should be made.
- 25.3 The Council 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 and the EIR;
- 25.3.2 is to be disclosed in response to a request for information.
- 25.4 The Supplier shall procure that its sub-contractors shall:
 - 25.4.1 transfer the request for information to the Council as soon as practicable after receipt and in any event within three working days of receiving a request for information;
 - 25.4.2 provide the Council with a copy of all information in its possession or power in the form that the Council requires within seven working days (or such other period as the Council may specify) of the Council requesting that information; and
 - 25.4.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a request for information within the time for compliance set out in section 10 of the FOIA and the EIR;
 - 25.4.4 in no event respond directly to a request for information unless expressly authorised to do so by the Council.
- 25.5 The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with this clause.
- 25.6 Both the FOIA and the EIR imposes time scales for compliance by the Council. The Supplier will ensure that the information requested is supplied to the Council within sufficient time for the Council to comply with the timescales set out in the FOIA and the EIR.

26 AUDIT

- 26.1 The Supplier shall keep and maintain until seven [7] years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Supplier shall on request afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with the Agreement.
- 26.2 The Supplier shall permit the Authorised Officer in relation to the provision of Services access during normal working hours to any premises used for the purpose of:
 - 26.2.1 inspecting relevant records and documents;
 - 26.2.2 interviewing the Supplier's Staff in connection with any concerns raised; and
 - 26.2.3 inspecting relevant equipment, systems and procedures.

27 WAIVER

- 27.1 If the Council fails to exercise or delays in exercising any right or remedy to which it is entitled under this Agreement or at law then this shall not constitute a waiver of any such right or remedy.
- 27.2 If the Council waives a Default on the part of the other then this shall not constitute a waiver of any future Default.
- 27.3 No waiver shall be effective unless it is:
- i) expressly stated to be a waiver;
 - ii) in writing; and
 - iii) signed by the Authorised Officer.

28 DEFAULTS

- 28.1 If the Supplier commits a Default (as defined in Schedule 2) then the Council will be entitled to serve on the Supplier a Default Notice. This will be without prejudice to any other right or remedy which may be available to the Council, either under this Agreement or at law.
- 28.2 If the Council serves on the Supplier a Default Notice which relates to a Default which can be corrected then on receiving such a Default Notice, the Supplier will take the action specified in the Notice to correct matters, within the timescale set out, at its own cost.
- 28.3 If there is any disagreement between the Parties as to whether a Default has occurred and/or about the action required to be taken and/or the timescale within which the action is to be taken, then either of the Parties can refer the matter for resolution, in accordance with Clause 32 (Dispute Resolution).

Persistent Default

- 28.4 If the Supplier commits a Persistent Default within the timescale set out in the Default Notice or fails to correct a Default within the timescale set out in the Default Notice, then the Council will be entitled to terminate this Agreement with immediate effect.

Suspension of Supplier

- 28.5 If the Default is a Serious Default (and the Default Notice shall say so if it is), then the Council shall be entitled to arrange for an Authorised Officer to carry out an investigation into the Serious Default.
- 28.6 The Council shall be entitled to serve on the Supplier a Suspension Notice where the Council (acting reasonably) considers it is not appropriate for the Supplier to continue to provide any or all of the Services because:
- 28.6.1 The Serious Default is of such seriousness; or
 - 28.6.2 There is a continuing threat to the health, safety or welfare of any or all of the Service Users; or

- 28.6.3 The Supplier has committed Persistent Defaults.
- 28.7 If the Council serves a Suspension Notice upon the Supplier, the Supplier shall cease providing the Service set out in the Suspension Notice from the date specified in the Suspension Notice and the Council shall be entitled either to provide some or all of the Service itself or engage another person to do so on its behalf for as long as the Suspension Notice is in force.
- 28.8 The Council shall ensure that any investigation is carried out as quickly as possible and shall make available to the Supplier a copy of the report of the investigation's findings as soon as practicable after it has been made available to the Council.
- 28.9 If the Supplier has been served with a Suspension Notice, then as soon as practicable after the Council has received the report of the investigation the Council (acting reasonably) shall decide whether or not the Supplier is to resume provision of any of the suspended Services.
- 28.10 If the Council decides that the Supplier is to resume provision of any of the suspended Services, then it shall serve on the Supplier a Resumption Notice which shall set out the Service(s) to be resumed and the date upon which it is or they are to be resumed.
- 28.11 The Council shall be entitled to set out in the Resumption Notice such conditions relating to the Supplier's resumption of the Services as may, in the Council's opinion, be reasonable.
- 28.12 If the Council decides that the Supplier is not to resume provision of any of the suspended Services then it shall be entitled to give the Supplier notice terminating the application of this Contract solely to the Services concerned in the Suspension Notice with immediate effect, or if the Council (acting reasonably) considers that the findings of the investigation reflect on the Supplier's ability to carry out the Services generally it shall be entitled to give the Supplier notice terminating this Contract as a whole with immediate effect.
- 28.13 During any period of suspension the Council shall suspend payments to the Supplier, and if the Council gives the Supplier notice of termination the Supplier shall repay to the Council all sums the Council has paid to the Supplier during the period of suspension that relate to the suspended Services concerned. If the Supplier does not repay to the Council these sums within twenty (20) Working Days of any notice of termination, then the Council shall be entitled to recover these sums as a debt. The Council also reserves the right to recover any sums due to it by setting them off against any future payments due to the Supplier in relation to this Contract or any other contract the Supplier has with the Council.

29 TERMINATION

- 29.1 If the Supplier:
- i) commits or causes the commission of any criminal offence in providing the Services (except for any minor offence or minor traffic offence); or,

- ii) fails to comply with Clause 22 Bribery and Corruption; or,
- iii) commits a Default which is a fundamental breach of its obligations under this Agreement; or,
- iv) becomes bankrupt or insolvent or unable to provide the Services.

Then the Council will be entitled to give the Supplier notice terminating this Agreement, with immediate effect or upon a specified notice period at the discretion of the Council.

29.2 If the Council terminate this Agreement under this Clause then:

- i) the Supplier will continue to provide the Services during the period of notice unless the Council request otherwise;
- ii) the Council shall be entitled:
 - a) to retain any monies owed to the Supplier under this Agreement until the Supplier has paid any monies owed to the Council under this Agreement; or
 - b) to deduct any such monies owed to the Council under this Agreement from the monies owed to the Supplier under this Agreement;in either case without prejudice to the provisions of Clause 16 (Recovery of Sums Due).

30 BREAK

30.1 This Agreement may be terminated by either Party giving twenty-eight [28] days written notice. If the Supplier fails to give twenty-eight [28] days written notice, the Supplier will be liable and pay to the Council any additional operational and administrative costs incurred by the Council in providing a replacement service.

31 FORCE MAJEURE AND NON-PERFORMANCE

31.1 If the Council believes that the Supplier is failing to provide the requisite service detailed in the Agreement, then the dispute procedures outlined in Clause 32 will apply.

31.2 In the event that the Supplier is unable to carry out the Services for whatever reason (save for reasons of Force Majeure) then any advance payments paid to the Supplier shall be refunded in full to the Council.

31.3 If the Council has to secure the services of an alternative Supplier due to any non-performance by the Supplier (other than through Force Majeure), the Supplier will be liable to meet any costs incurred by the Council in securing the alternative services including an allowance time and resources involved.

31.4 If either Party fails to carry out its respective obligations under this Agreement as a result of Force Majeure then whichever Party is affected shall not be liable under this Agreement for any such failure.

31.5 Clause 31.4 is subject to the proviso that whichever Party is affected shall have given the other notice that such failure is the result of Force Majeure within ten [10] working days of such failure occurring. If notice is not given in accordance with this Clause then the failure may be regarded as simply non-performance.

- 31.6 If an event of Force Majeure occurs then the Council shall meet with the Supplier to discuss how best the Supplier can continue to provide the Service until the Force Majeure event ceases, which may include the Supplier subcontracting.
- 31.7 In this Clause Force Majeure means:
- i) acts of war;
 - ii) acts of God;
 - iii) decrees of Government;
 - iv) riots;
 - v) civil commotion; and
 - vi) any event or circumstance which is both beyond the control of whichever Party is affected and which could not have been prevented by acting prudently, diligently or with reasonable foresight.
- 31.8 For the avoidance of doubt Force Majeure shall not include any labour dispute between the Supplier and its Staff, any other staffing problem, or the failure to provide the Service by any of its sub-contractors.
- 31.9 In the event that a Party is prevented from carrying out its obligations under the Agreement by any act of Force Majeure which continues for a period of thirty [30] days, the other Party may terminate the Agreement by notice in writing giving seven [7] days' notice.

32 DISPUTE RESOLUTION

- 32.1 If there is a dispute between the Supplier and the Council concerning the interpretation or operation of this Agreement, then either Party may notify the other in writing that it wishes the dispute to be referred to a meeting of the Authorised Officer and the Contract Manager to resolve, negotiating on the basis of good faith.
- 32.2 If after twenty-eight [28] Days (or such longer period as both Parties may agree) of the date of the notice referred to in Clause 32.1(above), the dispute has not been resolved then either Party may notify the other that it wishes the dispute to be referred to a meeting of a Chief Officer of the Council, (or a person appointed by the Chief Officer to act on their behalf) and a Chief Executive (or equivalent) of the Supplier, to resolve, negotiating on the basis of good faith.
- 32.3 If after twenty-eight [28] Days (or such longer period as both Parties may agree) of the date of the notice referred to in Clause 32.2 (above), the dispute has not been resolved then either Party may notify the other that it wishes to attempt to settle the dispute by mediation, in accordance with the Centre for Effective Dispute Resolution ('CEDR') Model Mediation Procedure 2001 (the 'Model Procedure') or such later edition as may be in force from time to time.
- 32.4 If the Council and the Supplier do not agree on the identity of the Mediator then either Party may request CEDR to appoint one.
- 32.5 Any agreement the Parties reach as a result of mediation shall be binding on both of them, as set out in the Model Procedure, but if the dispute has not been settled by mediation within ten [10] working days of the mediation starting then either Party may commence litigation proceedings (but not before then).

32.6 The use of the dispute resolution procedures set out in this Clause 32, (Dispute Resolution) shall not delay or take precedence over the provisions for termination set out in Clause 28 (Defaults) and Clause 29 (Termination).

33 VARIATIONS

33.1 A variation to this Agreement shall only be valid if it has been agreed in writing by both Parties.

33.2 If either Party wishes to vary this Agreement then it shall serve on the other a Variation Notice which shall set out the nature of the variation sought and the reasons for it.

33.3 If either Party receives a Variation Notice then it shall notify the other in writing whether or not it agrees to the variation and if not, the reasons for it.

33.4 If the Council serves a Variation Notice under this Clause 33, and is unable to implement the intended variation because the Supplier has not agreed to it and the Council and the Supplier are unable to resolve their concerns, then either Party will be entitled to give notice to the other terminating this Agreement or its application to the Service which is the subject of the Council's Variation Notice.

33.5 If the Council serves a Variation Notice under this Clause 33 that would require an amendment in costs to the Supplier then the Contract Price will be adjusted to reflect the change in costs, provided always that such adjustment, either increase or decrease, is justified in the absolute opinion of the Authorised Officer.

33.6 Variations to the route as defined in the Specification may be changed by the Council due to changes in passengers, addresses or other reasons. Where the normal one-way journey for a route is increased or decreased by:

- less than 3 miles, there will be no change to the price payable to the Supplier for that route;
- more than 3 miles, the Contract Price will be increased or decreased by negotiation.

33.7 The normal one-way journey in Clause 33.6 refers to the distance between the first passenger pick up point and the last passenger drop off point (normally bus stop / home and Establishment addresses).

34 ASSIGNMENT, SUBLETTING AND EMERGENCY COVER

34.1 The Council shall be entitled to assign the benefit of this Agreement and shall give written notice of any assignment to the Supplier.

34.2 The Supplier shall not transfer or assign directly or indirectly to any person or persons whatever any portion of this Agreement, without written permission given on behalf of the Council by the Authorised Officer.

34.3 The Supplier may arrange short term cover for the Services in cases of emergency, but must obtain the prior agreement of the Council as to the suitability

of the sub-contracting arrangements. In any instance of emergency cover it remains the responsibility of the Supplier to ensure that the Services are provided in accordance with all terms of the Agreement.

- 34.4 Where the Supplier fails to provide the Services, the Council may arrange cover and any cost so incurred, including an administration fee, will be charged to the Supplier.

35 MONITORING OF THE SERVICES

- 35.1 The Service will be monitored to ensure the Specification is being met, quality standards are being adhered to and that the Service is provided to the satisfaction of the Council.
- 35.2 The Supplier will permit the Council to travel, without charge on any vehicle used to monitor the provision of the Services.

36 HEALTH AND SAFETY

- 36.1 The Supplier must comply with the requirements of the Health and Safety at Work etc Act 1974 and all other Legislation insofar as they apply to the provision of the Services.
- 36.2 All vehicles used on the Service must be maintained to the standards expected by the licensing body. Written records of vehicle maintenance and servicing must be kept by the Supplier and made available to the Council upon request.
- 36.3 Failure by the Supplier to comply with its obligations under Clause 36 may be regarded as a fundamental breach of this Agreement.
- 36.4 The Council may suspend or terminate the provision of the Service or all Services in the event of non-compliance by the Supplier with its legal duties relating to health and safety. Costs associated with covering the Service, including an administration fee, will be due to the Supplier.
- 36.5 The Supplier will make available to the Council its Health and Safety Policy, recorded as a written document.
- 36.6 The Supplier will be responsible for ensuring that any vehicle operated to provide the Service is of suitable design to cater for all parts of the route and the Specification. A route risk assessment should be undertaken by the Supplier to ensure the Service can be delivered safely.
- 36.7 In the event of adverse weather rendering routes potentially hazardous, the Supplier shall contact the Council to determine how the Service shall be provided.
- 36.8 The Supplier shall provide detailed information to the Council following any Health & Safety incident, including violence on the vehicle, and traffic incidents.

37 TUPE

- 37.1 The Supplier recognises that TUPE may apply in respect of this Agreement, and should they so apply that for the purposes of TUPE, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Supplier on the commencement of full operations. At the termination and/or expiry of this Agreement the provision detailed below shall apply.
- 37.2 During the period of six months preceding the expiry of the Agreement or after the Council has given notice to terminate the Agreement or the Supplier stops trading, and within 20 working days of being so requested by the Council, the Supplier shall fully and accurately disclose to the Council for the purposes of TUPE all information relating to its employees engaged in providing Services under the Agreement, in particular, but not necessarily restricted to, the following:
- 37.2.1 the total number of Staff whose employment with the Supplier is liable to be terminated at the expiry of this Agreement but for any operation of law; and
- 37.2.2 for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given); and
- 37.2.3 full information about the other terms and conditions on which the affected Staff are employed (including but not limited to their working arrangements), or about where that information can be found; and
- 37.2.4 details of pensions entitlements, if any; and
- 37.2.5 job titles of the members of Staff affected and the qualifications required for each position.
- 37.3 The Supplier shall permit the Council to use the information for the purposes of TUPE and of re-tendering. The Supplier will co-operate with the re-tendering of the Agreement by allowing the transferee to communicate with and meet the affected employees and/or their representatives.
- 37.4 The Supplier agrees to indemnify the Council fully and to hold it harmless at all times from and against all losses, actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under clause 37.2.
- 37.5 The Supplier agrees to indemnify the Council from and against all losses, actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee on any date upon which the Agreement is terminated and/or transferred to any third Party ("Relevant Transfer Date") arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.
- 37.6 In the event that the information provided by the Supplier in accordance with clause 37.2 above becomes inaccurate, whether due to changes to the

employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Council of the inaccuracies and provide the amended information.

- 37.7 The provisions of this clause shall apply during the continuance of this Agreement and indefinitely after its termination.

38 GOVERNING LAW AND JURISDICTION

- 38.1 The Parties accept the exclusive jurisdiction of the English courts and agree that the Agreement and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

39 GENERAL

- 39.1 The Supplier shall ensure that its employees and agents are made aware of the Council's Whistleblowing Policy and that the details of this policy are fully explained to them and the Supplier shall provide the Council with evidence of doing so upon request.
- 39.2 The Supplier shall, and shall use reasonable endeavours to ensure that its employees, agents and subcontractors shall, at all times, act in a way which is compatible with the Convention Rights within the meaning of Section 1 of the Human Rights Act 1998.
- 39.3 The Supplier shall not issue any press release or make any public statement concerning the Council, its employees, agents, councillors or the Services without the prior written consent of the Council.
- 39.4 These conditions constitute the entire understanding between the parties relating to the subject matter of the Agreement and, save as may be expressly referred to or referenced herein, supersede all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

SCHEDULE 1 – Contract Price

The Contract Price for this Agreement is as stated in the Contract Particulars.

Where required for the Service, a fully completed and authorised Invoice Verification Form must be submitted before an invoice will be passed for payment.

In the event that the Service cannot be operated due to unavoidable Establishment closure (unavoidable closure means closure on account of weather conditions, heating failure, damage to buildings, epidemics, pandemics, strikes, etc) on a day when passengers would otherwise have attended, the Supplier agrees to the following:

- not to claim or invoice for the Contract Price as above for the relevant day or period; and
- may only claim 80 percent of the daily Contract Price for the relevant day or period for PSV (including permit) vehicles or 50 percent of the daily Contract Price for the relevant day or period for Private Hire or Hackney Carriage vehicles, but such claim may not exceed ten days in any financial year (01 April - 31 March).

In any other event that the Service is not required and the Supplier has been notified in advance of the trip commencing, the Supplier agrees to the following:

- not to claim or invoice for the Contract Price for the relevant day or period.

Contract Price is fixed for the term of the Agreement unless subject to an agreed Variation.

SCHEDULE 2 - Default List

This Schedule details the Defaults that include, but are not limited to, those that may constitute a lack of performance by the Supplier (or sub-contractor) and failure to achieve the required Service Standard.

- Any journeys that operate in excess of two minutes early or in excess of ten minutes late without good reason.
- Any journey that fails to take place.
- Failure to report any delayed or non-running services to the Council, at the earliest opportunity.
- Failure to observe the correct route and/or stopping places unless for reasons beyond the Supplier's control.
- Combining routes and/or stopping places without the Council's prior approval.
- Failure to provide vehicle(s) of sufficient capacity determined by the Service Specification except with the Council's prior approval.
- Failure to provide vehicle(s) conforming to the Service Specification in respect of special features, e.g. suitability for carriage of wheelchairs.
- Failure to provide a vehicle equipped with power operated passenger door(s) where required in the Service Specification.
- Use of an incorrectly licensed or incorrectly insured vehicle, or a vehicle found to be unsafe.
- Failure to maintain reasonable standard of cleanliness in vehicle, including vehicle tracking, where applicable.
- Failure to display a correct and clearly visible route number and/or yellow school bus sign when operated by a PSV.
- Failure to carry route schedule and/or travel plan, if applicable.
- Sub-contracting other than as permitted by the Agreement.
- Use of drivers without the appropriate licence, or drivers and/or passenger assistants without a Council-authorized enhanced Disclosure Barring Service disclosure.
- Use of a driver or passenger assistant without prior authorisation by the Council.
- Failure to provide a driver or passenger assistant adequately trained in the use of special seating and/or wheelchair restraints, where applicable to the Specification.
- Use by driver of a mobile phone whilst vehicle in service is in motion, unless a hands-free kit is used.
- Driver or passenger assistant observed smoking on the vehicle.
- Use of inappropriate language by a driver or passenger assistant.
- Giving of gifts, inappropriate contact or misconduct of a driver or passenger assistant with relation to passengers or other Parties in association with the Services.
- Failure of driver or passenger assistant to wear appropriate identification.
- Speeding or traffic offences.

- Staff operating the service whilst under the influence of alcohol, banned substances, or any substance which impairs their ability to perform the service.
- Carriage of passengers not authorised by the Council.
- Failure to report an accident to the Council within 24 hours.
- Failure to report a serious incident of pupil misbehaviour to the Council at the earliest opportunity.
- Failure to make suitable arrangements so that matters concerning complaints received from the public or a school/college can be discussed with the Authorised Officer between 8am and 5pm on normal working days.
- Failure to provide a formal report where requested to the Council about complaints received from the public or a school/college within 5 working days
- Failure to allow a Council officer access to the vehicle
- Failure to give the required notice to terminate a contract.
- Failure to comply with government guidance in the event of epidemics / pandemics.

SCHEDULE 3

PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The Supplier shall comply with any further written instructions with respect to processing by the Council.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	Information relating to pupils/students/parents/carers/guardians/Agreement to enable the provision of school transport assistance services.
Duration of the processing	From the Agreement Commencement Date to the Agreement Termination Date.
Nature and purposes of the processing	Collation, recording, organising, storing, altering, retrieving, using, disclosing and destroying information relating to pupils/students/parents/carers/guardians/Agreement in order to provide school transport assistance/services. Information to be retained securely, kept confidential and destroyed securely. Information to be used only by persons who are required to undertake/manage/administer school transport assistance/services.
Type of Personal Data	Names and addresses. Telephone numbers. Dates of birth. Genders. Specific needs, medical needs, mobility, sensory and behavioural needs. Schools attended. Eligibility to receive transport assistance.
Categories of Data Subject	Pupils/students/parents/carers/guardians.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Information will be securely destroyed with effect from the Agreement Termination Date. Route schedules superseded by more up-to-date schedules will be securely destroyed.