



## CONDITIONS OF CONTRACT INTEGRATED PASSENGER TRANSPORT

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, except where the context otherwise requires, the following terms and expressions shall have the meanings set out below:

<b>Agreement</b>	means the agreement for the Service(s) made between the Council and the Supplier comprising of the Conditions of Contract, the Contract Particulars and the Schedules
<b>Authorised Officer</b>	means the Corporate Director of Business and Environmental Services and his authorised representatives in Integrated Passenger Transport
<b>Best Practice Guide</b>	means the Council's guide to Best Practice in Transport Services as more particularly described in clause 2.13 and such amendments to the guide as the Council may issue from time to time
<b>Commencement Date</b>	means the date on which the Service is to commence as set out in the Contract Particulars
<b>Confidential Information</b>	means all information, whether written or oral (however recorded), provided by the disclosing party to the receiving party and which (i) is known by the receiving party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving party to be confidential
<b>Contract Charges</b>	means the charges for the Services which shall become due and payable by the Council to the Supplier in accordance with the provisions of this Agreement, details of which are set out in the Contract Particulars
<b>Contract Particulars</b>	means the contract particulars to this Agreement

<b>Contract Standards</b>	means the standards to which the Service is to be provided by the Supplier as set out in clause 2.2
<b>Contract Manager</b>	means the person appointed by the Supplier under clause 2.3
<b>Controller</b>	has the meaning given in the GDPR
<b>Council DBS Badge</b>	means the badge issued by the Council to identify that a Driver and/or Passenger Assistant has completed the DBS vetting procedure and been authorised by the Council to work on transport contracts
<b>Council</b>	means North Yorkshire County Council
<b>Data Loss Event</b>	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
<b>Data Processing Schedule</b>	means Schedule 2 to this Agreement setting out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject
<b>Data Protection Impact Assessment</b>	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data
<b>Data Protection Legislation</b>	means: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 to the extent that it relates to processing of Personal Data and privacy; and (iii) all applicable Law about the processing of Personal Data and privacy
<b>Data Protection Officer</b>	has the meaning given in the GDPR
<b>Data Subject</b>	has the meaning given in the GDPR
<b>Data Subject Access Request</b>	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

<b>DPA 2018</b>	means the Data Protection Act 2018
<b>Default Notice</b>	means the notice to be served on the Supplier in the event of default as set out in clause 10
<b>Designated Person</b>	means the person appointed by the Supplier to act for it in connection with Disclosure & Barring Service checks.
<b>Disclosure &amp; Barring Service (DBS)</b>	means the government department established to help organisations make safer recruiting decisions by carrying out background employment checks
<b>Driver(s)</b>	means a person employed or otherwise provided by the Supplier to drive Vehicles used for the Service
<b>EIR</b>	means the Environmental Information Regulations 2004
<b>Expiry Date</b>	means the date identified as such in the Contract Particulars
<b>FOIA</b>	means the Freedom of Information Act 2000
<b>GDPR</b>	means the General Data Protection Regulation ( <i>Regulation (EU) 2016/679</i> )
<b>Home to School or Health and Social Care Transport Service</b>	means the service provided for school pupils as part of the Council's obligations under Section 509 of the Education Act 1996 (as amended) and/or transport required for the purposes of Health and Social care.
<b>LED</b>	means the Law Enforcement Directive ( <i>Directive (EU) 2016/680</i> )
<b>Licensing Authority</b>	means the official body that grants Private Hire/Hackney Carriage Taxi Licences or PCV Operator's Licences
<b>Local Bus Service</b>	means a service provided for members of the public as part of the Council's obligations under Section IV of the Transport Act 1985
<b>Passenger Assistant</b>	means a person employed or otherwise provided by the Supplier or the Council to supervise and assist passengers on Vehicles used for the Service

<b>Passenger Transport Service(s)</b>	means together the Home to School Service or Health and Social Care Service, Health & Adult Services, Special Educational Needs Service and Local Bus Service
<b>PCV</b>	means a Passenger Carrying Vehicle
<b>Personal Data</b>	has the meaning given in the GDPR and where used in this Agreement refers to any such Personal Data processed by the Supplier on behalf of the Council under this Agreement
<b>Personal Data Breach</b>	has the meaning given in the GDPR
<b>Processor</b>	has the meaning given in the GDPR
<b>Protective Measures</b>	means the appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it
<b>Request for Information</b>	has the meaning set out in the FOIA or the EIR as relevant (where the meaning set out for the term “request” shall apply)
<b>Route(s)</b>	means the route(s) over which the Service is to be provided (including the specified pick up and drop off points) which are referred to in the Specification
<b>Service(s)</b>	means the Passenger Transport Service(s) to be provided under this Agreement
<b>Specification</b>	means the service specification attached at Schedule 1 to this Agreement
<b>Staff</b>	means all directors, partners, officers, employees (including but not limited to self-employed persons and volunteers), agents, consultants, and suppliers of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under this Agreement

<b>Staff Vetting Procedures</b>	means vetting procedures that accord with good industry practice or, where requested by the Council, the Council's procedures for the vetting of personnel as provided to the Supplier from time to time;
<b>Supplier</b>	means the party identified as such in the Contract Particulars
<b>Tender</b>	means the Supplier's tender for the Service which has been accepted by the Council, relevant details of which are included in the Specification
<b>Term</b>	means the period referred to in the Contract Particulars during which the Service is to be provided which will commence on the Commencement Date; such period is subject to extension under clause 2.1
<b>Vehicle(s)</b>	means the vehicle(s) used for the Service referred to in the Specification
<b>Working Day(s)</b>	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In this Agreement, unless the context otherwise requires:

- 1.2.1 references to clauses and schedules are references to the relevant clause and schedules of this Agreement and references to paragraphs are to paragraphs of the relevant schedule;
- 1.2.2 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;
- 1.2.3 the headings to the clauses of this Agreement are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.5 words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.6 a reference to one gender shall include a reference to the other genders;
- 1.2.7 any reference to a statute or statutory provision is a reference to it as amended,

extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it; and

1.2.8 the word 'including' shall be understood as meaning 'including without limitation'.

1.3 If there is any conflict or inconsistency between the provisions in the main body of this Agreement, the Contract Particulars and the Schedules, such conflict or inconsistency shall be resolved according to the following order of priority:

1.3.1 the clauses set out in the Conditions of Contract;

1.3.2 the Contract Particulars;

1.3.3 Schedule 1 to this Agreement; and

1.3.4 Schedule 2 to this Agreement.

## **2. THE SUPPLIER'S OBLIGATIONS**

### **2.1 Term**

2.1.1 This Agreement shall take effect on the Commencement Date and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 2.1.2 or terminated in accordance with the terms and conditions of this Agreement.

2.1.2 The Council may extend this Agreement for a period of up to twenty four (24 months by giving not less than one (1) months' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of this Agreement shall apply throughout any such extended period.

### **2.2 Contract Standards**

2.2.1 In supplying the Services, the Supplier shall:

- (a) co-operate with the Council in all matters relating to the Services and comply with all the Council's instructions;
- (b) perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
- (c) 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 this Agreement;
- (d) ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
- (e) comply with all applicable laws, codes of practice and the Best Practice Guide; and

- (f) provide all equipment, tools and vehicles and other items as are required to provide the Services,

(together the “**Contract Standards**”).

## 2.3 **Supplier’s Representative and Designated Person**

2.3.1 Before the Commencement Date the Supplier must nominate:

- (a) the Contract Manager who will be responsible for the successful operation of the Agreement and who will be the initial point of contact;
- (b) the Designated Person who will be responsible for all DBS checks and Staff Vetting Procedures in connection with the Service.

2.3.2 The Council reserve the right to reject nominations made by the Supplier. The Council undertakes not to act unreasonably or maliciously in the application of this power.

2.3.3 The Contract Manager must:

- (a) be empowered to act on behalf of the Supplier for all purposes connected with the Agreement; and
- (b) have continuous and effective responsibility for the management of the transport operations of the business in so far as they relate to the carriage of passengers and the Council transport contracts.

2.3.4 The areas of responsibility of the Contract Manager are outlined, but not wholly defined, in the Best Practice Guide.

2.3.5 The Council reserve the right to remove a Contract Manager or Designated Person upon the Authorised Officer’s instruction with or without a reason first being given, and where it is considered that the individual is no longer suitable for their nominated role. The Council undertakes not to act unreasonably or maliciously in the application of this power. Any costs and expenses payable in connection with such removal shall be met by the Supplier.

2.3.6 Where a Contract Manager or Designated Person has been deemed unsuitable, having been removed from the role by the Council, then that individual shall not be authorised to work in a similar role for any other Supplier in providing a Service to the Council.

## 2.4 **Operator Licences**

2.4.1 The Supplier shall hold the appropriate permit and/or licence for the Service.

2.4.2 All such permits or licences shall be current, valid and in accordance with the requirements of any Licensing Authority.

## 2.5 Drivers & Passenger Assistants

- 2.5.1 The Supplier shall ensure that any Driver or Passenger Assistant used on a Home to School or Health and Social Care Transport Service is a suitable person to drive Vehicles carrying children/vulnerable adults or to act as a Passenger Assistant upon such Vehicles. Drivers and Passenger Assistants must be recruited using the Contract Standards and standards set out in the Best Practice Guide and have received any appropriate training. Confirmation of recruitment to these standards shall be included in the Contract Particulars signed by the Supplier. Suppliers must be able to provide evidence of any training undertaken.
- 2.5.2 Without prejudice to clause 2.6.4 the Supplier shall ensure that all persons associated with the operation of this Agreement are properly covered by employer's liability insurance where required.
- 2.5.3 All Drivers must undertake an eyesight test every twenty four (24) months and the Supplier shall retain evidence of this for inspection by the Authorised Officer.
- 2.5.4 The Supplier shall retain evidence, for inspection, of the necessary driver medical checks to demonstrate compliance with licencing legislation/regulations.
- 2.5.5 The Council will require the Supplier to ensure that any person employed in the direct provision of the Services has undertaken a DBS check (including but not limited to all Drivers and Passenger Assistants). The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Council, or is of a type otherwise advised by the Council (each such conviction a "**Relevant Conviction**"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a DBS check or otherwise) is employed or engaged in the provision of any part of the Services.
- 2.5.6 If the Council reasonably believes that any of the Staff (including but not limited to Drivers and Passenger Assistants) are unsuitable to undertake work in respect of this Agreement, the Authorised Officer may, by giving written notice to the Supplier:
- (a) refuse admission to the relevant person(s) to the Council's premises;
  - (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
  - (c) require that the Supplier replace any person removed under this clause 2.5 with another suitably qualified person and procure that any Council DBS Badge's or any other passes issued by the Council to the person removed is surrendered, and

the Supplier shall comply with any such notice. Any costs and expenses payable in connection with such removal shall be met by the Supplier.

- 2.5.7 The Supplier shall:



- (a) ensure that all Staff are vetted in accordance with legal requirements and the Supplier's Staff Vetting Procedures (where applicable); and
- (b) procure that all Staff comply with any rules, regulations and requirements as may be reasonably specified by the Council from time to time.

2.5.8 The Supplier shall comply with DBS vetting procedures as required by the Council and any new statutory legislation introduced. Failure to comply with the DBS vetting procedures and/or use of a non-DBS vetted Driver and/or Passenger Assistant would constitute a material breach of Agreement under clause 12.2.

2.5.9 Where self-employed Drivers or Passenger Assistants are to be used the Supplier must maintain personnel records including training records as if such Drivers and Passenger Assistants were employees and such records should be available for inspection on request.

2.5.10 The Supplier will ensure that payroll records are maintained for all employees.

2.5.11 The Supplier must ensure that all Drivers and Passenger Assistants wear a seatbelt where one is fitted to the Vehicle.

2.5.12 The Supplier shall ensure that all Drivers shall hold the appropriate driving licence(s) for the Vehicle.

2.5.13 Where a Vehicle will be operated under a permit issued under section 19 or 22 of the Transport Act 1985 then all Drivers must have successfully completed a MIDAS assessment, and retain this by undertaking refresher training at the appropriate time.

2.5.14 The licences and MIDAS qualification referred to in clause 2.5.12 and 2.5.13 shall be current, valid and in accordance with the requirements of any Licensing Authority. Failure to comply with clause 2.5.12, 2.5.13, or this clause 2.5.14 would be considered a material breach of the Agreement under clause 12.2, and the Council will notify the relevant Licensing Authority of the breach.

2.5.15 The Supplier must have in place a system which monitors checks of all the driving licenses of all the individuals working on the Council's contracts. . The system must include a six (6) monthly check and must be kept available for inspection by the Authorised Officer at any time without notice.

2.5.16 The Supplier shall ensure that Staff engaged by it for the purposes of the Service are issued with, understand and use where necessary, the information contained in the Best Practice Guide and the guidelines for Drivers and Passenger Assistants issued in conjunction with the Council DBS Badge. Confirmation of receipt of these documents is required and should be retained on Staff personnel files.

2.5.17 The Supplier shall take all such steps as are reasonably necessary to ensure that all Drivers and Passenger Assistants are fit to work whilst engaged on the Service

and are not rendered unsuitable by reason of alcohol/substance/drug abuse or sleep deprivation, illness or any other cause.

- 2.5.18 The Supplier shall ensure that all Drivers are equipped with a mobile telephone connected to the network most appropriate to the area served. Mobile phones, including via any hands-free device, must not be used whilst driving or when the engine is switched on. A mobile telephone may not be required if the Vehicle is fitted with a two way radio system that will function over the majority of the Route.
- 2.5.19 The Supplier shall ensure that the Service is operated in accordance with the relevant drivers' hours regulations. The Supplier shall also undertake checks of individual Drivers' compliance with the relevant drivers' hours regulations and evidence of these checks shall be retained and be available for inspection.
- 2.5.20 The Supplier shall ensure that all Drivers and Passenger Assistants wear, and have visible, the Council DBS Badge when delivering the Service. Once a Driver and/or Passenger Assistant ceases to be employed by the Supplier and/or involved with the delivery of the Services, they shall return the Council DBS Badge within ten (10) Working Days.
- 2.5.21 Any person employed as a Passenger Assistant must be fully able to carry out all aspects of the role and any specific requirements pertaining to individual passengers.

## 2.6 **Insurance**

- 2.6.1 The Supplier shall ensure that adequate motor insurance for hire and reward covering third party injury and losses arising in connection with the Service is maintained by itself, its Drivers (including any self-employed Drivers) throughout the Term of this Agreement. The minimum period of insurance renewal is three (3) months. The limitation in respect of third party property damage caused by either private car or commercial vehicle shall be for a minimum of ten million pounds (£10,000,000) separately for each claim.
- 2.6.2 The Supplier shall indemnify the Council against all actions, claims, damages, costs and other expenses in relation to the injury to, or death of, any person, and loss of, or damage to, any property, real or personal which is attributable to the negligent act or default of the Supplier and/or, its Staff in connection with the Service.
- 2.6.3 The Supplier shall take out and maintain, and shall ensure that any self-employed Drivers and/or Passenger Assistants also take out and maintain, insurance against its liabilities under clause 2.6.2 for the minimum sum of five million pounds (£5,000,000) in respect of any one incident.
- 2.6.4 The Supplier must take out and maintain employer's liability insurance (unless the Supplier is exempt), in a minimum amount for each and every claim, act or occurrence or series of claims, acts or occurrences which complies with statutory

requirements (which at the date of this Agreement is ten million pounds (£10,000,000)). The Supplier shall ensure that the employer's liability insurance covers all Staff including any volunteers and individuals who work on a self-employed basis in the provision of the Service.

2.6.5 The Supplier shall supply to the Council on request copies of all insurance policies, cover notes, premium receipts and other documents necessary to establish compliance with this clause 2.6. This also relates to self-employed and voluntary Drivers and copies of these documents must be retained by the Supplier where such Drivers are undertaking work on their behalf.

2.6.6 If the Supplier fails to supply any documents requested to establish compliance with this clause 2.6 then the Council reserves the right to withhold payment until such time as the documents are made available. If the documents are not provided within two (2) weeks of the date of expiry of the insurance then this would constitute a material breach of the Agreement under clause 12.2.

## 2.7 **Vehicles**

2.7.1 The Supplier shall ensure that Vehicles shall comply with all relevant requirements of law relating to construction (including the Equality Act 2010 and the Public Service Vehicle Accessibility Regulations 2000), equipment and use and shall ensure that the Vehicles are properly taxed, tested, licensed and insured, and where a Vehicle does not meet any element of these requirements then this would be considered a material breach of Agreement under clause 12.2.

2.7.2 Vehicles with fewer than nine (9) passenger seats shall not in any circumstances be operated under a PCV operator's licence unless agreed by the Authorised Officer.

2.7.3 Where required by law, the Supplier shall ensure that all Vehicles shall be equipped with one 3-point seat belt in good working order for each person carried, including wheelchair seated passengers, and will operate in accordance with the law and further guidance issued by the Department for Transport ("DfT") or the Council through the Best Practice Guide.

2.7.4 Any Vehicle with fewer than nine (9) passenger seats must have 3-point seat belts fitted. Any seats fitted with lap belts are not to be used by any person carried. One forward facing seat for each person carried should be available, however Vehicles with rear facing seats and 3-point seat belts may be considered for use only following a transport assessment by the Council. Seatbelts must be suitable for those using them or adapted where possible and required.

2.7.5 The Supplier shall ensure that where the Service comprises a Home to School or Health and Social Care Transport Service, for a Vehicle with fewer than nine (9) passenger seats, seatbelts are properly worn by all passengers and appropriate restraints and seats are provided in accordance with the law and further guidance

issued by the DfT or the Council through the Best Practice Guide or a transport assessment.

- 2.7.6 Where seatbelts are fitted to a Vehicle with nine or more passenger seats then the Supplier shall ensure that it takes all reasonable steps to ensure that the passengers are notified that they are required to wear a seatbelt at all times. This shall be done by means of an announcement or audio-visual presentation as passengers join the bus and/or a designated sign, approved by the DfT.
- 2.7.7 The Supplier shall ensure that Vehicles are kept in good repair, meet the minimum legal requirements and are maintained to the Council's satisfaction. The Vehicles must be clean and tidy, both internally and externally, and the interior must be free from strong odours or perfumes. If the Council is not satisfied regarding the maintenance of a Vehicle then it reserves the right to specify that the Vehicle is not used on any Service until such time as the Vehicle is re-inspected and deemed by the Council to be satisfactory. Any required maintenance or repairs must be carried out and the Supplier shall provide evidence to the Council of the maintenance or repairs which have been carried out.
- 2.7.8 A daily walk round check ("**First Use Check**") shall be undertaken by a responsible person acting on behalf of the Supplier before a Vehicle is first used in accordance with the Best Practice Guide.
- 2.7.9 A copy of the defect sheet recording the First Use Check each day must be kept with the Vehicle and be available for inspection unless otherwise agreed by the Authorised Officer.
- 2.7.10 The Authorised Officer and any person nominated by him shall be allowed reasonable access by the Supplier to examine Vehicles, the Supplier's premises and records relating to the maintenance and operation of the Vehicles and the provision of the Service.
- 2.7.11 The Supplier shall ensure that scheduled vehicle inspections are undertaken by a competent person as set out in the licence and/or permit requirements obtained in accordance with clause 2.4. Non PCV Vehicles must be inspected every thirteen (13) weeks (this can include MOT, main dealer service and the Taxi Licensing Authority tests).
- 2.7.12 Maintenance, inspection and First Use Check records must be kept for a minimum of fifteen (15) months for all Vehicles operating on the Service.
- 2.7.13 The Supplier shall ensure that all Vehicles shall be fitted with a serviceable foam or water fire extinguisher which complies with BS 5423 or BS EN3 and has a minimum fire rating of at least 8A or 21B.
- 2.7.14 The Supplier shall ensure that all PCVs are fitted with a serviceable reversing horn which must be used when the Vehicle is reversing except where otherwise agreed by the Authorised Officer.

- 2.7.15 All PCVs must be fitted with wheel nut indicators except where otherwise agreed by the Authorised Officer.
- 2.7.16 The Supplier shall ensure that all Vehicles comply with the details submitted in the Tender, or as otherwise agreed, in writing, by the Authorised Officer.
- 2.7.17 The Supplier shall ensure that all Vehicles, including taxis, display the destination and/or service number and other information required by the Specification. The Supplier shall ensure that all Vehicles used in the delivery of the Service display the name of the Supplier. This may be on the Vehicle, the destination/service number display or other appropriate and visible means.
- 2.7.18 **Taxi Contracts:** The following condition applies to contracts for all Taxi Services:
- Vehicle Age:**
- Unless otherwise stated in the Specification, the maximum age for Vehicles used to deliver the Services during the Term of this Agreement shall be twelve (12) years for Vehicles of eight (8) passenger seats and fewer (including vehicles adapted for the carriage of wheelchairs).
- 2.7.19 **Minibus, Bus and Coach Contracts:** The following condition applies to contracts for Bus and Coach Services undertaking the Home to School and Health and Social Care Transport Service:
- Vehicle Age:**
- Unless otherwise stated in the Specification, the maximum age for Vehicles used to deliver the Services during the Term of this Agreement shall be:
- (a) fifteen (15) years for Vehicles of sixteen (16) passenger seats and fewer (including vehicles adapted for the carriage of wheelchairs); and/or
- (b) twenty five (25) years for Vehicles of seventeen (17) passenger seats and over.
- 2.7.20 **Local Bus Contracts:** The following condition applies to contracts for Local Bus Services:
- Vehicle Age:**
- Unless otherwise stated in the Specification, the maximum age for Vehicles used to deliver the Services for the Term of this Agreement shall be:
- (a) seven (7) years for Vehicles of twenty one (21) seats and fewer; and/or
- (b) twelve (12) years for Vehicles of twenty two (22) seats and over.

- 2.7.21 Vehicles fitted with passenger wheelchair lifts, which must conform to LOLER 98 Regulations, require an annual LOLER weight test certificate and an inspection by a competent person every six (6) months. Evidence of both must be retained by the Supplier and produced for inspection by the Authorised Officer on request.
- 2.7.22 Suppliers shall ensure that they inform the appropriate licensing authorities, in writing, of any Vehicles which have been modified after original registration and that they have been re-tested by the Driver and Vehicle Standards Agency, if required. Evidence of the notification of modification, response and re-test must be kept by the Supplier and produced for inspection by the Authorised Officer on request. The Council, subject to an inspection, reserve the right to deem a modified Vehicle as unsuitable for contracted Services.
- 2.7.23 The Supplier shall consider the Advertising Practice Code prior to agreeing to enter in to any vehicle advertisement agreement. The code gives specific guidance relating to advertising to children and is enforced by the Advertising Standards Authority.

## 2.8 **Training and Introductory Visits**

- 2.8.1 The Supplier will arrange for the Contract Manager, and where appropriate, Drivers and Passenger Assistants to participate in training programmes for the safety and wellbeing of passengers organised by the Council. These will be of up to half a day's duration and the Council would not normally require any individual to attend more than one such training session during each academic year.
- 2.8.2 Where the Service is provided to a primary or special needs school for the first time by the Supplier and where a Vehicle with fewer than thirty (30) seats is being used to provide the Service at any school, the Authorised Officer may require the Supplier to arrange for the Driver (and any Passenger Assistant) to attend either the home or the school to meet the pupils who are to be carried.

## 2.9 **Passengers**

- 2.9.1 The Council will issue the majority of pupils entitled to free Home to School transport with a travel permit. The Supplier shall ensure that Drivers shall check such permits on a regular (no less frequently than weekly) basis and the Supplier shall provide the Authorised Officer with details of the name and school of any child travelling on Home to School or Health and Social Care Transport Service without such a permit. On a Local Bus Service, non-permit holders shall pay the appropriate fare to the Supplier. Pupils shall not be refused travel without the prior agreement of the Authorised Officer on a Home to School Service.
- 2.9.2 The Supplier shall ensure the safety and well-being of all passengers on any Vehicle.
- 2.9.3 The Supplier shall not eject any pupil/passenger from a Vehicle before the desired stop except in circumstances where the actions of the pupil/passenger have

constituted a genuine threat to the safety of the Driver or other passengers. If such action takes place, the Supplier shall notify the Authorised Officer immediately.

2.9.4 The Supplier shall ensure that wherever practicable no standing passengers are carried on a journey which caters principally for school children. There shall be no standing passengers at all on Vehicles which do not have a permit to carry them. Where overloading occurs the Authorised Officer shall be informed immediately.

2.9.5 The Supplier shall ensure that Drivers are made aware of the special needs of the elderly or people with any type of disability and that they shall be given all reasonable assistance and shown all due courtesy by Drivers, particularly when getting on or off a Vehicle.

2.9.6 The Supplier shall ensure that, for registered Local Bus Services, their policies adhere to the Confederation of Passenger Transport UK (CPT) Guidelines for the transportation of Wheelchairs and Mobility scooters.

## 2.10 **Provision of Information and Freedom of Information**

2.10.1 Whenever required by the Authorised Officer the Supplier will provide access to all documentation relating to the Service including (but without limitation) licences, permits and certificates relating to Drivers, Passenger Assistant or Vehicles. The Authorised Officer may take copies of such material.

2.10.2 The Supplier shall notify the Authorised Officer, in writing, immediately the Supplier becomes aware of any action or prosecution in relation to any Vehicle, operating base or facility, Driver, Passenger Assistant or any other person connected with the Service. This includes any investigations or public inquiries carried out by a Taxi Licensing authority or the Traffic Commissioner regardless of whether they relate to the Council's contract operations or not.

2.10.3 The Supplier shall permit access with reasonable notice to nominated representatives of the Council to relevant accounts and other financial records throughout the duration of the Agreement to assess a Supplier's financial stability. The Council may also request further financial information or undertake credit checks at any time.

2.10.4 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall:

(a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and the EIR;

(b) transfer to the Council all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

- (c) provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within five (5) Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Council.

- 2.10.5 The Supplier acknowledges that the Council may be required under the FOIA and the EIR to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 2.10.6 Notwithstanding any other provision in this Agreement, the Council shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the EIR
- 2.10.7 The Supplier shall maintain an adequate records management system which will enable it to access the information within the time limits prescribed.
- 2.10.8 The Supplier shall indemnify the Council against all claims, demands, actions, costs, proceedings and liabilities which the Council directly incurs due to the Supplier's (or any subcontractors) breach of this clause 2.10 or any part of it.
- 2.10.9 The Supplier will inform Drivers and Passenger Assistants that information, including their personal data, may be disclosed to relevant authorities (including Taxi Licensing Authorities and The Traffic Commissioners) by the Supplier or by the Council to fulfil their obligations to them
- 2.10.10 The Supplier shall agree to share ticket machine data with the Council in accordance with sections 16 and 17 of the North Yorkshire & York Concessionary Fares Scheme 1 October 2016, or as otherwise amended for contract management purposes.

## 2.11 **Surveys**

- 2.11.1 The Supplier shall complete or distribute survey forms relating to the Service as the Authorised Officer may require from time to time.
- 2.11.2 The Council may itself undertake surveys on any Vehicle at any time without notice.



## 2.12 Smoking Policy

The Supplier shall ensure that no smoking, including the use of electronic cigarettes, is permitted at any time on any Vehicle used for the Service. The Supplier must ensure that the necessary no smoking signs are fitted to the Vehicle to comply with current legislation. The Supplier shall ensure that the Drivers and Passenger Assistants adhere to all legislation, as well as the policies in place at any premises which form part of the Route. Drivers and Passenger Assistants must not smoke within sight of a school or any premises which form part of the Route.

## 2.13 Best Practice Guide

The Supplier shall comply with the Best Practice Guide at all times during the Term of this Agreement. The Council reserves the right from time to time to issue amendments to the Best Practice Guide and shall make available copies of the same to the Supplier. Such amendments shall be deemed to form part of the terms and conditions of this Agreement and the Supplier shall comply with their requirement

## 3. SERVICE DETAIL

- 3.1 The Supplier shall operate the Service on the Routes in accordance with the terms and conditions of this Agreement including the details in the Specification.
- 3.2 If the Service constitutes a Local Bus Service the Supplier shall register the Service with the relevant Traffic Area Office. The Supplier is responsible for the preparation and submission of registration documents and payment of fees to the Traffic Area Office except where otherwise agreed by the Authorised Officer.
- 3.3 The Supplier shall not vary any Route or the location of any stopping place without the prior approval of the Authorised Officer.
- 3.4 The Supplier shall obtain such consents as are necessary to ensure that the Service may be provided over any part of a Route which is not on the public highway.
- 3.5 Where appropriate the Supplier shall make use of any bus stations along a Route except where agreed otherwise by the Authorised Officer. The Supplier shall ensure that all recognised stopping places are observed along a Route unless specified otherwise in the Specification. The Supplier shall assess the safety of each non-recognised stopping place prior to its use, and all risk assessment paperwork shall be retained by the Supplier for inspection by the Authorised Officer where requested.
- 3.6 The Supplier shall be responsible for obtaining all necessary consents to use any bus station for a Route and shall be responsible for the payment of any fees for such use or for road/bridge tolls.
- 3.7 If a connecting Service is provided for school children then the Driver must wait with any child(ren) for the arrival of the connecting Service. The Supplier will be

responsible for ensuring the safety of any such child(ren) where such a connection fails (including, but not limited to, making alternative arrangements for the journey).

3.8 The Supplier may not register a Home to School or Health and Social Care Transport Service as a Local Bus Service without first seeking the written consent of the Council.

3.9 The Supplier shall ensure that any Vehicle used to operate the Service is suitable for the Route followed.

#### **4. CONTRACT CHARGES, PAYMENT AND RECOVERY OF SUMS DUE**

4.1 The Contract Charges for the Services shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Council, the Contract Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services. For the avoidance of doubt, the Contract Charges shall be inclusive of VAT.

4.2 The Supplier shall invoice the Council as specified in this Agreement (as may be amended by the Council from time to time) unless approval has previously been given for payment to be made via the Council's automatic payment system. Invoices shall be submitted monthly (or four (4) weekly as may be agreed) in arrears.

4.3 Each invoice shall include such supporting information as may be required by the Council (as per clause 4.4 below or as requested by the Council from time to time) to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period. Non-compliant invoices will be sent back to the Supplier which may lead to a delay in payment

4.4 Invoices shall include:

- (a) details of journeys or part journeys not operated and the reason;
- (b) the total scheduled mileage not operated in the period covered by the invoice;
- (c) in respect of Local Bus Service contracts, including registered Home to School Transport Services:
  - (i) the number of fare paying passengers and concessionary pass holders carried and revenue accrued for each journey on each day in the fourth week of operation and each successive fourth week (the Authorised Officer may require information for other weeks as necessary from time to time);
  - (ii) the total number of fare paying passengers and concessionary pass holders carried and revenue accrued by the Supplier for the period of the invoice; and

- (iii) a quarterly statement of payments received from all authorities in respect of concessionary fares; a
- (d) full details of the Contract Charges; and
- (e) where relevant and agreed by the Council in advance, the costs of making alternative arrangements.

For the avoidance of doubt, where payments are made via the automatic payment system, the Supplier shall still be required to submit the above information on a monthly basis.

- 4.5 The Council reserves the right to withhold full payment of an invoice where the necessary information referred to in clause 4.4 above is not provided.
- 4.6 In consideration of the supply of the Services by the Supplier, the Council shall, subject to clause 4.7, pay the Supplier the invoiced amounts no later than thirty (30) days from receipt of the invoice after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. All payments will be via the BACS payment system and an acknowledgement will be sent by email. The Council may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 4.7 The Council may arrange for small and medium sized enterprises to be paid within ten (10) days on request provided that the Supplier has been classified as a small and medium sized enterprise and has completed the application form via the Council's website below:  
  
<https://www.northyorks.gov.uk/business-and-economy/procurement>
- 4.8 If the Council fails to consider and verify an invoice or raise a dispute within thirty (30) Working Days of receipt the invoice shall be regarded as valid and undisputed for the purpose of clause 4.6.
- 4.9 If there is a dispute between the Parties as to the amount invoiced, the Council shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services during the period of dispute and any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 18.
- 4.10 If a payment of an undisputed amount is not made by the Council by the due date, then the Council shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.11 If any sum of money is recoverable from or payable by the Supplier under this Agreement (including any sum which the Supplier is liable to pay the Council in respect of any breach of this Agreement (including but not limited to clause 10.5)), that sum may be deducted unilaterally by the Council from any sum then due, or which may

come due, to the Supplier under this Agreement or under any other agreement or contract with the Council. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Council in order to justify withholding payment of any such amount in whole or in part.

- 4.12 The Council will only pay the Contract Charges for transport journeys which were actually required and which did take place. Failure to notify the Authorised Officer of non-operation or changes to a contract as a result of passengers moving address or leaving school will result in action being taken to re-cover any payment made that the Supplier is not entitled to.
- 4.13 During periods of adverse weather and/or where the Council, school or establishment cancels a journey before 8am on the morning the journey was scheduled to take place, through notification on the Council website, phone call or other suitable method of communication, then the Supplier is entitled to claim the cost of the journey (up to 50% of the daily Contract Charges).
- 4.14 During extended periods of adverse weather of three (3) days or more, and where the school has been closed, the Council will, at its sole discretion, consider whether additional payments can be claimed by the Supplier, up to a maximum of 75% of the daily Contract Charges for each day of non-operation. The Council will notify Suppliers if this additional payment will be made.

## **5. CONTRACT CHARGES REVIEW**

- 5.1 The Contract Charges will be reviewed by the Council from 1 April during each year of the Term in accordance with transport related indicators set by the DfT (as may be amended and updated from time to time).
- 5.2 If following the review, the Council at its sole discretion, considers that an adjustment to the Contract Charges is required, this shall, subject to clause 5.3 below, take effect from the following month and shall be documented in accordance with clause 9.
- 5.3 Where a Contract has been in operation for fewer than six months prior to 1 April then no increase will be paid until the following April.

## **6. PUBLICITY**

- 6.1 The Council has produced a Bus Information Strategy which sets out its requirements for the provision of information. Except where otherwise agreed by the Council the Supplier is responsible for providing and distributing publicity for the Service in compliance with the Minimum Enforceable Requirement in the Bus Information Strategy.
- 6.2 The Supplier shall supply copies of publicity material to the Authorised Officer at least seven (7) days before commencement of the Service except where otherwise agreed

by the Authorised Officer. This requirement includes any publicity applying to changes to an existing Service.

- 6.3 If the publicity material provided by the Supplier is inadequate the Authorised Officer may, (upon prior notice being given to the Supplier) produce the necessary publicity material on the Supplier's behalf and deduct the costs incurred from the Contract Charges.
- 6.4 The Supplier shall provide timetable information at appropriate points on the Route as agreed with the Authorised Officer.

## **7. FARES**

- 7.1 If the Specification and/or the Contract Particulars includes a fare table or makes reference to fares conditions the Supplier shall comply with the requirements as specified in the Specification and/or the Contract Particulars in this respect. In all other circumstances the Supplier may determine fares subject to the following provisions of this clause 7.
- 7.2 The Supplier shall provide the Authorised Officer with a comprehensive fare table for each Local Bus Service at least seven (7) days before it is introduced except where otherwise agreed by the Authorised Officer.
- 7.3 The Supplier may apply to the Authorised Officer to revise fares on any Service; such application shall be in writing and be at least twenty eight (28) days before the proposed introduction of such revisions. The Authorised Officer may approve, amend or refuse the proposed revision and shall give reasons for doing so.
- 7.4 The Supplier shall co-operate with the Council and any other authority which operates a concessionary fares scheme or system of multi-journey tickets. The Supplier shall ensure that any additional cost or revenue loss is borne by the authority introducing the scheme and shall be responsible for all negotiations relating to such scheme or system.
- 7.5 Half fares should be accepted for all young people from their 5<sup>th</sup> birthday up to age eighteen (18) years. Children under five (5) shall be carried free of charge. The Supplier must participate in any ID schemes that may be introduced during the life of the Agreement and it may charge a reasonable administration fee approved by the Council to the passenger.
- 7.6 The Supplier shall collect and audit fares revenue, including electronic and pre-paid tickets.
- 7.7 Passengers shall be in receipt of a ticket, including electronic and pre-paid tickets, for all journeys made.

7.8 The Supplier may be required to enter into any through or joint ticketing arrangements as specified by the Council.

## **8. CHANGE OF CONTROL, SUB-CONTRACTING, ASSIGNMENT AND NOVATION**

8.1 The Supplier shall not transfer, novate or assign this Agreement without the prior written consent of the Council. For the avoidance of doubt, in the event of a sale or takeover of the Supplier's business, this Agreement shall not form part of any such sale or takeover without the prior written consent of the Council.

8.2 Where the Supplier undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988, the Supplier shall notify the Council of such change or potential change of control as soon as practicable (in any event prior to the change taking effect). The Council must be satisfied that there are no discretionary or mandatory exclusion grounds under Regulation 57 of the Public Agreement Regulations 2015 (PCR 2015) (regardless of whether the PCR 2015 are engaged due to the value of the Agreement) or under the terms of the Agreement which are applicable as a result of the change; and where such grounds are identified the Council reserves the right to terminate the Agreement with immediate effect.

8.3 The Supplier shall not sub- contract part of any Service for more than (5) five consecutive days and on no more than one occasion without the Authorised Officer's prior written consent except in the case of genuine emergency. In all cases schools and establishments should be advised immediately of the name of the sub-contractor who will provide the Service.

8.4 Subject to clause 8.3, the Supplier shall not without the written consent of the Council assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of this Agreement or any part of this Agreement. The Council may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

8.5 Wherever sub-contractors are used these must be included on a list supplied by the Council and any Sub-contractors appointed by the Supplier to deliver the Services must hold a current Driver or Passenger Assistants badge provided by the Council. The Supplier remains responsible for the provision of the Service in accordance with this Agreement. Where a sub-contractor is used which is not included on the Council's list of contractors then this would be considered a material breach of the Agreement under clause 12.2.

- 8.6 Where the Council has consented to the placing of sub-contracts, the Supplier shall, at the request of the Council, send copies of each sub-contract, to the Council as soon as is reasonably practicable.
- 8.7 Where a Supplier utilises self-employed Drivers or Passenger Assistants the Council reserves the right to restrict the number of contracts that are awarded to the Supplier. The use of self-employed Drivers to deliver the Service shall require the Council's prior written consent.
- 8.8 The Council may assign, novate, or otherwise dispose of its rights and obligations under this Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under this Agreement.

## 9. VARIATION

- 9.1 At any time during the Term of this Agreement, the Authorised Officer may require the Supplier in writing to:
- (a) omit any part of the Service;
  - (b) provide additional Services; or
  - (c) vary the scope of the Service or any part of it (including but not limited to introducing variations in timing, the number of passengers to be carried, the type of Vehicle used, the Route taken or any other matter associated with the Service).
- 9.2 If as a result of the requested variation, the Supplier is required to carry out additional mileage, this shall be paid at the following rates (as may be amended in accordance with clause 5) (the **Variation Rate**):

Vehicle seating capacity	Variation Rate Per Mile
	Over 1 Mile
Up to eight passenger seats	83p
9 – 26 passenger seats	£1.25
Over 26 passenger seats	£1.70
Index is current at 1 <sup>st</sup> August 2018	

The Council may, at its sole discretion, consider a further adjustment to the Variation Rate in exceptional circumstances.

- 9.3 From time to time the Council may require the Supplier to make changes in timing, pick-up points and routing at very short notice. The Council will use all reasonable endeavours to give a minimum of twenty four (24) hours' notice of such changes.
- 9.4 Any variation which is required in accordance with this clause 9 shall be recorded in writing and issued to the Supplier by the Council.
- 9.4 If the Supplier is unwilling to undertake the variation proposed by the Council in accordance with this clause 9 then this will constitute a material breach of Agreement as per clause 12.2.

## 10. DEFAULT

- 10.1 Without prejudice to the Council's other powers under this Agreement, where:
- (a) the Council receives a complaint about the standard of the Service(s); and/or
  - (b) if the Supplier commits any breach of this Agreement (including but not limited to the failure to comply with the Contract Standards) which is capable of remedy,
- the Council will be entitled to serve a notice to the Supplier stating the nature of the breach and/or default and the action required to remedy the breach and/or default, including timescales ("**Default Notice**"). Any such timescale shall be reasonable in accordance with the nature of the breach.
- 10.2 The Supplier will take the action specified in the Default Notice within the timescale set out at its own cost. Failure to respond and return a Default Notice within the specified timescale will result in additional administrative costs being incurred by the Supplier.
- 10.3 The Supplier shall comply with the Default Notice but shall be permitted to make representations to the Authorised Officer on the matters referred to in it which the Authorised Officer shall consider and, as necessary, discuss with the Supplier.
- 10.4 Unless a Default Notice is waived or deferred by the Authorised Officer as a consequence of the representations made by the Supplier under clause 10.3, the Supplier shall pay the Council a default payment for each default which may represent no less than 25% of the daily Contract Charges payable or a sum of £20 whichever shall be the greater. This sum shall be deducted from the Contract Charges by the Authorised Officer. For the avoidance of doubt, the Council will not pay the Contract Charges which relate to any part of the Service which is not provided by the Supplier as a result of the default.



- 10.5 The Supplier and the Council agree that the default payment payable to the Council in respect of Default Notices represents a reasonable estimate of the cost incurred by the Council in investigating the default(s), serving the Default Notice and, where relevant, checking for compliance.
- 10.6 Where the Supplier is issued with a number of Default Notices on the same contract in a relatively short space of time, this will constitute poor performance and may result in increased monitoring, the requirement to attend an issues resolution meeting or the withholding of payments. Where these actions do not result in an improvement in the Service, and new Default Notices continue to be issued during a specified monitoring period, this shall constitute a persistent breach of contract under clause 12.2.
- 10.7 Without prejudice to the Council's other powers under this Agreement, in the event of default or if the Supplier fails to provide the Services in accordance with this Agreement, the Council may commission and pay another Supplier to provide part or all of the Services until:
- (a) such time as the Supplier has satisfied the Authorised Officer that it is able to provide the Service (or the relevant part of it) to the Contract Standards; or
  - (b) the Agreement is terminated (in whole or in part) in accordance with clause 12.2(i).
- 10.8 Costs incurred by the Council in providing part or all of the Services, in accordance with clause 10.7, may be deducted from the Contract Charges or shall be recoverable as a debt.

## **11. SUSPENSION OF THE SERVICE**

- 11.1 If the Authorised Officer reasonably considers that a Passenger Transport Service has been registered commercially which meets the need of a Local Bus Service provided under this Agreement, the Authorised Officer may require the Service provided under the Agreement to be suspended for the remainder of the Term or until the commercial passenger transport service ceases to be operated, whichever is the sooner.
- 11.2 The Authorised Officer will give written notice of suspension to the Supplier at least forty two (42) days before the suspension is to take effect.
- 11.3 If the Service is suspended, no Contract Charges are payable for the Service for the period of suspension, either during the suspension or at any other time.

## 12. TERMINATION

12.1 The Council may terminate this Agreement at any time by providing notice in writing to the Supplier to take effect on any date falling at least one (1) month later than the date of service of the relevant notice.

12.2 Without prejudice to any other right or remedy it might have, the Council may terminate this Agreement by written notice to the Supplier with immediate effect if:

(a) The Supplier:-

- (i) (without prejudice to clause 12.2(a)(v)) is in material breach of any obligation under this Agreement (including but not limited to defaults) which is not capable of remedy;
- (ii) repeatedly breaches any of the terms and conditions of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of this Agreement;
- (iii) is in material breach of any obligation which is capable of remedy, and that breach is not remedied within seven (7) days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
- (iv) undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
- (v) breaches any of the provisions of clauses 2.5.5, 2.5.7, 2.10, 13, 14 and 15;
- (vi) becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 12.2(a)(vi)) in consequence of debt in any jurisdiction;
- (vi) fails to comply with legal obligations in the fields of environmental, social or labour law;
- (vii) has materially misrepresented any information in the Tender (upon which the Council has relied in appointing the Supplier);
- (viii) has committed any offence under the Bribery Act 2010 or has committed an offence under Section 117(2) of the Local Government Act 1972; or has

offered any gift or consideration of any kind as an inducement or disincentive for doing anything in respect of this Agreement or any other contract with the Council;

- (ix) is otherwise in breach of the collusive tendering certificate provided with the Tender;
  - (x) has insufficient resources to provide the Service because of a reduction in the number of Vehicles authorised by the Traffic Commissioner to be operated by the Supplier;
  - (xi) the Supplier no longer meets the standard required by the Councils quality threshold;
  - (xii) ceases, or threatens to cease, to carry on all or substantially the whole of its business;
  - (xiii) or any personnel the Supplier engages to provide the requirements of the Agreement fail, or refuse, after written instruction to provide the Services reasonably and properly required;
  - (xiv) or any of the personnel it engages to provide the Agreement requirements conduct itself/himself/herself in any manner which, in the Council's reasonable opinion brings or is likely to bring the Council into disrepute by association; or
  - (xv) at any time during the Term is convicted of any offence referred to in Regulation 57(1) of the Public Agreements Regulations 2015 or if an event occurs which would have entitled the Council to treat the Supplier as ineligible for selection under Regulation 57(3), 57(4) or 57(8).
- (b) The Council has within the last fourteen (14) days terminated another contract with the Supplier for a service similar to the Service provided under this Agreement and such termination had been effected on such serious grounds as to enable the Council reasonably to believe that:
- (i) the safety of passengers and/or the public at large may be endangered or otherwise adversely affected; and/ or
  - (ii) the quality of the Service under this Agreement can no longer be guaranteed by the Supplier.
- (c) The reputation of the Supplier has so seriously been jeopardised by an act or default of the Supplier, its Drivers, Passenger Assistants or member of Staff (including, but without limitation, a criminal act) that the Council reasonably

believes that the Supplier is unable to guarantee adherence to the Contract Standards.

12.3 If the Agreement has been terminated under 12.2 the Council:-

- (a) ceases to be under any obligation to pay the Contract Charges until the costs arising out of the termination (including the costs of terminating the Agreement and making alternative arrangements for the Service) have been calculated and show a sum due to the Supplier (in which case this sum will be paid to the Supplier as soon as possible);
- (b) may immediately appoint a replacement Supplier;
- (c) shall be entitled to recover all losses resulting from such termination including any additional costs incurred for the outstanding period of the Agreement; and
- (d) shall not be liable to the Supplier for any costs incurred in relation to the termination.

12.4 In the case of Home to School or Local Bus Service transport contracts the Council may terminate the Agreement by giving thirty (30) days' notice where circumstances beyond the control of the Council dictate that the Service is no longer required (including but not limited to a reduction in pupil numbers or closure of a school). Where practicable and considered appropriate in the Council's reasonable opinion, the Council may offer a suitable alternative contract to the Supplier.

12.5 The Supplier may apply to the Authorised Officer for the Agreement to be terminated where there are exceptional circumstances which could not have been foreseen. Individual circumstances will be considered and any break in the Agreement will be granted at the discretion of the Authorised Officer.

12.6 The Supplier may not re-tender for any Agreement which they have operated and which has been terminated by the Council under this clause 12 or for any other Council contract for a minimum period of six (6) months.

12.7 Termination or expiry of this Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause 12 and clauses 2.2, 2.5, 2.6, 2.10, 13.2, 14, 15, 17, 18, 21 and 24.7, and or any other provision of the Agreement that either expressly or by implication has effect after termination.

12.8 Upon termination or expiry of this Agreement, the Supplier shall:

- (a) give all reasonable assistance to the Council and any incoming supplier of the Services; and

- (b) return all requested documents, information and data to the Council, and destroy any personal data associated with the Services operated under this Agreement, as soon as reasonably practicable.

12.9 Without prejudice to the Council's rights to terminate this Agreement, if a right to terminate this Agreement arises in accordance with clause 12.2, the Council may suspend the Supplier's right to receive payment from the Council by giving notice in writing to the Supplier. If the Council provides notice to the Supplier in accordance with this clause 12.9, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Council in writing from time to time.

## **13. COMPLIANCE**

### **13.1 Health and Safety**

13.1.1 The Supplier shall comply with the requirements of the Health and Safety at Work Act 1974 so far as they apply to the provision of the Service and throughout the Term of this Agreement the Supplier shall have in place a health and safety policy which complies with all statutory requirements.

13.1.2 The Supplier shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under this Agreement.

13.1.3 The Supplier shall notify the Council immediately in the event of any incident or "near miss" occurring in the performance of the Agreement where that incident or "near miss" causes, or may cause, any personal injury or damage to property which could give rise to personal injury.

13.1.4 The Supplier shall take all necessary measures to 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 which may apply to the Staff in the performance of the Agreement.

13.1.5 The Supplier shall ensure that its health and safety policy statement and health and safety management arrangements (as required by the Health and Safety at Work etc. Act 1974) are made available to the Council on request.

13.1.6 Risk assessments will be carried out by the Supplier as required under current legislation (Management of Health and Safety at Work Regulations 1999). Risk assessments which relate to the operation of the Service and the safety of Council officers, passengers, Drivers and Passenger Assistant, which must include a driving and Route risk assessment, will be made available for inspection by the Authorised Officer on request.

13.1.7 The Supplier must also ensure that a risk assessment is undertaken for all stopping places to be used on the Route prior to the commencement of the Service and these

must be retained by the Supplier and made available for inspection by the Authorised Officer on request.

- 13.1.8 The Supplier shall make the Council aware immediately and in writing of any concerns regarding a stopping place or Route, and ensure that reversing manoeuvres are not part of the Route unless there is no suitable alternative. Where a reversing manoeuvre is required then a risk assessment must be completed prior to the commencement of, or variation to, the Route and the Council must be notified in writing immediately and prior to commencement of, or variation to the Route.
- 13.1.9 In the event of an incident or accident relating to the Vehicle, member of Staff, Drivers, Passenger Assistants or passenger(s) during the performance and delivery of the Services the Supplier must report the incident to the Authorised Officer immediately and provide the written incident report(s) as soon as possible thereafter.

## 13.2 Other Legislation

13.2.1 The Supplier shall:

- (a) perform its obligations under this Agreement in accordance with the Equalities Act 2010 (and any subsequent legislation in respect of equalities which may be enacted during the Term of this Agreement) and the Council's equality and diversity policy as provided to the Supplier from time to time; and
- (b) take all reasonable steps to secure the observance of clause 13.2.1 (a) by all Staff.

13.2.2 The Supplier shall provide such information as the Council may reasonably request for the purpose of assessing the Supplier's compliance with this clause 13.2 including, if requested, examples of any instructions or other documents, recruitment advertisements or other literature containing details of monitoring of recruitment and employees

13.2.3 The Supplier shall supply the Services in accordance with the Council's environmental policy as provided to the Supplier from time to time.

13.2.4 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of all applicable laws, statutes, regulations from time to time in force (including but not limited to):

- (a) the Official Secrets Acts 1911 to 1989;
- (b) section 182 of the Finance Act 1989;
- (c) the Bribery Act 2010;
- (d) the Modern Slavery Act 2015; and

(e) the Data Protection Legislation.

13.2.5 The Council may terminate the Agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of clause 13.2.4 (a) or 13.2.4(c)

## **14. DATA PROTECTION**

14.1 Both Parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation. Each Party shall bear its own costs in relation to compliance with this clause 14 and the Data Protection Legislation.

14.2 The Supplier shall and shall ensure that the Supplier Personnel shall, in performing its obligations under this Agreement, comply in all respects with the Data Protection Legislation.

14.3 The Supplier shall and shall ensure that the Supplier Personnel shall not do or permit anything to be done which might jeopardise or contravene the Council's compliance with the Data Protection Legislation.

14.4 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 the Data Processing Schedule provided by the Council and may not be determined by the Supplier.

14.5 For the purpose of this clause 14, the term "processing" and cognate terms have the meaning given in the GDPR.

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

14.7 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 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.

14.8 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 the Data Processing Schedule, 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) the Supplier and the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Data Processing Schedule);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any of the Supplier Personnel 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 14;

(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;



- (d) not transfer Personal Data outside of the European Union 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) the Supplier complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data; and
- (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.

14.9 Subject to clause 14.10, the Supplier shall notify the Council immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation in connection with Personal Data processed under this Agreement;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) 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
- (f) becomes aware of a Data Loss Event.

14.10 The Supplier's obligation to notify under clause 14.9 shall include the provision of further information to the Council in phases, as details become available.

- 14.11 Taking into account the nature of the processing, the Supplier shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation in connection with Personal Data processed under this Agreement and any complaint, communication or request made under clause 14.9 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
- (a) the Council with full details and copies of the complaint, communication or request;
  - (b) 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;
  - (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Council following any Data Loss Event; and
  - (e) 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.
- 14.12 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause 14. 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; or
  - (c) the Council determines that the processing is likely to result in a high risk to the rights and freedoms of Data Subjects.
- 14.13 The Supplier shall allow for audits of its data processing activity and premises by the Council or the Council's designated auditor and authorised representatives. In particular, the Council shall be entitled to inspect, test and audit or appoint representatives to inspect, test and audit all facilities, premises, equipment, systems, documents and electronic data relating to the processing of Personal Data by or on behalf of the Supplier and the Supplier shall co-operate and assist the Council (and its representative) with each inspect, test and audit.
- 14.14 The Supplier shall comply with the instructions of the Council to enable the audits referred to in clause 14.13 to be carried out and the Supplier shall provide to the Council and/or their designated auditor and authorised representatives, all reasonable assistance that they require in connection with any audits, including

making available to the Council all information necessary to demonstrate compliance with its obligations under this Agreement and the Data Protection Legislation.

14.15 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.

14.16 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 give effect to the terms set out in this clause 14 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.

14.17 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

14.18 The Supplier shall indemnify the Council for any damage, cost or losses (including legal costs) incurred by the Council in connection with any third party claim made or threatened against the Council in connection with the loss, unauthorised disclosure or breach of the Data Protection Legislation by the Supplier or any Sub-processor in relation to any Personal Data. This indemnity shall not apply to the extent the Supplier's act or omission was a result of the express instruction of the Council.

14.19 The Supplier may, at any time on not less than thirty (30) Working Days' notice, revise this clause 14 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).

14.20 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than thirty (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.

## **15. CONFIDENTIALITY, TRANSPARENCY AND PUBLICITY**

15.1 Subject to clause 15.2, each Party shall:

- (a) treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing party; and

- (b) not use or exploit the disclosing party's Confidential Information in any way except for the purposes anticipated under this Agreement.

15.2 Notwithstanding clause 15.1, a Party may disclose Confidential Information which it receives from the other Party:

- (a) where disclosure is required by applicable law or by a court of competent jurisdiction;
- (b) to its auditors for the purposes of regulatory requirements;
- (c) on a confidential basis, to its professional advisers;
- (d) to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- (e) where the receiving party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under this Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 15.2(e) shall observe the Supplier's confidentiality obligations under this agreement; and
- (f) where the receiving party is the Council:
  - (i) on a confidential basis to the employees, agents, consultants and Suppliers of the Council;
  - (ii) on a confidential basis to any company to which the Council transfers or proposes to transfer all or any part of its business;
  - (iii) to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
  - (iv) in accordance with clause 2.10.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Council under this clause 15.

15.3 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 and the Supplier hereby gives its consent for the Council to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to this Agreement agreed from time to time. The Council may consult with the Supplier to inform its decision regarding any redactions

but shall have the final decision in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

- 15.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise this Agreement or any part of this Agreement in any way, except with the prior written consent of the Council.

## **16. AGENCY**

- 16.1 The Supplier shall not represent itself as being: -
- (a) the servant or agent of the Council (except as may be authorised under the Agreement);
  - (b) authorised to enter into any Agreement or other obligation on the Council's behalf except as may be authorised under the Agreement

## **17. BEST VALUE**

- 17.1 In accordance with Part 1 of the Local Government Act 1999, and subsequent legislation in relation to Best Value, the Council may from time to time review the Service in pursuance of the Council's wide commitment to continuing Service improvement, having regard to a combination of economy, efficiency and effectiveness and the Supplier shall: -
- (a) Participate in, and fully co-operate with, such reviews; and
  - (b) Provide such assistance and information including, but without limitation, accounting and other record books, business plans, quality assurance, service records and service plans as may be reasonably required by the Council in relation to the Service.

## **18. DISPUTE RESOLUTION**

- 18.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement and such efforts shall involve the escalation of the dispute to an appropriate senior representative of each Party.
- 18.2 If the dispute cannot be resolved by the Parties within one (1) month of being escalated as referred to in clause 18.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 18.3 If the Parties fail to appoint a Mediator within one (1) month, or fail to enter into a

written agreement resolving the dispute within one (1) month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

- 18.4 Where required by the Council the Supplier shall continue to provide the Service in accordance with the Agreement pending any discussion or outcome of the dispute.

## **19. NOTICES, AMENDMENTS AND COMPLAINTS**

- 19.1 Any notice to be served under the Agreement must be in writing, sent by Recorded Delivery, or delivered by hand, and addressed to the party concerned at the addresses stated in the Contract Particulars. Notices to the Council must be addressed to the Authorised Officer.

- 19.2 Any amendment, including modifications and variations to the Agreement must be made in writing, and agreed by both parties and attached to the Agreement.

- 19.3 The overall remedies for late payment by either party referred to in the Agreement are substantial remedies within the meaning of Part II of the Late Payment of Commercial Debts (Interest) Act 1998 and both parties acknowledge that the term was not imposed on either party to the detriment of the other and that the Supplier did not receive any inducement to agree to this term.

- 19.4 If a complaint is made to the Council about the Service, the Local Government Ombudsman may investigate the complaint and the Supplier will be required to co-operate in such investigations. If the Council is found guilty of maladministration or injustice by the Ombudsman relating to a matter caused by the act or default of the Supplier, the Council shall be indemnified by the Supplier in respect of all costs which arise from the maladministration or injustice.

- 19.5 The Supplier must advise the Council in writing of any change in information or circumstances as provided for quality assessment during or after the Tender process.

## **20. SUSTAINABILITY**

- 20.1 In providing the Service the Supplier shall meet such sustainability requirements as are set out in the Specification.

- 20.2 Throughout the Term of this Agreement the Supplier shall make all reasonable endeavours to reduce any negative impact on the environment caused by the Service. If during the Term, the Supplier wishes to change any of the materials, technologies or working practices used in connection with the Service, the Supplier shall notify the Council detailing the changes, any possible impact on the Contract Charges or the Contract Standards and must also include an evaluation of the environmental impact of the proposed changes. If the Council agrees to the variation the Supplier shall implement the changes in accordance with the provisions of clause 9.

## 21 GOVERNANCE, RECORDS AND REVIEW

### 21.1 The Supplier shall:

21.1.1 attend progress meetings with the Council as may be requested from time to time and shall ensure that its representatives are suitably qualified to attend such meetings; and

21.1.2 submit progress reports to the Council as may be requested from time to time.

21.2 The Council may from time to time review the Services in pursuance of the Council's commitment to continuing service improvement, having regard to a combination of economy, efficiency and effectiveness and the Supplier shall participate in and fully co-operate with such reviews and provide such assistance and information including, but not limited to; accounting and other record books, business plans, quality assurance, service records and service plans as may be reasonably required by the Council in relation to the Services.

21.3 During the first year of the Term, the Supplier shall produce and maintain arrangements which set out the methodology for achieving an orderly transition of the Services from the Supplier to the Council or a replacement Supplier on the expiry or termination of this Agreement. As a minimum arrangements will include:

21.3.1 a detailed description of how the Services will cease and be transferred to the Council or a replacement Supplier;

21.3.2 details of the management structure to be employed to effectively transfer the Service;

21.3.3 details of how relevant knowledge will be transferred; and

21.3.4 details of any assets and/or contracts (if any) which may be available for transfer upon transfer or termination.

21.4 The Supplier shall provide such support and assistance, including the provision of information as the Council considers necessary to disclose to potential tenderers for the future of this Agreement in relation to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE**") or any equivalent provisions then in force. as required in order to achieve a smooth transfer of the Service to the Council or a replacement supplier as specified by the Council at any time prior to, or within ninety (90) days following, the occurrence of a termination or expiry of this Agreement.

21.5 The Council accepts no liability nor gives any indemnity for losses incurred through the operation of TUPE in relation to this Agreement (as may be applicable). Where

relevant, the Supplier shall ensure it has complied with TUPE and shall indemnify the Council against any costs or losses incurred by the Council due to the Supplier's failure to comply with any such requirements.

- 21.6 The Supplier shall keep and maintain until six (6) years after the end of this Agreement, 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 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 reasonably requested by the Council in connection with this Agreement.

## **22 FORCE MAJEURE**

- 22.1 Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 22.2 If the period of delay or non-performance continues for four (4) weeks, the Party not affected may terminate this Agreement by giving four weeks written notice to the affected Party.

## **23 GOVERNING LAW AND JURISDICTION**

- 23.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
- 23.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

## **24 GENERAL**

- 24.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Agreement, and that this Agreement is executed by its duly authorised representative.
- 24.2 A person who is not a party to this Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 24.3 This Agreement contains the whole agreement between the Parties relating to the Services and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have



not entered into this Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause 24 shall exclude liability for fraud or fraudulent misrepresentation.

- 24.4 Neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.
- 24.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of this Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 24.6 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 24.7 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 24.8 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

**SCHEDULE 1**

**SERVICE SPECIFICATION**

**See separate document**

## **SCHEDULE 2**

### **DATA PROCESSING SCHEDULE**

**See separate document**