

**CONDITIONS OF CONTRACT FOR PASSENGER TRANSPORT –
JANUARY 2018**



**VEHICLES CONSTRUCTED OR ADAPTED TO CARRY 17 OR MORE
PASSENGERS**

1. DEFINITIONS AND INTERPRETATION

In these Conditions of Contract certain words and expressions are used which are defined as follows:

- 1.1. **“Business Continuity Plan”** means a plan generated by the Operator detailing contingency for the delivery of the Service in adverse circumstances;
- 1.2. **“Closed Education Contract”** means a Contract for the exclusive carriage of school children to/from an Establishment;
- 1.3. **“Commencement Date”** means the date set out in the Letter of Award;
- 1.4. **“Confidential Information”** means any information which has been designated as confidential by the Council in writing or that ought to be considered as confidential (however conveyed or on whatever media it may be stored), including information, the disclosure which would, or would be likely to, prejudice the commercial interest of any person, trade secret, IP or know-how of the Council and all personal data and sensitive personal data within the meaning of the DPA but not including information which:
 - 1.4.1. was public knowledge at the time of the disclosure otherwise than by breach of condition 37;
 - 1.4.2. was in the possession of the receiving party, without restrictions as to its disclosure, before receiving it from the disclosing party;
 - 1.4.3. is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
 - 1.4.4. is independently developed without access to the Confidential Information;
- 1.5. **“Contract”** means:
 - 1.5.1. the Invitation to Tender including the Specification;
 - 1.5.2. these conditions and any schedules hereto; and
 - 1.5.3. the Tender.
- 1.6. **“Council”** means The Council of the Borough and County of the Town of Poole, Civic Centre, Poole, Dorset BH15 2RU and includes its successors in title;
- 1.7. **“CPI Base Figure”** means the CPI (All Items) figure published by the Office for National Statistics for the month of December which precedes the month of April falling 12 months prior to the Initial Price Revision Date;
- 1.8. **“CPI Revised Figure”** means the CPI (All Items) figure published by the Office for National Statistics for the month of December which first precedes the relevant Price Revision Date;
- 1.9. **“DBS Checks”** means checks carried out with the Disclosure and Barring Service (formerly Criminal Records Bureau) for disclosures and, where deemed appropriate by the Council, enhanced disclosures which are required for each driver prior to the commencement of the Services in accordance with the Contract;

- 1.10. **“Default”** means any breach of the obligation of either party (including but not limited to breach of a fundamental term or a fundamental breach) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-Operators in connection with or in relation to the subject matter of the Contract and in respect of which such party is liable to the other;
- 1.11. **“DPA”** means the Data Protection Act 1998 and any subordinate legislation made thereunder from time to time, together with any guidance and/or codes of practice relating thereto issued by the Information Commissioner or competent government department; **Data Protection Legislation:** the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, including by the GDPR and laws implementing or supplementing the GDPR;
- 1.12. **“Driver”** means a duly authorised and authorised person to drive the vehicle specified in the relevant Specification;
- 1.13. **“Duly Authorised Officer”** means the Head of Growth and Infrastructure or the Head of Children, Young People and Learning from time to time;
- 1.14. **“EIR”** means the Environmental Information Regulations 2004 and any guidance and/or codes of practice relating thereto issued by the Information Commissioner or competent government department;
- 1.15. **“ENCTS”** means the English National Concessionary Travel Scheme;
- 1.16. **“Establishment”** means the schools, colleges and places providing education or social care facilities as may be designated in the relevant Specification;
- 1.17. **“Financial Regulations”** means the financial regulations from time to time providing the governing framework for managing the Council’s financial affairs (a copy of which will be provided to the Operator on request);
- 1.18. **“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made thereunder from time to time, together with any guidance and/or codes of practice relating thereto issued by the Information Commissioner or competent government department;
- 1.19. **“GDPR”** means EU General Data Protection Regulation 2016/679;
- 1.20. **“Group Contracts”** means one or more Contracts in respect of which a single combined price is provided;
- 1.21. **“Head of Growth and Infrastructure”** means the Council’s Head of Growth and Infrastructure or his/her authorised representative from time to time;
- 1.22. **“Head of Children, Young People and Learning”** means the Council’s Head of Children, Young People and Learning or his/her authorised representative from time to time;
- 1.23. **“Initial CPI Base Figure”** means the CPI (All Items) figure published by the Office for National Statistics for the month of June which first precedes the Initial Price Revision Date;
- 1.24. **“Initial Price Cap”** means either:

- 1.24.1. where the Term Commencement Date falls between 1 October and 31 March (inclusive), the Price immediately prior to the Initial Price Revision Date multiplied by the CPI Revised Figure / CPI Base Figure; or
- 1.24.2. where the Term Commencement Date falls between 1 April and 30 September (inclusive), the Price immediately prior to the Initial Price Revision Date multiplied by the CPI Revised Figure / Initial CPI Base Figure;
- 1.25. **“Initial Term”** means the term set out in the Specification;
- 1.26. **“Invitation to Tender”** means the invitation to tender for the Service issued by the Council;
- 1.27. **“Letter of Acceptance”** means the letter from the Council to the Operator accepting the Tender and which will constitute the agreement of the parties to provide the Service in accordance with the Contract;
- 1.28. **“Local Bus Contract”** means a contract for the provision of a local bus service as defined in section 2 of the Transport Act 1985;
- 1.29. **“Local School Bus Contract”** means a Local Bus Contract which originates from or terminates at a school or college or other Establishment;
- 1.30. **“Material Default”** means any material breach of the Contract as reasonably determined by the Council, including any failure to comply with the law, a breach of the Operator’s insuring obligations, a persistent breach of the Service Performance Specification, any action or inaction by the Driver which compromises the safety of the Passengers or any Vehicle, the failure of the Vehicle to meet the Vehicle Specification, the revocation of the Operator’s Licence, any failure to notify the Council of a road traffic accident or other incident in accordance with the time scales set out in the Contract, any breach of the corruption provisions, any failure by the Operator to permit the relevant inspections of the Vehicles or any anti-competitive conduct by the Operator;
- 1.31. **“Minimum Cost Contract”** is a Local Bus Contract where all the revenue taken during the period of operation of the Contract is credited to the Council;
- 1.32. **“Minimum Support Contract”** is a Local Bus Contract where all the revenue taken during the operation of the Contract is retained by the Operator;
- 1.33. **“Operator”** means the person whose Tender is accepted by the Council and includes the Operator’s permitted successors and assigns;
- 1.34. **“Operator Affiliate”** means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with the Operator, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.
- 1.35. **“Operator’s Licence”** means a Public Service Operator’s Licence or any other licence or permit required by law in order to provide the Service in accordance with the Contract;
- 1.36. **“Passenger”** means any person who is authorised by the appropriate Duly Authorised Officer to travel on a Closed Education Contract or any person paying a fare or presenting a valid authority to travel on a Local Bus Contract or Local School Bus Contract;
- 1.37. **“Persistent Default”** means the issue of four Warning Notices within a period of 26 consecutive weeks during the Term;

- 1.38. **"Price"** means the price as set out in the Specification payable to the Operator by the Council for the provision of the Service, together with any revision or addition thereto or deduction therefrom advised in accordance with the Contract;
- 1.39. **"Price Cap"** means the Price immediately prior to the Price Revision Date multiplied by the CPI Revised Figure / CPI Base Figure;
- 1.40. **"Risk Assessment"** means an assessment to identify potential health and safety hazards in respect of the delivery of the Service and upon which an Operator is then required to act to minimise risk to Staff, passengers, or anyone else involved in the provision of the Service;
- 1.41. **"Safeguarding"** means a commitment to safeguard and promote the welfare of children and other vulnerable groups compliant with section 1 of the Children Act 2004, the Safeguarding Vulnerable Groups Act 2006 and any other similar or replacement legislation from time to time in force;
- 1.42. **"Service"** means the service provided pursuant to a Local Bus Contract, a Local School Bus Contract or a Closed Education Contract by the Operator and which is to be provided in accordance with the Contract;
- 1.43. **"Service Commencement Date"** means the date for commencement of the Service as specified in the Invitation to Tender (or as otherwise agreed in writing by the parties);
- 1.44. **"Service Performance Specification"** means the specification set out at Schedule 3 hereto;
- 1.45. **"Service Specification"** means the specification set out at Schedule 2 hereto;
- 1.46. **"Specification"** means the specification set out in the Invitation to Tender;
- 1.47. **"Staff"** means any person employed by or otherwise engaged by the Operator, including those persons in administrative and other roles supporting operation of the Service;
- 1.48. **"Subprocessor"** means any person (including any third party and any Operator Affiliate, but excluding an employee of Operator or any of its sub-contractors) appointed by or on behalf of the Operator to Process Personal Data on behalf of the Council in connection with the Contract;
- 1.49. **"Tender"** means the response to the Invitation to Tender submitted by the Operator to the Council for the provision of the Services;
- 1.50. **"Term Commencement Date"** means the date of the Contract;
- 1.51. **"Vehicle"** means the vehicle used for the provision of the Service;
- 1.52. **"Vehicle Licence"** means a passenger carrying vehicle licence of the relevant classification as required by section 12 of the Public Passenger Vehicles Act 1981;
- 1.53. **"Vehicle Specification"** means the specification for the Vehicle set out in Schedule 1 hereto;
- 1.54. **"DVSA"** means the Driver and Vehicle Standards Agency;
- 1.55. **"Warning Notice"** means a notice issued pursuant to condition 23 and in accordance with Schedule 4; and
- 1.56. **"Working Days"** means days other than Saturday, Sunday, bank holidays or any other days on which the Council's offices are closed for business;
- 1.57. words importing the singular include the plural and vice versa and reference to the masculine include the feminine and the neuter;
- 1.58. reference to a condition is a reference to the whole of that condition unless stated otherwise;

- 1.59. unless the context otherwise requires, any reference to any statute or statutory provision shall be a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced;
- 1.60. reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successor and permitted assigns or transferred;
- 1.61. the words include, includes and including are to be construed as if they were immediately followed by the words without limitation;
- 1.62. headings within the Contract are for ease of reference only and shall not affect interpretation or construction of the Contract;
- 1.63. the words party or parties means either one or both the Council and the Operator as the case may be; and
- 1.64. in the event of, and only to the extent of, any conflict between these conditions and any document referred to in these conditions, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.64.1. these conditions and any applicable schedule hereto;
 - 1.64.2. the Specification;
 - 1.64.3. the Tender;
 - 1.64.4. any other document referred to in these conditions.

2. CONTRACT TERM

- 2.1. The Contract will take effect on the Term Commencement Date for the Initial Term as may be earlier determined or extended in accordance with these conditions (the “**Term**”).
- 2.2. The Term may be extended at the Council’s option for a further period as stated in the Specification, but otherwise on the terms and conditions as set out herein. The option is exercisable as follows:
 - 2.2.1. the Council must give the Operator written notice of its wish to extend the Term no less than six months’ prior to expiry of the Term;
 - 2.2.2. the Operator shall serve a counter notice on the Council accepting the extension or refusing the extension within three months’ of the date of the Council’s notice serviced pursuant to 2.2.1 above;
 - 2.2.3. failure to serve a notice or a counter notice shall be taken as an indication that either the Council does not wish to exercise the option or that the Operator does not wish the Contract to be extended, as the case may be.

3. SERVICE & BUSINESS CONTINUITY

- 3.1. The Operator shall commence provision of the Service on the Service Commencement Date.
- 3.2. The Operator shall provide the Service in a timely and professional manner and in accordance with the Contract, in particular the Service Performance Specification, Service Specification and Specification.
- 3.3. No persons other than Passengers and anyone else authorised by the Council shall be conveyed during the operation of the Contract.
- 3.4. In the case of Local School Bus Contracts and Closed Education Contracts, the Contract will operate on all days when the school(s)/college(s) or other Establishment specified which it serves is/are open.
- 3.5. The Council shall make available on request a list of standard school dates at the start of the school year and the Operator shall check the exact opening days of the

school/college or other Establishments it serves (as dates may vary from the standard list).

- 3.6. Time for performance of the Service shall be of the essence.
- 3.7. The Council's rights under the Contract are in addition to the statutory conditions implied in favour of the Council, including by the Supply of Goods and Services Act 1982.
- 3.8. The Operator shall have in place and be able to demonstrate and provide a Business Continuity Plan, including service continuity arrangements providing contingency for premises, vehicles, drivers, maintenance, communications, IT/information, equipment, e.g., vandalism, loss of key suppliers and emergency situations such as pandemics, fire and flood.
- 3.9. The Operator must at all times during the Term be able to demonstrate that he/she has sufficient reserve Vehicles and Drivers to provide the Services in the event of a breakdown or other emergency.
- 3.10. Should the Operator have been unable to demonstrate that it has sufficient reserve Vehicles and/or Drivers as required by condition 3.9, it shall provide written confirmation from another Operator acceptable to the Council that alternative Vehicles and Drivers will be made available by that Operator to provide the Service if required.

4. OPERATOR'S LICENCE

- 4.1. The Operator shall at his/her own cost have and keep in force at all times throughout the Term an Operator's Licence. The Operator may be required to produce the Operator's Licence for inspection prior to the Service Commencement Date and at any other times as required by the Council.
- 4.2. The Operator shall notify the Council within seven days of any change to the Operator's Licence which affects its ability to provide the Service in accordance with the Contract or withdrawal of the Operator's Licence.
- 4.3. If the Operator's Licence is withdrawn or suspended for any reason, the Council may terminate the Contract on written notice with immediate effect and the Operator shall indemnify the Council for all losses, costs, expenses, liabilities or similar incurred as a result of the early termination of the Service (including the cost of finding a replacement Service and any difference between the cost of such alternative Service and the Price for the remainder of the Term).

5. VEHICLES

- 5.1. The Operator shall ensure that all Vehicles comply with all legal requirements, government issued guidance and industry best practice relating to passenger carrying vehicles, including licensing, insurance, testing, operation, construction and use regulations, fitness, equipment, safety, display of notices, maintenance and use of closed circuit television equipment.
- 5.2. Without prejudice to the generality of the foregoing, Vehicles:
 - 5.2.1. must be fitted with at least one fire extinguisher which complies in all respects with the specifications for portable fire extinguishers from time to time issued by the British Standards Institution and as set out in Schedule 7 of the Road Vehicles (Construction and Use) Regulations 1986 (as amended by SI 1989/2360);
 - 5.2.2. comply, with the Public Service Vehicle Accessibility Regulations 2000, as amended; and
 - 5.2.3. carry first aid equipment in compliance with any statutory requirements and with the requirements of any competent authority, including the licensing authority.

- 5.3. The Operator shall ensure that the Vehicle complies at all times with the Vehicle Specification.
- 5.4. The Operator shall ensure that all Vehicles are clean (both internally and externally), comfortable, properly heated and ventilated and operationally fit for purpose throughout the Term and the Operator shall ensure that smoking on the Vehicle is not permitted at any time by any person and that no-smoking signs are displayed on the Vehicle in accordance with the relevant statutory provisions.
- 5.5. The Operator shall ensure that no advertisements, including political advertisements, which the Council reasonably deems inappropriate are displayed on any Vehicle at any time.
- 5.6. The Operator shall notify the Council as soon as reasonably practicable and in any event within 24 hours of receipt of any notice received from or action taken by the Traffic Commissioner, DVSA, the Police, a licensing authority or any other such competent body which imposes any prohibition on any Vehicle or issues any formal warning or notice or qualification of the Operator's Licence or any other permit or permission required to enable the Operator to perform the Service.
- 5.7. In the event that the Operator becomes unable to provide the Service due to the taking of any action or service of any notice referred to in condition 5.6 above, the Council may make alternative arrangements for the continuation of the Service and the Operator shall indemnify the Council in full for the costs, expenses, liabilities or similar of such alternative arrangements for a period not exceeding three months.
- 5.8. The Operator shall, if required to do so by the Council, make available any Vehicle for inspection by an appropriately qualified person on behalf of the Council at a time and place to be determined by a Duly Authorised Officer and the Operator shall also make available to the Council all records relating to the service, repair and maintenance of any Vehicle.
- 5.9. If in the Council's opinion any Vehicle inspected is unsuitable or unsafe for Passengers or other road users, the Operator will use a replacement vehicle for the provision of the Service at the Operator's expense with immediate effect until the defect has been rectified to the Council's satisfaction.
- 5.10. The Council may notify the DVSA or any other competent authority if any Vehicle is found to be unsuitable or unsafe and any such findings shall entitle the Council to terminate the Contract on written notice with immediate effect and the Operator shall indemnify the Council for all losses, costs, expenses, liabilities or similar incurred as a result of the early termination of the Service (including the cost of finding a replacement Service and any difference between the cost of such alternative Service and the Price for the remainder of the Term).
- 5.11. The Operator shall make arrangements to permit any Duly Authorised Officer to inspect any premises used by the Operator for the maintenance or garaging of any Vehicles at any reasonable time and on reasonable notice.

6. DRIVERS

- 6.1. The Operator shall ensure that all Drivers comply with the law, fully understand the nature of their duties and provide the Service with all due skill, care and diligence.
- 6.2. The Operator shall ensure that all Drivers are properly qualified and have such skills and experience as are necessary for the performance of the Service and possess the

relevant driving licence or permit for each Vehicle which they drive. For the avoidance of doubt, the cost of any training of Staff shall be solely borne by the Operator.

- 6.3. The Operator shall procure that each Driver shall produce such licence or permit (or proof of possession thereof) on demand for inspection by a Duly Authorised Officer, and if any Driver shall fail to comply with this condition then the Council shall notify the Operator in writing and the Operator shall submit written evidence of proof of the Driver's compliance with condition 6.1 to that Duly Authorised Officer within seven days.
- 6.4. The Operator shall procure that all Drivers ask Passengers to show any passes and pre-paid tickets and check to ensure they are valid for travel.
- 6.5. The Operator shall carry any Passengers of school age who do not have a valid ticket or pass and shall record their name and address which shall be reported to the Council within seven days.
- 6.6. Drivers should confiscate any illegible, defaced, out of date or mis-used passes, including ENCTS passes where the photograph does not match the bearer, and hand these to the Operator who shall immediately notify the Council.
- 6.7. The Operator shall procure that the Drivers shall take all reasonable precautions to ensure the safety and good and proper conduct of Passengers while boarding, alighting and whilst on the Vehicle and that the Drivers shall supervise the opening, closing and proper securing of the doors of the Vehicle before and after any Passenger enters or alights the Vehicle.
- 6.8. The Operator must ensure that all Drivers are trained to oversee an emergency evacuation procedure from any Vehicle which they drive and are capable of effective communication in English with Passengers, and the Operator shall notify the Council as soon as reasonably practicable of any such emergency evacuation or incident which has taken place.
- 6.9. The Operator shall on request by the Council provide the name and address of any Driver and the Operator shall procure that each Driver shall provide his name and driving licence number, where applicable, and any other proof of identity reasonably sufficient to establish his identity on request by a Duly Authorised Officer.
- 6.10. Should the Operator become aware that the Police are considering the prosecution of the Operator or a Driver for any offence, the Operator must notify the Council in writing as soon as reasonably practicable and in any event within seven days of becoming aware.
- 6.11. The Operator shall ensure that all Drivers are competent, clean, courteous and of smart appearance.
- 6.12. The Operator shall ensure that Drivers do not smoke at any time whilst operating the Service or immediately prior to operating the Service and shall use all reasonable endeavours to ensure that Drivers are fit to drive and do not operate any Vehicle whilst under the influence of any substance which may impair driving ability.
- 6.13. The Operator shall notify the Council of any disciplinary or grievance or complaints procedures and shall keep the Council informed of the progress and outcome of any such procedure.
- 6.14. The Operator shall suspend from provision of the Service forthwith upon written request from the Council any Driver if the Council reasonably considers that the continued performance of the Service by such Driver would be undesirable. The notice from the Council shall set out wherever possible the grounds for the suspension, but the Council shall not be obliged to give such grounds. Any such suspension shall remain in force

until the Council notifies the Operator that the relevant Driver may be reinstated to perform the Service.

- 6.15. In the event of the Council requiring the suspension of any Driver pursuant to condition 6.14 above, the Operator shall provide an alternative Driver to undertake provision of the Service. If the Operator cannot do so, then the Council may suspend the Contract pursuant to and in accordance with condition 24 and Schedule 4.

7. REGISTRATION

- 7.1. The Operator shall at his own cost register the Service as may be required by law, including section 2 and Schedule 6 of the Transport Act 1985 as appropriate.
- 7.2. Should the Council require the Operator to vary the registration during the Term, the Council shall be responsible for the reasonable cost of the variation properly incurred by the Operator.

8. FARES

- 8.1. Unless otherwise set out in the Specification and with the exception of Minimum Cost Contracts, the Operator shall charge the fares for the Service as set out in the Tender. The Operator shall also participate in any concessionary travel schemes, including the ENCTS and, if so required by the Specification, the Operator shall accept other operators' return tickets without charging an additional fare.
- 8.2. Where the Specification does not set out the applicable fares for each year of the Term (and these are not set out within the Tender), the Operator may increase the fares once per annum on no less than one month's written notice to the Council.
- 8.3. During the Term, the Operator must ensure that electronic ticket machines which can read ENCTS passes and other ITSO certified smart card media are installed and in operation on all Vehicles.
- 8.4. The operator will be required to participate fully in the local 'Multi Operator Smartcard' scheme, currently termed 'Getting About' with the tendered service operated accepting such tickets for travel and enabling top up of travel on bus. The scheme is ITSO certified and re-imbursement for journeys as part of this scheme will be provided according to the operational agreement. Outline details of the scheme are available at www.bournemouth.gov.uk/gettingabout - the full operational agreement can be provided on request.
- 8.5. In respect of Minimum Cost Contracts, the fares charged by the Operator for the Service shall be as set out in the Specification or as otherwise required in writing by the Council.

9. MINIMUM SUPPORT CONTRACTS

- 9.1. For the avoidance of doubt, where the Service is provided pursuant to a Minimum Support Contract, the Council shall not be responsible for any financial loss incurred by the Operator arising out of any difference between actual fare revenue and estimated fare revenue for the Service.

10. MINIMUM COST CONTRACTS

- 10.1. Where the Service is provided pursuant to a Minimum Cost Contract:
- 10.1.1. the Operator shall allow a Duly Authorised Officer to board without notice and travel without charge on any Vehicle for the purpose of ticket inspection or inspection of records and ticket issuing equipment;
 - 10.1.2. if any such inspection pursuant to clause 10.1.1 reveals a discrepancy between the issued tickets and fares revenue declared on the relevant invoice, the Council will submit a report to the Operator and the Operator

will provide a written response to explain the discrepancy and to outline any action that has been taken or is proposed to be taken to prevent its recurrence. If Council considers the explanation or the action taken or proposed to be unsatisfactory, the Council may issue a Warning Notice in accordance with the procedure set out in Schedule 4;

- 10.1.3. the Operator shall keep and maintain ticket-issuing equipment, including emergency tickets, for the Term to the satisfaction of the Council.
- 10.1.4. the Operator shall ensure that all revenue collected from Passengers, including a pro-rata share of off-bus ticketing, is safely banked and offset against any invoices issued in accordance with condition 12.3;
- 10.1.5. in the event that such revenue exceeds the sum of any invoices, then the Operator shall pay the excess to the Council within 30 days of the date of the invoice; and
- 10.1.6. the Operator shall separately record journey numbers undertaken by passengers holding ENCTS passes and submit this information with the monthly invoice required to be submitted pursuant to condition 12.

11. CONTRACT PRICE

- 11.1. The sum payable by the Council to the Operator shall be the Price.
- 11.2. Where neither the Specification nor Tender specifies the Price for each year of the Initial Term, the Operator may increase the Price:
 - 11.2.1. with effect from 1 April next following the date which falls six months after the Term Commencement Date (the “**Initial Price Revision Date**”) on no less than one month’s prior written notice provided that any such increases shall not exceed the Initial Price Cap; and
 - 11.2.2. subsequently with effect from each 1 April which falls thereafter during the Term (a “**Price Revision Date**”) on no less than one month’s written notice to the Council provided that any such increases shall not exceed the Price Cap.

12. PAYMENTS

- 12.1. The Operator shall be required to submit to the Council a valid VAT invoice in respect of the monthly payment within 30 days of the end of the month to which it relates.
- 12.2. Subject to receipt of a valid VAT invoice in respect of each instalment, the Council shall pay the Operator the Price in 12 equal calendar monthly payments in arrears within 30 days of receipt of the invoice.
- 12.3. Each invoice submitted should show the net amount claimed for the period after first stating the gross amount due under the Contract (and for Minimum Cost Contracts the total revenue offset against the instalment sum), and any amount to be deducted for lost mileage calculated in accordance with the Service Performance Specification. The invoice must show the details of any deductions made from an invoice, including the number of lost miles due for deduction and the rate of deduction for each mile. Any such deductions must also be supported by full details of lost mileage for the Service (and for each route within the Service) (a “**Lost Mileage Statement**”) which is detailed on the Statistical Return.
- 12.4. In the case of a Minimum Cost Contract, the fare revenue collected by the Operator for the relevant month shall be offset against the instalment sum payable by the Council and

each invoice will show such sums in respect of fare revenue credited against any revenue taken from the Passengers.

- 12.5. The Operator shall within a reasonable time of receipt of a written request from the Council make available all books, records and papers for audit by the Council of any revenue taken.

13. MONTHLY STATISTICAL RETURN

- 13.1. A statistical return shall be supplied to the Council each month, together with the invoice and must contain a Lost Mileage Statement and Passenger Revenue Information in accordance with condition 14 for the relevant month to which the invoice relates (the **"Statistical Return"**).

14. PASSENGER AND REVENUE INFORMATION

- 14.1. The Operator shall issue a ticket stating the boarding stage, fare paid and date issued to each Passenger who pays a fare to travel on the Vehicle.
- 14.2. The Operator shall record for each journey the number of Passengers and total revenue collected (including the use of ENCTS bus passes and journeys undertaken by Passengers using prepaid travel passes) (the **"Passenger Revenue Information"**), and retain that information for a period of at least 12 months.
- 14.3. The Operator shall provide to the Council a summary of the Passenger Revenue Information for each month of Term to be set out within the Statistical Return.
- 14.4. Within ten Working Days of receipt of a written request from the Council, the Operator shall supply a journey by journey analysis of the Passenger Revenue Information for any two full weeks in any year of the Term and in a format as may be specified by the request.
- 14.5. The Operator shall at the request of the Council make available all books, records and papers for audit of the Lost Mileage Statements and Passenger Revenue Information and the Operator shall ensure that those records are kept to a standard, which ensures that an audit can be carried out to verify the accuracy of the records to the satisfaction of an auditor acting on behalf of the Council.
- 14.6. In the case of a Group Contract, the Operator will supply the Lost Mileage Statements and Passenger Revenue Information in respect of each Contract for which Tenders were submitted.
- 14.7. Any report on an audit carried out under condition 14.5 may be provided to the Operator for a response which must be provided within 10 Working Days of receipt of the report by the Operator. Any such response should also detail any action the Operator proposes to take or has taken. If no response is received within the specified period the Operator shall be deemed to have accepted the report as a true statement.
- 14.8. The Council shall consider what (if any) action it is appropriate to take in the light of the audit report and any response from the Operator.
- 14.9. Any failure by the Operator to keep satisfactory records may result in the Council issuing a Warning Notice.
- 14.10. In the case of a Minimum Cost Contract, any failure to keep satisfactory records as specified in condition 14.5 shall be deemed a Material Default.

15. SURVEYS

- 15.1. The Operator shall permit Duly Authorised Officers to board without notice and travel free of charge on any Vehicle for the purpose of conducting Passenger surveys, inspection of the Vehicle and the observation and recording of any information relevant to the performance of the Contract.

16. SUB-CONTRACTING AND ASSIGNMENT

- 16.1. The Operator shall not assign the Contract without the prior written consent of the Council (which may be withheld in the Council's absolute discretion) and any such assignment may be subject to any conditions which the Council may impose. If the Council consents to an assignment, the assignee must enter into a deed of covenant direct with the Council to comply with the terms and conditions of the Contract.
- 16.2. The Operator shall not sub-contract all or any part of the Contract without the prior written agreement of the Council and the Council may withhold its consent in its absolute discretion.
- 16.3. In the case of an emergency only, the Operator may hire a vehicle from a third party and shall inform the Council as soon as is reasonably practical and in any event within one Working Day.
- 16.4. Any such emergency arrangement must not be in place for longer than a period of 24 hours consecutively without the Council's written consent and will be at the Operator's own cost.
- 16.5. Notwithstanding any subcontracting or hire of a third party vehicle, the Operator shall be responsible for complying with its obligations under the Contract ensuring that the Services are provided strictly in accordance therewith.
- 16.6. Without prejudice to any other legal remedies available to the Council, any default of any sub contractor shall be deemed to be a default by the Operator and the Council may take action for breach of the Contract against the Operator accordingly.
- 16.7. Where the Council has consented to the subcontracting of all or part of the Service, copies of each subcontract shall at the Council's request be provided to it as soon as reasonably practicable.
- 16.8. It shall be a condition of any subcontracting that:
- 16.8.1. the subcontract shall terminate immediately upon the termination (for any reason) of the Contract;
 - 16.8.2. the subcontract shall provide that the Operator pays for the Services within 30 days following receipt of a valid VAT invoice from the subcontractor and shall provide that the subcontractor shall keep the records and provide the information and access to such information as required by conditions 13 and 14 above.

17. LIABILITY

- 17.1. The Operator shall fully indemnify and keep indemnified the Council against all direct, indirect or consequential liabilities (including loss of profit, loss of business, depletion of goodwill and like loss), loss, claims, proceedings, actions, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Council arising out of or in connection with the Contract, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Operator, or any other loss caused directly or indirectly by any act or omission of the Operator or of its subcontractor.

- 17.2. Neither party excludes or limits liability to the other party for death or personal injury caused by its negligence or for any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982.

18. INSURANCE

- 18.1. The Operator shall effect and maintain at its own cost with a reputable insurance company:

- 18.1.1. a policy or policies of insurance (including a motor insurance policy) providing an adequate level of cover in respect of all risks which may be incurred by the Operator arising out of the Operator's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss;
- 18.1.2. a public liability insurance policy to cover the liability of the Operator in respect of any act or default for which it may become liable to indemnify the Council under the terms of this Contract and which shall in any event have a minimum level of cover per claim of £5,000,000; and
- 18.1.3. an employer's liability insurance policy providing an adequate level of cover in respect of staff in accordance with any legal requirement for the time being in force,

(together the "**Insurances**").

- 18.2. If required by the Council, the Operator shall provide to the Council copies of such policy or policies of the Insurances, together with any other evidence of payment of the latest premiums due under those policies.
- 18.3. The Operator shall notify the Council immediately of any alteration, cancellation or change of cover provided for by the Insurances.
- 18.4. If for whatever reason the Operator fails to give effect to and maintain the Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Operator.
- 18.5. The Council will accept no liability for any damage to the Vehicles by any Passenger.

19. SERVICE PUBLICITY

- 19.1. The Operator may publicise a Service at its sole cost. Such publicity shall clearly indicate the Service which the Operator operates on behalf of the Council and shall be approved in writing by the Council prior to publication.
- 19.2. The Council may publicise the Service and may require any publicity produced by the Operator to be made available to the public at the Council's offices and, where appropriate, bus stations as may be designated by the Council.
- 19.3. The Operator shall ensure that a current copy of the timetable and the fare table is available on each Vehicle and shall display a maximum of two relevant notices up to A4 in size provided by the Council.

- 19.4. Under the National Public Transport Information initiative (traveline), local authorities and bus operators in the South West have set up and operate a regional call centre with access to appropriate timetable databases for answering public transport timetable queries and for on-line journey planning. In support of this, the Operator shall supply and verify timetable and fare information and meet any charges relating to calls covering all Services provided by the Operator which shall be invoiced to the Operator by traveline.

20. LOST PROPERTY

- 20.1. The Operator will make arrangements to deal with any lost property in accordance with the Public Service Vehicles (Lost Property) Regulations 1978 as amended by the PSV (Lost Property) (Amendment) Regulations 1995.

21. COMPLAINTS

- 21.1. The Operator will send to the Council within five Working Days of receipt copies of all written comments or complaints they receive about or in connection with the Service, together with any reply they have made. Where investigations are ongoing, the Operator must provide a copy of the final reply to the Council. Any complaints that the Council receives will be passed on to the Operator for his/her comments.
- 21.2. Where a Passenger claims a refund for any reason, the Operator may reimburse the Passenger and the Operator shall notify the Council if it does not intend to reimburse a Passenger in full. If after due consideration the Council is satisfied that the claim is reasonable in the circumstances, the Operator shall reimburse the Passenger at the Council's written request.
- 21.3. If the Operator does not reimburse the Passenger where instructed to do so by the Council within 28 days of the request, the Council shall be entitled to reimburse the Passenger and a sum equal to the reimbursement claimed shall be offset against the next invoice submitted by the Operator.

22. ACCIDENTS

- 22.1. The Operator shall inform the Council as soon as reasonably practicable and in any event within 24 hours of an accident resulting in loss of life, injury and/or damage to property and in all cases shall have submitted a written report of any accident involving a Vehicle or Passenger travelling on or boarding or alighting from a Vehicle or any road user, together with a report of any action they have taken or propose to take to prevent its recurrence.

23. CONTRACT PERFORMANCE

- 23.1. The Operator should take every reasonable step to ensure that, as well as operating all the specified journeys, the Service is provided to the quality required in the Service Performance Specification. From time to time the Council will without notice monitor the service and will also investigate complaints received from any verifiable source including those received from passengers.
- 23.2. No liability shall attach to the Operator in the event of his failure to perform any part of the Contract satisfactorily if the Operator can demonstrate to the Council's satisfaction that such breach arose wholly as a result of events over which the Operator had no control.

24. SUSPENSION OF THE CONTRACT

- 24.1. The Council may suspend all or part of the Contract by notice in writing to the Operator setting out its reasons for such suspension.
- 24.2. If the Council is considering immediate termination of the Contract for an alleged Material Default, the Council may suspend the Service for any period of investigation.

- 24.3. If the Service is suspended by the Council pursuant to condition 24.2, the suspension will be for a period of no less than five Working Days (as set out in the notice of suspension issued pursuant to condition 24.1 above) pending termination.
- 24.4. During the period of suspension referred to in condition 24.3 above, the Operator may appeal against termination of the Contract.
- 24.5. The procedure for such an appeal will be as set out in Schedule 4 and if unsuccessful, then the Council may terminate the Contract in accordance with condition 26.
- 24.6. In the event of the Contract being suspended in accordance with the Contract, the Council will not be liable for any payment for the Service for the period of suspension, notwithstanding the subsequent continuation of the Contract.

25. MODIFICATIONS TO THE SERVICE AND TERMINATION WITH NOTICE

- 25.1. Any of the Schedules to or conditions of the Contract may be altered by the written agreement of the parties. The Operator shall not unreasonably withhold its consent to any variations that the Council may require and shall have notified to the Operator in writing. Save as provided for in conditions 25.2 and 25.3, the parties shall be entitled to negotiate any changes to the Price as a result of any alteration pursuant to this condition 25.1.
- 25.2. The Council may request the Operator to modify or change the route or pick up and drop off places as set out in the Specification or as otherwise agreed by the parties.
- 25.3. If any such modification or change would give rise to a reduction or increase in the daily mileage by less than 5%, then no adjustment will be made to the Contract Price.
- 25.4. The Council reserves the right to terminate the Contract in accordance with the notice periods set out herein if the rate derived from any variation or negotiation no longer represents continued value for money in the Council's opinion, or where demand for the Service is materially changed, e.g., in response to school/college closure or relocation, increased or decreased passenger numbers, changes to legislation, Council policy or similar.
- 25.5. If the Council declares an emergency, the Council may ask the Operator to make available the Vehicle(s) and/or Driver(s) to the Council and if necessary cease operation of the Service. If agreed by the Operator, the Vehicle(s) and/or Driver(s) will operate as directed by the Council for the duration of the emergency. The Council would meet any additional reasonable costs properly incurred by the Operator in connection with any such alternative service. The Operator, if requested must supply the Council with a telephone number and name of the person to be contacted in an emergency.
- 25.6. For the avoidance of doubt the Council may have any additional services carried out by companies or persons other than the Operator.

26. TERMINATION

- 26.1. The Contract may be terminated by the Council by giving notice in writing to take immediate effect in the event that:
 - 26.1.1. the Operator has materially or persistently failed to meet the requirements of the Contract;
 - 26.1.2. a Persistent Default shall have occurred;
 - 26.1.3. there has been a Material Default by the Operator (whether following a period of suspension or otherwise);
 - 26.1.4. there has been a change of control of the Operator within the meaning of section 416 of the Incomes and Corporation Taxes Act 1988 which impacts

adversely and materially on the Council or on the performance of the Service;

26.1.5. the Operator is an individual (or when the Operator is a firm, any partner in that firm) and shall become bankrupt or shall have a receiving order or an administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors or shall make any conveyance or assignment for the benefit of his creditors or similar;

26.1.6. the Operator is a Company and shall pass a resolution or if the Court shall make an order that the Company shall be wound up or dissolved (except for the purpose of reconstruction), or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge or similar;

26.1.7. the Operator is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

26.1.8. If the Contract is terminated by the Council pursuant to this condition, the Council shall be entitled to recover from the Operator the additional cost over the Price of providing a replacement service for up to 30 days following the termination of the Contract.

26.1.9. If the Contract is terminated by the Council pursuant to this condition, the Council shall be entitled to recover from the Operator the additional cost over the Price of providing a replacement service for up to 30 days following the termination of the Contract.

26.2. Save as otherwise provided in condition 26.1 above, the Contract may be terminated by either party giving to the other not less than sixteen weeks' notice in writing. For the avoidance of doubt, notice may be served in respect of an individual contract awarded as part of a series of Group Contracts without affecting the other contracts.

26.3. If the Contract is terminated in accordance with conditions 26.1.1, 26.1.2 or 26.1.3, then the Council shall:

26.3.1. cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Contract shall have been calculated (and provided then that such calculations show a sum or sums due to the Operator);

26.3.2. be entitled to contract with and pay other persons to provide and complete provision of the Services or any part thereof;

26.3.3. be entitled to deduct from any sum or sums which would have been due from the Council to the Operator under the Contract or any other contract or be entitled to recover the same from the Operator as a debt any loss or damage to the Council resulting from or arising out of the termination of the Contract, including the reasonable cost to the Council of the time spent by

its officers in terminating the Contract and in making alternative arrangements for the provision of the Services or any part thereof.

26.4. Upon termination of the Contract, the Supplier shall return to the Council forthwith all related material and documentation and any Confidential Information or Personal Data belonging to the Council and any copies, backups or archives of the whole or any part thereof.

26.5. Termination of the Contract shall not affect the accrued rights and liabilities of the parties arising in any way out of the Contract prior to the date of termination.

27. NOTICES

27.1. Any notice to the Operator shall be considered to be sufficiently served if delivered at, or sent by prepaid Recorded Delivery service to the address indicated by the Operator on his Tender, or such other address as the Operator may notify in writing to the Council from time to time.

27.2. Any notice to the Council, except invoices, shall be considered to be sufficiently served if delivered at or sent by prepaid Recorded Delivery service to the Head of Growth and Infrastructure, Borough of Poole, Civic Centre, Poole, Dorset, BH15 2RU or such other address as the Council may notify in writing to the Operator from time to time.

27.3. In every case the notice must state clearly the Contract to which the notice refers.

28. HEALTH AND SAFETY AT WORK

28.1. The Operator shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety which may apply to Staff and other persons in the performance of its obligations under the Contract.

29. MOBILE COMMUNICATIONS

29.1. The Operator will ensure that there is a two-way communication system with the driver/vehicle unless the Head of Growth and Infrastructure gives prior written agreement that two-way communications are not required. The system may be radio or hands-free mobile phone but whatever system is used it shall be available to the Head of Transportation Services either directly or via the Operators base. If a system via the Operators base is used the Operator will ensure that the base is staffed during the hours of operation of the Contract.

30. EQUALITY

30.1. The Operator shall have regard to its responsibilities under the Equalities Act 2010. The Operator and his/her employees shall not discriminate on the grounds of any person on grounds of gender, sexual orientation, religious persuasion, colour, ethnic origin, disability, cultural and linguistic background, age or any other specific requirements detailed in the Specification.

31. SAFEGUARDING CHILDREN

31.1. The Operator shall ensure compliance with section 11 of the Children Act 2004 and any similar legislation to promote the welfare of children in all aspects of the Service.

31.2. Where the Service provided is pursuant to a Local School Bus Contract or a Closed Education Contract, the Council shall at its sole discretion be entitled to require the Operator's Staff to undergo any appropriate checks including an enhanced Disclosure and Barring Service ("DBS") check.

31.3. If any of the Operator's Staff are required to undergo any such DBS checks, then the Operator shall ensure that such checks are carried out as soon as practicable and are

repeated no less frequently than every 3 years and that all results are provided promptly following receipt to the Council.

- 31.4. No person required to undergo any such DBS check shall provide the Services unsupervised by a person who has undergone such checks with a satisfactory outcome until such checks have been completed with a satisfactory result and notified to the Council.
- 31.5. The Operator shall ensure that no person to whom the Council reasonably objects providing the Service shall be engaged in the provision of the Services.
- 31.6. The cost of any DBS checks shall be borne solely by the Operator.
- 31.7. At the Operator's request, or if necessary under its own authority, the Council shall submit DBS check forms and any fee charged and the Council's reasonable administrative costs shall be charged to the Operator and shall be payable within 30 days of the date of the invoice.

32. SUSTAINABILITY

- 32.1. The Operator must have regard to and co-operate with the Council in achieving delivery of a reduction of the environmental impact of its Services.

33. RIGHTS OF THIRD PARTIES

- 33.1. The parties to the Contract do not intend that any term of the Contract will be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person that is not a party to it.

34. HUMAN RIGHTS

- 34.1. In delivering the Service, the Operator shall not act in a way which is discriminatory or otherwise inconsistent with a person's right to respect for private and family life, freedom of expression, property, association or any other right or freedom set out in the Human Rights Act 1998.

35. STATUTORY AND OTHER REGULATIONS

- 35.1. The Operator shall in all matters arising in the performance of the contract conform with all Acts of Parliament and to all orders, regulations, bylaws and codes of guidance made with statutory authority by Government Departments or other statutory body.

36. PREVENTION OF CORRUPTION

- 36.1. The Operator shall not offer or give or agree to give to the Council or any other public body or any person employed by or on behalf of the Council of any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing any acting relation to the obtaining or execution of the Contract or any other agreement with the Council of any other public body or for showing or refraining from showing favour of disfavour to any person in relation to the Contract or any such contract.
- 36.2. The Operator warrants that it has not paid commission or agreed to pay commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with the Contract.

37. CONFIDENTIALITY

- 37.1. Except to the extent set out in this condition or where disclosure is expressly permitted elsewhere in the Contract, the Operator shall:
 - 37.1.1. treat all Confidential Information belonging to the Council as confidential and use all reasonable endeavours to prevent its Staff from making any disclosure to any person of such Confidential Information; and

- 37.1.2. not disclose any Confidential Information belonging to the Council to any other person without the prior written consent of the Council,

except to such persons and to such extent as may be necessary for the performance of the Operator's obligations under the Contract.

37.2. The Operator shall not use any Confidential Information it receives from the Council otherwise than for the purposes of the Contract.

37.3. Nothing in conditions 37.1 or 37.2 shall prevent the Operator from:

37.3.1. using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the Council's Confidential Information or an infringement of the Council's IP; or

37.3.2. disclosing Confidential Information which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Operator.

37.4. In the event the Operator fails to comply with conditions 37.1 or 37.2, the Council reserves the right to terminate the Contract with immediate effect by notice in writing.

37.5. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services under the Contract, the Operator undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.

37.6. The Operator will immediately notify the Council of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services under the Contract and will keep a record of such breaches.

37.7. The Operator will use its best endeavours to recover such Confidential Information or data however it may be recorded.

37.8. The Operator will co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

37.9. The Operator shall, at its own expense, alter any security systems at any time during the term of the Contract at the Council's request if the Council reasonably believes the Operator has failed to comply with condition 37.5.

38. DATA PROTECTION

38.1. For the purpose of this condition, the terms "**Data Controller**", "**Data Processor**", "**Process**", "**Processing**" and "**Personal Data**" shall have the meaning as in the DPA and following the coming into force of the GDPR, the terms "**Commission**", "**Controller**", "**Data Subject**", "**Member State**", "**Personal Data**",^[1] "**Personal Data Breach**", "**Processing**" and "**Supervisory Authority**" shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

38.2. The Operator shall (and shall procure that any of its Staff involved in the provision of the agreement) comply with any notification requirements under the Data Protection Legislation and both parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Contract.

^[1] The GDPR definition of "personal data" will not include personal data relating to legal persons other than individuals, so if a firm wishes to extend the scope of the Addendum to cover processing under the laws of e.g. Switzerland or South Africa a wider definition should be considered here.

- 38.3. Notwithstanding the general obligation in condition 38.2, where the Operator is processing Personal Data as a Data Processor for the Council, the Operator shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the Data Protection Act 1998; and
- (a) provide the Council with such information as the Council may reasonably require to satisfy itself that the Operator is complying with its obligations under the Data Protection Legislation;
 - (b) promptly notify the Council of any breach of the security measures required to be put in place pursuant to condition 38.3; and
 - (c) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the Data Protection Legislation.
 - (d) comply with Annex 1 to this Contract (which concerns the Processing of Personal Data as required by article 28(3) of the GDPR) and to which the Council may make reasonable amendments by written notice to the Operator from time to time as the Council reasonably considers necessary.
- 38.4. The Operator shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Processor who may have access to Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Personal Data, as strictly necessary for the purposes of the Contract, and to comply with Data Protection Legislation in the context of that individual's duties to the Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.
- 38.5. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Operator shall in relation to the Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR. In assessing the appropriate level of security, the Operator and each Operator Affiliate shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.
- 38.6. The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.
- 38.7. The Operator shall fully indemnify the Council in respect of all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses arising out of or in connection with any civil claim made in respect information subject to the Data Protection Legislation , which claims would not have arisen but for some act, omission or negligence in breach of this condition on the part of the Operator, its employees, agents or any subcontractor or anyone acting on its or their behalf.

39. FREEDOM OF INFORMATION

- 39.1. The Operator acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Council to enable the Council to comply with its information disclosure obligations.
- 39.2. The Operator shall and shall procure that any sub-contractors shall:
- 39.2.1. transfer to the Council all requests for information that it receives as soon as practicable and in any event within 2 (two) working days of receiving a request for information;
 - 39.2.2. provide the Council with a copy of all information in its possession, or power in the form that the Council requires within 5 (five) working days (or such other period as the Council may specify) of the Council's request; and
 - 39.2.3. provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the request for information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the EIR.
- 39.3. The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA the text of these conditions, any Schedules to these conditions and any part of the Contract, is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any part of the Contract is exempt from disclosure in accordance with the provisions of the Act.
- 39.4. In no event shall the Operator respond directly to a request for information unless expressly authorised to do so by the Council.
- 39.5. The Operator acknowledges that (notwithstanding the provisions of this condition) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (the "**Code**"), be obliged under the FOIA, or the EIR to disclose information concerning the Operator or the Services in certain circumstances:
- 39.5.1. without consulting the Operator; or
 - 39.5.2. following consultation with the Operator and having taken their views into account

provided always that where condition 39.5.1 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Operator advanced notice, or failing that, to draw the disclosure to the Operator's attention after any such disclosure.

- 39.6. The Operator shall ensure that all information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 39.7. Notwithstanding any other term of the Contract, the Operator hereby gives its consent for the Council to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public in whatever form the Council decides.

40. FORCE MAJEURE

- 40.1. The Council reserves the right to defer the date of delivery or performance or payment or to cancel the Contract or reduce the volume of the Services ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the

reasonable control of the Council including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

- 40.2. In the case of an emergency closure of a School, college or other specified Establishment served by the Contract, due to unforeseen circumstances (including fire, flood, building defects and illness), the Council may suspend the operation of the Contract. In this situation the Operator will be entitled to claim up to 50% of the daily contract rate for a period of up to one week. No payment will be made if the Contract remains suspended beyond this period.

41. DISPUTE RESOLUTION

- 41.1. Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.
- 41.2. The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the chief executive (or equivalent) of each party.
- 41.3. If the chief executives of the Operator and the Council are unable to resolve the dispute pursuant to condition 41.2, the parties shall refer it to mediation pursuant to the procedure set out in condition 41.5 unless:
- 41.3.1. the Council considers that the dispute is not suitable for resolution by mediation; or
 - 41.3.2. the Operator does not agree to mediation.
- 41.4. The obligations of the parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Operator shall comply fully with the requirements of the Contract at all times.
- 41.5. The procedure for mediation and consequential provisions relating to mediation are as follows:
- 41.5.1. a neutral advisor or mediator (the "**Mediator**") shall be appointed by agreement between the parties or, if they are unable to agree upon a mediator within ten Working Days after a request by one party to the other, either party shall, within 10 Working Days from the date of the proposal to appoint a mediator, apply to the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a mediator;
 - 41.5.2. the parties shall, within ten working days of the appointment of the Mediator, meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
 - 41.5.3. unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;

- 41.5.4. if the parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the parties once it is signed by their duly authorised representatives;
- 41.5.5. if the parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

42. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE")

42.1. In the event that TUPE applies to the Contract:

- 42.1.1. within twenty Working Days of being so requested by the Council, the Operator shall fully and accurately disclose to the Council for the purposes of TUPE all employee liability information relating to its employees engaged in providing the Services under the Contract (the "**Employee Information**");
- 42.1.2. the Operator shall permit the Council to use the Employee Information for the purposes of TUPE; and
- 42.1.3. the Operator shall indemnify the Council fully and hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or:
 - 42.1.3.1. arising from or relating to the provision of the Employee Information; and
 - 42.1.3.2. as a result of any claim or demand by any employee or person claiming to be an employee on any date upon which the Contract is terminated or transferred to any third party arising out of their employment or its termination.

43. GENERAL

- 43.1. Each right or remedy of the Council under the Contract is without prejudice to any other right or remedy of the Council whether under the Contract or not.
- 43.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 43.3. Failure or delay by the Council in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 43.4. Any waiver by the Council of any breach of, or any default under, any provision of the Contract by the Operator will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 43.5. At all times during the period of the Contract the Operator shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the parties and accordingly neither party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other party save as expressly permitted by the terms of the Contract.

- 43.6. The formation, existence, construction, performance, validity and all aspects of the Contract (whether contractual in nature or otherwise) shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

**SCHEDULE 1
VEHICLE SPECIFICATION**

1. Please see Appendix A1 of the Invitation to Tender – Specification for Vehicles

**SCHEDULE 2
SERVICE SPECIFICATION**

1. Please see Appendix A2 of the Invitation to Tender – Specification for Service

**SCHEDULE 3
SERVICE PERFORMANCE SPECIFICATION**

1. Please see Appendix A3 of the Invitation to Tender – Specification for Service Performance

SCHEDULE 4

WARNING NOTICES

1. WARNING NOTICES

- 1.1 If the Contractor fails to meet the Specification or a breach otherwise occurs and provided that such failure does not constitute a Material Default upon which the Council decides to exercise its rights pursuant to condition 26, the Council may issue a Warning Notice in accordance with this Schedule 4.
- 1.2 The Council will at its sole discretion use a system of formal issue of Warning Notices to ensure compliance with the Contract and which may be implemented in the event of breaches of Contract (which do not constitute Material Defaults). For the avoidance of doubt, in the event of a Material Default, this Schedule 4 shall not apply.
- 1.3 The primary purpose of a Warning Notice is to advise the Contractor that a Default has occurred and to afford the Operator the opportunity to remedy the Default.
- 1.4 Where the Council has received a report of an alleged Default, the Council will seek representations from the Operator within five Working Days of notifying the Operator in writing of such allegation (unless a sooner response is reasonably required to be given by the Council in the circumstances).
- 1.5 If the Operator fails to make any such representations and the Council is satisfied that a Default has occurred, then the Council may issue a Warning.
- 1.6 The Council may provide any information relating to a Default by the Operator to any appropriate regulating or statutory or other bodies, including the Traffic Commissioner. Further the Council may share information relating to Defaults and corresponding Warning Notices with other local authorities.
- 1.7 For the avoidance of doubt, where four Warning Notices are issued by the Council within a rolling 26 week period (i.e., a Persistent Default has occurred), the Council will shall the right to terminate the Contract pursuant to clause 26.

2. APPEALS AGAINST WARNING NOTICES OR SUSPENSION

- 2.1 If an Operator wishes to appeal against the issue of a Warning Notice, he must do so in writing to the Head of Growth and Infrastructure within seven days of receipt of the Warning Notice or other notice of suspension, setting out in full the reasons for the appeal.
- 2.2 Following receipt of an appeal notice from an Operator, the Council will agree with the Operator a date for the appeal to be heard.
- 2.3 If the Operator fails to appear at the hearing without notice, the appeal will be heard in their absence on the basis of any written evidence submitted.
- 2.4 If the Operator proposes to submit written evidence he/she must notify the Council in advance and written evidence must be received by the Council no less than four Working days before the appeal date.
- 2.5 At an appeal, the Operator shall present any written and oral evidence of material issues by the Operator in person or by its representative. The Operator may then be cross-examined by members of the appeals panel or other Council officers. The

Operator or its representative may then cross-examine the Council officer(s) responsible for the issue of the Warning Notice. The Operator and the officer(s) would then withdraw to allow the appeal panel to make a decision.

- 2.6 The Council will not accept any appeal against the issue of a Warning Notice following termination of the Contract.

Annex 1: GDPR

1. For the purposes of this Annex 1:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the European Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses;
- (d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

2. Data Transfer

The details of the transfer include information relating to Passengers where applicable.

3. Third Party Beneficiary

- (a) The data subject can enforce against the data exporter this Clause 3, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (h), Clause 6(a) and (b), Clause 7, Clause 8(2), and Clauses 8 to 10 as third-party beneficiary.
- (b) The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has

assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

- (c) The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

4. Obligations of the data exporter

The data exporter agrees and warrants:

(a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

(b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

(c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures;

(d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e) that it will ensure compliance with the security measures;

(f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

(g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(c) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h) to make available to the data subjects upon request a copy of the Clauses and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless

the Clauses or the contract contain commercial information, in which case it may remove such commercial information;and

- (i) that it will ensure compliance with Clause 4(a) to (h).

5. Obligations of the data importer

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented appropriate technical and organisational security measures before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
 - (ii) any accidental or unauthorised access, and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

(g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, and a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

(h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;

(i) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

6. Liability

(a) The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 9 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

(b) If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 9, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

(c) If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 9 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

7. Mediation and jurisdiction

(a) The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

(i) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

(ii) to refer the dispute to the English courts.

(b) The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

8. Cooperation with supervisory authorities

(a) The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

(b) The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

(c) The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

9. Subprocessing

The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter

10. Obligation after the termination of the Service

(a) The parties agree that on the termination of the provision of the Service, the data importer and any subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

(b) The data importer and any subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.