

General Terms and Conditions for Passenger Transport Contracts

General Specification for Small Vehicle and Specialist Transport Contracts

August 2017



This booklet comprises the following documents:

**Wiltshire Council Terms and Conditions
and General Specification for
Small Vehicle and Specialist Transport Contracts**

*which sets out the standard requirements for the operation of passenger
transport contracts organised by the Wiltshire Council Passenger Transport
Unit.*

Wiltshire Council is committed to Safeguarding all children, young people and vulnerable adults.

We believe that all children, young people and vulnerable adults have an equal right to protection from abuse, regardless of their age, race, religion, ability, gender, language, background or sexual identity and consider the welfare of the child/ young person / vulnerable adult is paramount.

Transport operators will be expected to work with the Council by ensuring that Safeguarding is at the heart of the operation of all contracted journeys.

1. **DEFINITIONS AND INTERPRETATION**

- 1.1. When they are used in this contract, the following terms and expressions have the meanings set out in this clause 1.

"The Acts" means the Transport Act 1985, the Transport Act 2000, the Public Passenger Vehicles Act 1981 and the PSV (Operator's Licences) Regulations 1986 and any amendments to the Acts.

"The Award of Contracts Letter" means the Award of Contract Letter completed and signed by the Contractor and the Operator following the conclusion of the relevant Dynamic Purchasing System mini-competition.

"Additional Publicity" means the requirements set out in Appendix D of the General Specification for Wiltshire Public Transport and School Bus Contracts.

"Authorised Officer" means the person detailed as such on the Award of Contract Letter and which details may be amended in accordance with clause 8.

"Authorised Passenger" means the person specifically authorised by the Authorised officer to be conveyed as part of this contract.

"Booking" means the individual requests made by the Council to the Operator for the performance of the Service which will be made by telephone and recorded in writing by both parties and which will be performed in accordance with the terms of the Contract.

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

"Commencement Date" means the date of the commencement of the Service as detailed in the Award of Contract Letter.

"Commercially Sensitive Information" comprising the information of a commercially sensitive nature relating to the Operator, its intellectual property rights or its business or which the Operator has indicated to the Authority that, if disclosed by the Authority, would cause the Operator significant commercial disadvantage or material financial loss.

"Confidential Information" any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Operator, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as *"confidential"*) or which ought reasonably to be considered to be confidential, including Commercially Sensitive Information.

"Contract" means the provisions of these Terms and Conditions including Schedules 1 and 2,, the Award of Contract Letter, the General Specification and the Route Specification.

“Contract Price” means the contract prices submitted by the Operator as part of the relevant Dynamic Purchasing System mini-competition.

“Cost Contract” is a contract where the price is on the basis of all revenue collected or attributable to that contract being returned to the Council.

“Day/s” means Monday to Sunday inclusive.

“Day Centre” means the day centre to or from which passengers are being conveyed.

“Default” means any failure by either party to carry out its obligations under this Contract but a Default shall not include a Serious Default.

“Drop Off Point” means the agreed location at which the passenger will be set down.

“Education Journey Requirements” means the requirements set out in Appendix A of the General Specification for Wiltshire Public Transport and School Bus Contracts.

“Environmental Information Regulations” the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant government department in relation to such regulations.

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

“Information” has the meaning given under Section 84 of FOIA.

“General Specification” means the relevant document headed General Specification for the Service as Route Specification including any Variation.

“Mediator” means an individual who is appointed in accordance with clause 27 (Dispute Resolution) to mediate between the Operator and the Council if the parties are in dispute.

“Monitoring Information” means that information to be provided by the Operator to the Council set out in the General Specification and the Route Specification.

“Net Subsidy Contract” is a contract where the price is on the basis of all revenue collected on or attributable to that contract being retained by the Operator.

“No-Fares Contract” is a contract where only passengers authorised by the Council to travel on the contract are to be conveyed and no fares are to be collected.

“Operator Manager” means the person referred to in clause 9 Operator/ Manager).

“Outcomes” means the outcomes set out in the General Specification and the Route Specification which the Operator must achieve in delivering the service.

“Passenger Assistant” means an authorised employee or representative of the Council who shall assist passengers at all times during the journey.

“Passenger Transport Unit” means the Wiltshire Council Passenger Transport Unit (PTU).

“Payment Period” means the period of 1 calendar month.

“Performance Monitoring” means the procedure for monitoring the Service described in clause 12.

“Performance Management Indicators” means the omissions and actions listed in the Performance Management Table.

“Performance Management Table” means the table found in Appendix F of the General Specification setting out potential actions or omissions of the Operator the occurrence of which would indicate that the Operator is performing the Services at a performance level that is less than that agreed to in this Contract.

“Performance Management Warning Record” means the record of Performance Management Indicator events and Performance Management Warning Notices recorded under clause 12.

“Performance Targets” means the performance targets in respect of the delivery of the Service set out in the General Specification and the Route Specification.

“Persistent Default” means where the Operator has committed more than 2 Defaults during any consecutive period of 3 months, whether or not these are the same Defaults or different Defaults and even if the Operator puts the Default right each time.

“Pick Up Point” means the agreed location the passenger will be collected from.

“Power Operated Passenger Doors” are doors normally used by passengers to board and alight from the Vehicle, which are capable of operation mechanically or electrically by the driver from the driver's seat.

“Prohibited Act” the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

- (c) committing any offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts;
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority.
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

“Regulatory Body” means a body whether established under statute or otherwise to whose regulatory powers either or both parties are subject.

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

“Regulated Activity Provider” as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006.

“Request for Information” a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

“Route Specification” the additional information specific to each route to be provided as part of the relevant Dynamic Purchasing System mini-competition.

“Safeguarding” means the practices and behaviours set out in Appendix B and clause 16.

“Serious Default” means a default on the Operator’s part which materially prejudices the health, safety or welfare of a Service User or Service Users in general.

“Service” means the passenger transport service more particularly described in the General Specification and Route Specification.

“Services” the services to be delivered by or on behalf of the Operator under this agreement.

“Service User” means any individual who receives or uses the Services.

“Special Needs” means a child or young person who finds it difficult to learn compared to other children of the same age.

“Sub-Contract” any contract or agreement or proposed contract or agreement between the Operator and any third party whereby that third party agrees to provide to the Operator the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof.

“Sub-Operator” the third parties that enter into a Sub-Contract with the Operator.

“Suspension Notice” has the meaning given it in clause 24.

“Term” means the period of time for which this contract is in force as determined by the Service Specification.

“Termination Date” means the date stated in the Award of Contract Letter.

“Timetable” is the timetable contained in the Route Specification.

“The Traffic Commissioner” is the Traffic Commissioner referred to in the Transport Act (1985).

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014.

“VAT” means Value Added Tax.

“Variation” means a variation to this Contract or to the Services, made in accordance with clause 28, *“varied”* will be construed accordingly.

“Vehicle” is a vehicle in use by the Operator in the performance of the Services and *“Vehicles”* shall be construed accordingly.

“Vulnerable Adult” means someone over 18 years of age who may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself, or unable to protect himself against significant harm or exploitation and as described in the Department of Health and Home Office publication “HM government Care and Support statutory guidance Chapter 14 Adult Safeguarding Guidance 2016” (<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#Safeguarding-1>)

“Vulnerable Adult Policy and Procedures” means the latest edition of the Swindon Borough Council and Wiltshire Council’s publication “Policy and Procedures for the Protection of Vulnerable Adults from Harm in Swindon and Wiltshire” or any update or replacement thereof.

“Vulnerable Passenger” means a passenger who may by reason of mental or other disability, age or illness are or may be unable to take care of himself, or may be unable to protect himself against significant harm or exploitation and as such is a vulnerable person as described in the Department of Health and Home Office publication *“No Secrets”*.

“Wheelchair Accessible Vehicle” means a Vehicle which has Wheelchair Accessible Vehicle requirements as set out in the Department for Transport code of practice (**VSE 87/1**) covering the safety of passengers in wheelchairs.

“Working Days” means between 9:00am and 5:00pm Monday to Friday inclusive, but does not include any days which are bank holidays or public holidays.

- 1.2 Unless the context demands, any reference in this Contract to:
 - 1.2.1 the masculine includes a reference to the feminine and vice versa;
 - 1.2.2 the singular includes a reference to the plural and vice versa;
 - 1.2.3 a person includes a reference to an individual or a firm, partnership, company, or corporation;
 - 1.2.4 a 'clause' or an 'appendix' in this contract means a reference to a clause or appendix of the Contract.
- 1.3 The headings in this Contract are for ease of reference only and do not affect its interpretation.
- 1.4 Any reference in this Contract to any enactment, order, regulation or other similar instrument is to be taken to mean a reference to any such enactment, order, regulation or other similar instrument which is in force for the time being. This includes (for as long as they are in force):
 - 1.4.1 any amendments or modifications to any such enactment, order, regulation or other similar instrument; and
 - 1.4.2 any re-enactment of any such enactment, order, regulation or other similar instrument.

2. TERM OF CONTRACT, EXTENSION AND SERVICE STANDARD

- 2.1. This Contract comes into force on the Commencement Date and will remain in force until the Termination Date unless otherwise determined in accordance with the terms of this Contract.
- 2.2. The Contract may be extended by written agreement. The total duration of all extensions cumulatively will not exceed three years.
- 2.3 The Operator will:
 - 2.3.1 provide the Services in a timely, proper, skilful and workmanlike manner in accordance with the General Specification, the Route Specification, the best technical and commercial practices and the terms of this Contract to the satisfaction of the Authorised Officer.
 - 2.3.2 provide the Services in accordance with any and all codes of practice, performance ratings and quality standards that are set out in this Contract or that are issued to it as part of a variation of the Contract made pursuant to clause 27 (Variation); and provide the Services in accordance with the Acts and all other statutory provisions which apply to the Services and to Vehicles.

3. **ENTIRE CONTRACT**

- 3.1 This Contract constitutes the entire Contract between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 3.2 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Contract. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Contract.
- 3.3 Clause 12 (**Performance Management**) and 42 (**Termination of Contract/s and [Removal from dynamic Purchasing system] due to failure to comply with Safeguarding duties**) of this Contract will operate to take effect across all extant Wiltshire Council Public Transport and School Bus Contracts in respect of which the Operator is a party.

4. **PRIORITY OF DOCUMENTS**

In the event of any conflict or inconsistency between the documents forming this Contract the following order of precedence shall apply for the purpose of resolving such conflict or inconsistency:

- 1) The Award of Contract Letter
- 2) These Terms and Conditions Schedules 1 and 2
- 3) The General Specification
- 4) The Route Specification

5. **PREVENTION OF BRIBERY AND TRANSPARENCY REQUIREMENTS**

5.1 The Operator:

- 5.1.1 Shall not, and shall ensure that any Operator Party and all Operator Personnel shall not, in connection with this Contract commit a Prohibited Act;
- 5.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

5.2 The Operator shall:

- 5.2.1 If requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant

jurisdiction for the purpose of compliance with the Bribery Act;

- 5.2.2 Within 45 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Operator) compliance with this clause 5 by the Operator and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Operator shall provide such supporting evidence of compliance as the Council may reasonably request.
- 5.3 The Operator shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Operator Party or Operator Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 5.4 If any breach of clause 5.1 is suspected or known, the Operator must notify the Council immediately.
- 5.5 If the Operator notifies the Council that it suspects or knows that there may be a breach of clause 5.1, the Operator must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.
- 5.6 The Council may terminate this Contract by written notice with immediate effect if the Operator, Operator Party or Operator Personnel (in all cases whether or not acting with the Operator's knowledge) breaches clause 5.1.
- 5.7 Any notice of termination under clause 5.1 must specify:
 - 5.7.1 the nature of the Prohibited Act;
 - 5.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and
 - 5.7.3 the date on which this Contract will terminate.
- 5.8 Despite clause 27 (**Dispute Resolution**), any dispute relating to:
 - 5.8.1 the interpretation of clause 5; or
 - 5.8.2 the amount or value of any gift, consideration or commission, shall be determined by the Council and its decision shall be final and conclusive.
- 5.9 Any termination under clause 5.1 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.
- 5.10 The Operator hereby confirms that it:
 - 5.10.1 understand that the Council routinely publishes local spending data in relation to invoices, grant payments, expenses payments and other transactions over £500, including details of contracts and tenders over £500, in accordance with the Government's transparency programme and guidance, the 'Local Government Transparency Code 2015' and the Local Government (Transparency Requirements) (England) Regulations 2014 and is required to publish information on 'Contracts Finder' in

accordance with Part 4 of the Public Contracts Regulations 2015 (together the "Transparency Requirements"); and

- 5.10.2 agrees that the Council may therefore publish details (in accordance with the Transparency Requirements) of the Contract with the Supplier and will comply with any reasonable request from the Council in order to assist the Council in complying with its transparency obligations under this clause 5.

6. ASSIGNMENT AND SUB-CONTRACTING

- 6.1 Except in accordance with clauses 6.2 and 6.3 below the Operator may not assign sub-contract or in any other way dispose of the provision of the whole or any part of the Services or all or any of its rights or obligations under this Contract to any person without the prior written consent of the Council.
- 6.2 Where, due to what the Council agrees is unexpected circumstances, the Operator is unable to perform the Contract using its own vehicles and drivers, the Council will consider allowing the operation of all or part of the Contract to be sub contracted to another transport operator for a limited period of time, subject to the following conditions:
- 6.2.1 The reason, duration and arrangements for the Sub-Contract must be agreed in advance with the Council;
- 6.2.2 The transport operator and drivers that are to be used for the Sub-Contract must be approved in advance by the Council;
- 6.2.3 The passengers using the service and the staff at any schools and colleges served by the Contract must be informed by the Operator about the Sub-Contract before it commences;
- 6.2.4 The Operator will continue to be responsible for ensuring that the Contract is operated in accordance with the Conditions of Contract and that Sub contractor's staff involved have received sufficient training to ensure that the Contract is performed correctly.
- 6.2.5 In the event that the Contract is not operated correctly or any of the above requirements are not met, the Operator will:
- (a) terminate the Sub-Contract immediately at the Council's request; and;
 - (b) the Operator will resume performance of the Contract using its own vehicles and drivers;
 - (c) should the Operator still be unable to perform the Contract due to conditions persisting as a result of the unexpected circumstances at clause 6.2 the Council will consider allowing the operation of all or part of the Contract to be sub contracted to an alternative transport operator and the provisions of clause 6.2 will apply;

- (d) Where the Operator has terminated any Sub-Contract under clause 6.2.5 but is unable to perform the Contract or arrange for a Sub-Contract to the satisfaction of the Council the Council may terminate the Contract immediately
- 6.3 In an emergency, the Operator may arrange for all or part of the Services to be performed by another operator approved by the Council, provided that;
 - 6.3.1 the Council is notified before the journey is sub contracted, in exceptional circumstances where this is not possible, the Council should be notified as soon as the journey has been completed.
 - 6.3.2 every effort is made to rectify the problem necessitating the Sub-Contract, at the earliest opportunity.
 - 6.3.3 The Operator is to resume performance of the Services at the earliest opportunity.
 - 6.3.4 If the Operator uses a Sub Contractor who is not approved by the Council, the Council will reserve the right to immediately terminate the Contract.
- 6.4 If the Council consents to any sub-contracting under clause 6.1,6.2 or if there is an emergency situation necessitating sub-contracting under clause 6.3, such sub-contracting shall not relieve the Operator of its obligations under this Contract.

7. AGENCY OR PARTNERSHIP

- 7.1 The Operator is not the Council's agent and will not represent to anyone, nor allow any of its employees or agents to represent to anyone, that it is the Council's agent.
- 7.2 The Operator does not have the power under this Contract to make, vary, discharge or waive any bye-law or regulation of any kind and the Operator must not represent that it has any such power.
- 7.3 Nothing in this Contract is intended to create a partnership (within the meaning of the Partnership Act 1890) or a relationship of employment between the Council and the Operator.

8. AUTHORISED OFFICER

- 8.1 The Council has appointed a person to exercise its rights and powers under this Contract, called the 'Authorised Officer'. This will not limit in any way either the Council's rights or obligations under this Contract.
- 8.2 The Council may change the identity of the Authorised Officer by notice in writing to the Operator.
- 8.3 All notifications of changes under this clause 8 (**Authorised Officer**) will be made in accordance with clause 33 (**Notices**).

9. OPERATOR / MANAGER

- 9.1. The Operator must appoint a person to exercise the Operator's rights and powers under this Contract, called the 'Operator Manager'. This will not limit in any way either the Operator's rights or obligations under this Contract.
- 9.2. Details of the person the Operator has appointed to act as Operator Manager from the Commencement Date (his/her telephone number, fax number, e-mail address and postal address) are set out in the Award of Contract Letter.
- 9.3. The Operator will be entitled to change the identity of the Operator Manager on reasonable notice to the Council.
- 9.4. Any such notice referred to in clause 9.3 must contain the same details regarding the replacement Operator Manager as are set out in the Service Specification regarding the original Operator Manager.
- 9.5. Until the Operator has notified the Council of any change in the identity of the Operator Manager, the Council will be entitled to treat the last person notified to it as the Operator Manager.
- 9.6. All notifications of changes under this clause 9 (**Operator Manager**) should be made in accordance with clause 33 (**Notices**).

10. PAYMENT

- 10.1 The Operator shall submit to the Council by the 14th day of each calendar month an invoice for the preceding Payment Period. Invoices shall be submitted to the Invoicing Address.
- 10.2 On receipt of an Invoice containing the correct information the Council shall pay the amount owing under that Invoice within 28 days of receipt. If the amount due in the relevant Invoice is not agreed by the Council, then the Council will notify the Operator at or before the time of payment in accordance with this clause.
- 10.3 If the amount due in an Invoice is not agreed, within 14 days of receiving notice under clause 10.2, then the matter will be resolved in accordance with clause 27 (Dispute Resolution).
- 10.4 On the matter being resolved, if;
 - 10.4.1 any amount paid by the Council to the Operator under clause 10.1 was in excess of the actual amount due under the Invoice that was disputed, then the Operator shall refund the excess amount paid by the Council within 28 days of the relevant dispute being resolved. If the Operator fails to repay the sum owing under clause 10.3 within the 7 day period, then the Council shall have the right to charge interest on the overdue amount at a rate of 4% per annum above the base rate of HSBC; or,
 - 10.4.2 if any amount is payable by the Council to the Operator under the Invoice that was disputed, it shall be paid within 28 days of the relevant dispute being resolved.

- 10.5 The Contract Price does not include VAT. If VAT is payable then the Council must pay this in addition to the Contract Price provided that the Operator supplies the Council with a proper VAT invoice.

11. CONTRACT MANAGEMENT MEETINGS

- 11.1 As and when determined by the Authorised Officer, the parties shall hold a contract management meeting (the "Management Meeting") at which they will discuss the operation and management of this Contract, their performance of their respective obligations under it, matters relevant to the Outcomes and the Operator's achievement of such, the performance of the Services and any other matters or issues that arise from or in connection with this Contract and the performance of the Services.
- 11.2 At least 10 Working Days before each Management Meeting, the Operator shall provide the Council with the Monitoring Information and all other such information as the Council may reasonably request.
- 11.3 The Management Meeting shall be chaired by the Authorised Officer or his nominated representative and present shall be such representatives of the Council as the Authorised Officer considers appropriate, the Operator Manager and such representatives of the Operator as the Operator Manager considers appropriate.

12. PERFORMANCE MANAGEMENT

- 12.1 Where it is the reasonable belief of the Authorised Officer that two or more occurrences of any of the Performance Management Indicator (PMI) events listed in the Performance Management Table, whether a recurrence of the same PMI event or a combination of separate PMI events, have taken place during any six month period, the Council may open a Performance Management Warning Record and send a written warning ("Performance First Warning Notice") to the Operator.
- 12.2 Any notice sent under clause 12.1 will state:
- 12.2.1 the date of the notice;
 - 12.2.2 the Performance Management Indicator events that have occurred, and,
 - 12.2.3 the date and location of the events.
- 12.3 The Operator will, within 5 days of receipt of the Performance First Warning Notice, inform the Council of:
- 12.3.1 any representations the Operator may have in respect of the events stated in the notice; and,
 - 12.3.2 the measures the Operator has taken (if any) to prevent the type of events stated in the notice from reoccurring in future.
- 12.4 Further to clause 12.1 where it is the reasonable belief of the Authorised Officer that a further PMI event has taken place within 6 months of the date of the 'Performance First Warning Notice', the Council may send a second written warning ("Performance Final Warning Notice") to the Operator.

- 12.5 Any notice sent under clause 12.4 will state:
- 12.5.1 the date of the notice,
 - 12.5.2 the Performance Management Indicator event that has occurred, and,
 - 12.5.3 the date and location of the event.
- 12.6 The Operator will, within 7 days of receipt of the Performance Final Warning Notice, inform the Council of:
- 12.6.1 any representations the Operator may have in respect of the event stated in the notice; and,
 - 12.6.2 the measures the Operator has taken (if any) to prevent the event from reoccurring in future.
- 12.7 Further to clause 12.5 where it is the reasonable belief of the Authorised Officer that a further PMI event has taken place within 6 months of the date of the 'Performance Second Warning Notice', the Council may give notice to the Operator that the Contract is to be terminated as per the provisions of clause 25 (**Termination**)
- 12.8 Where, after the period of six months from the date specified on either:
- (a) a Performance First Warning Notice served under clause 12.1 in respect of which no Performance Final Warning Notice has subsequently been served under clause 12.4; or,
 - (b) a Performance Final Warning Notice served under clause 12.4 in respect of which no action to terminate the Contract has subsequently been taken under clause 12.7; the Council is satisfied that no PMI events have occurred, the Council will close its Performance Management Warning Record.
- 12.9 It is agreed that, as from the Commencement Date, the provisions of this clause 12 (**Performance Management**) shall operate:
- 12.9.1 to take effect across all extant Wiltshire Council Public Transport and School Bus Contracts in respect of which the Operator is a party; and,
 - 12.9.2 to the exclusion of any performance management regime contained in those contracts.
- 12.10 Nothing in this clause 12 shall operate to prevent the Council exercising its rights under clause 24 (**Default and Suspension**) or under clause 25 (**Termination**).

13. ACCESS TO INFORMATION

- 13.1 The Operator must allow the Council's employees or authorised agents access to:
- 13.1.1. the Operator's employees; and

13.1.2. all information reasonably requested by the Council, including, but not limited to, all reports, financial accounts and record books, business plans, quality assurance service records, service plans, documents, records, insurance documents, maintenance schedules (whether in human or machine readable form), and data, which in each case are relevant to this Contract or the Services and the Council shall be permitted to take copies of all such information.

13.1.3. Any information, reports etc. made available to the Council under this clause shall be treated by the Council as Confidential Information and therefore subject to the provisions of clause 18 (**Confidentiality**).

14. EQUALITIES AND EQUAL OPPORTUNITIES

14.1 The Operator will be subject to the same duty in respect of equalities and equal opportunities as if it were the Council.

14.2 The Operator shall:

14.2.1 perform its obligations under this Contract (including those in relation to the Services) in accordance with:

- (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- (b) the Council's equality and diversity policy as provided to the Operator from time to time; and
- (c) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality Law;

14.2.2 take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

15. HUMAN RIGHTS

15.1 In providing the Services, the Operator will be subject to the same duty in respect of human rights (being those rights stipulated in the Human Rights Act 1998) as if it were the Council.

15.2. The Operator will undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its duty under the Human Rights Act 1998.

16. **STAFF AND SAFEGUARDING**

- 16.1 The Operator shall employ sufficient persons appropriately trained, qualified, skilled and supervised and provide sufficient vehicles, plant, equipment and facilities to ensure that it can comply with its obligations under this Contract.
- 16.2 The Operator is responsible for the employment, including employment conditions, of its employees and shall at all times be fully responsible for the payment of all salaries and wages, income or other taxes, national insurance contributions or levies of any kind, relating to or arising out of the employment of any persons employed by the Operator and shall indemnify the Council in respect of any liability of the Council in respect of such.
- 16.3 The Operator must, if requested to do so by the Authorised Officer provide the name of any member of staff employed in the performance of the Service. The Authorised Officer reserves the right to request the immediate removal from the Service of any driver (including sub-contracted drivers) or other members of staff found to be acting contrary to the requirements of the Contract, or contrary to the safety of passengers or other road users or who in the opinion of the Council is otherwise unsuitable or unfit to have contact with the Service Users.
- 16.4 **Regulated Activity:** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
- 16.5 **Safeguarding Adults' Procedures:** the latest edition of Swindon Borough Council and the Authority's publication "Policy and Procedures for the Safeguarding Adults at risk in Swindon and Wiltshire" or any update or replacement thereof.
- 16.6 **Operator's Personnel:** all employees, staff, other workers, contractors, agents and consultants of the Operator and of any Sub-Contractors who are engaged in the provision of the Services from time to time.
- 16.7 **Services:** the services to be delivered by or on behalf of the Operator under this agreement, as more particularly described in the specification.
- 16.8 **Sub-Contract:** any contract between the Operator and a third party pursuant to which the Operator agrees to source the provision of any of the Services from that third party.
- 16.9 **Sub-Contractor:** the contractors or Operators engaged by the Operator to provide goods, services or works to, for or on behalf of the Operator for the purposes of providing the Services to the Authority.

Safeguarding children and vulnerable adults

- 16.10 Everyone has a responsibility for protecting and safeguarding children and adults who may be vulnerable. Subject to clause 16.11, in the event that the Service Provider has concerns that a child or adult is suffering or is likely to suffer from any form of maltreatment (whether financial, physical, sexual, emotional or neglect) this should be reported in the following ways:

- 16.10.1 if a child or vulnerable adult is in immediate danger or left alone, contact the police or call an ambulance on 999;
- 16.10.2 in all other cases involving children, referrals should be made to Wiltshire Social Care Services via the Council's 'Multi-Agency Safeguarding Hub' (MASH) on 0300 456 0108 (or out of hours via the 'Emergency Duty Service' on 0845 607 0888);
- 16.10.3 in all other cases involving adults, referrals should be made to the Council's Customer Advisers on 0300 456 0111 (our out of hours via the 'Emergency Duty Service' on 0845 607 0888), e-mail: customeradvisors@wiltshire.gov.uk
- 16.11 The parties acknowledge that the Service Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006 (**SVGA 2006**)
- 16.12 The Service Provider shall (whether performing the agreement by itself and/or any Sub-Contractor):
- 16.12.1 comply at all times with the provisions of the SVGA 2006 and any regulations made thereunder and all related guidance issued by HM Government (including government ministers, government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf) including 'Working together to safeguard children' (2013) and Department of Health (DoH) – Care Act – Chapter 14 Guidance – Safeguarding Adults (revised March 2015);
- 16.12.2 comply with all relevant Council policies and procedures relating to safeguarding that are published on its website (www.wiltshire.gov.uk) or otherwise provided by the Council from time to time; including 'the Wiltshire Safeguarding Adults Board (WSAB) 'Staff Guide'. As developed from the DoH – Chapter 14 Guidance, and the WSAB Policy and Procedures – Safeguarding Adults in Wiltshire (updated March 2017) and the '*Safeguarding Framework for Children's Commissioned Services*'; further policies and practice guidance can be found at Wiltshire Safeguarding Children Board website <http://www.wiltshirescb.org.uk/>);
- 16.12.3 have due regard for an undertake, or refrain from undertaking, such acts as the Council may request so as to enable the Council to comply with its obligations under the SVGA 2006, Children Act 1989, section 11 of the Children Act 2004, the Care Act 2014, the policies and procedures referred to in clause 16.12 and any other laws, enactments, orders or regulations or statutory guidance relating to the protection or safeguarding of children and vulnerable adults;
- 16.12.4 where applicable, operate a child protection policy that reflects and complements the Council's multi-agency and single agency child protection procedures (as provided by the Council and as may be amended from time to time).

- 16.12.5 where the provision of the Services results in contact with “adults at risk” (as defined in the WSAB Policy and Procedures – Safeguarding Adults in Wiltshire (updated March 2017) the Service Provider shall report any concerns of “abuse” (including allegations of abuse by a member of staff or volunteer) in accordance with the policy and shall (at its own expense) co-operate and provide all reasonable assistance to the Council in respect of any investigations or enforcement actions
- 16.12.6 where the provision of the Services results in contact with “adults at risk” (as defined in *‘Policy and Procedures for Safeguarding Adults at risk in Swindon and Wiltshire’*) the Service Provider shall report any concerns of “abuse” (including allegations of abuse by a member of staff or volunteer) in accordance with the policy and shall (at its own expense) co-operate and provide all reasonable assistance to the Council in respect of any investigations or enforcement actions;
- 16.12.7 operate recruitment and training policies and procedures (including in relation to potential staff and volunteers) having regards to the need to safeguard and promote the welfare of children and/or vulnerable adults shall:
- 16.12.7.1 use an application form that includes an explanation that the post is exempt from the Rehabilitation of Offenders Act 1974 and therefore that all convictions, cautions, reprimands, final warnings, or bind overs, including those regarding as ‘spent’, should be declared unless otherwise “protected” from disclosure under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013). The Service Provider (or Sub-Contractor) should also obtain a signed statement that the person is not disqualified from work with children or vulnerable adults, or subject to sanctions imposed by any regulatory body, and has no convictions, cautions, reprimands, final warnings, or bind overs, or has declared the details of such offences (unless protected from disclosure);
- 16.12.7.2 ensure that all Service Provider Personnel and Sub-Contractors engaged in the provisions of the Services are familiar with the legal requirements, policies and procedures referred to in this clause;
- 16.12.8 Ensure that all individuals carrying out Services are subject to valid standard or enhanced disclosure checks (in accordance with the legal eligibility requirements relating to positions and duties) undertaken through the ‘Disclosure and Barring Service’ (DBS), including enhanced disclosure checks with a check of the appropriate barred list for individuals providing a Regulated Activity;
- 16.12.9 Not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users or other recipients of the Services under this agreement;

- 16.12.10 immediately notify and keep the Council advised of any person who subsequently receives a conviction or whose previous conviction(s) becomes known to the Service Provider where such conviction would prevent that person from providing any Services in accordance with clause 16.13.8.
- 16.12.11 treat all DBS disclosures as confidential and store and retain them in compliance with all applicable laws and guidance including Data Protection legislation and any other guidance issued by HM Government.
- 16.12.12 monitor the level, validity and frequency of the checks required under clause 16.13.7 for each individual employed or engaged in the provisions of the Service.
- 16.12.13 comply with clauses 16.13 to 16.15 below.
- 16.13 Comply at all times with the provisions of the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012 (as from time to time amended, extended, re-enacted or consolidated and all statutory instruments or orders made pursuant to it).
- 16.14 Comply at all times with the requirements of the Safeguarding Children's Services Standards. Please see Appendix B at the back of this document on how to report concerns about children at risk.
- 16.15 Where the delivery of the Services results in relevant contact by the Operator with adults at risk as defined by the Authority's policy, the Operator shall as appropriate to its performance of the Services have regard to the "No Secrets in Swindon and Wiltshire" guidelines (as amended or replaced from time to time).
- 16.16 Any concern that an adult at risk is being abused (i.e. being caused significant harm) must always be investigated using the Safeguarding Adults' Procedures and Operators are expected to refer any concerns in accordance with those procedures. Please see Appendix B at the back of this document for further information on how to report concerns about vulnerable adults.
- 16.17 The Operator will operate recruitment and training policies and procedures for paid staff and volunteers which have regard to the need to safeguard and promote the welfare of adults at risk and shall ensure that all staff and volunteers (including potential staff) who during the course of their employment or engagement have access to or contact with adults at risk, receive adequate training in the adults at risk policies and procedures contained in this clause;
- 16.18 Allegations that a staff member or volunteer has abused a vulnerable adult must be dealt with in line with Section T of the "Policy and Procedures for Safeguarding adults at risk in Swindon and Wiltshire".
- 16.19 The Operator shall inform the Passenger Transport Unit as soon as it becomes aware of any allegation to which clause 16.18 above relates.
- 16.20 The Operator shall use an application form that includes an explanation that the post is exempt from the Rehabilitation of Offenders Act 1974 and therefore that all convictions, cautions and bind-overs, including those regarded as 'spent', should be declared.

- 16.21 The Operator should also obtain a signed statement that the person is not disqualified from working with children, or subject to sanctions imposed by a regulatory body, and either has no convictions, cautions, or bind-overs, or has declared the details of such offences.
- 16.22 The Operator shall in respect of each driver and passenger assistant that operates on the contract obtain an Enhanced Disclosure and Barring Service Disclosure in accordance with Part V of the Police Act 1997 and the exemptions to the Rehabilitation of Offenders Act 1974. Organisations registered with the Disclosure and Barring Service (DBS) can only apply for a DBS Disclosure if the position is included in this list. The Disclosure for each member of staff shall include as appropriate a search of the new barred lists as appropriate for children or adults, one for children, one for adults at risk, which will encompass all the existing lists such as The Protection of Children Act (POCA) list, Protection of Vulnerable Adults (POVA) list, List 99 and the Disqualification Order Regime.
- 16.23 The Operator shall provide evidence to the Authority showing that they are following the Authority's own storage of disclosures policy as a DBS registered body.
- 16.24 The Service Provider warrants and represents that at all times for the purpose of the Agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services will be employed or engaged in breach of clause 16.28.1.
- 16.25 The Service Provider shall promptly provide, at its own cost, any information or evidence that the Council reasonably requests to enable it to be satisfied that the obligations of this clause 16 have been met. In particular, and without incurring any liability to the Service Provider, the Council may require the suspension of any person from carrying out the Services until written confirmation of the required checks and clearances is given in a form satisfactory to the Council.
- 16.26 The Operator shall ensure that the Authority is kept advised at all times of any person who, subsequent to the provision of the Services under this agreement, receives a conviction or whose previous conviction(s) becomes known to the Operator where that conviction is incompatible with the type of work being undertaken by the person supplying the Services or where that person is found to be barred from working or applying to work with children or adults at risk.
- 16.27 Where requested in writing the Operator will provide written confirmation that an acceptable Enhanced DBS Disclosure has been issued in respect of any person pursuant to the requirements of this clause and without liability the Authority may require the suspension of any person from carrying out services pursuant to this Agreement until written confirmation of required clearances is given in a form reasonably satisfactory to the Authority.
- 16.28 All Operators will ensure that all of their staff who are involved in the delivery of transport services including back office staff have completed the online training on Child Exploitation and any future safe guarding training required by Wiltshire Council.

17. **DATA PROTECTION**

- 17.1 The Operator agrees to ensure that it will comply at all times with the provisions and obligations contained in the Data Protection Act 1998 ("DPA") and the data protection principles set out in the DPA in storing and processing personal data. All personal data acquired by one party from the other shall only be used or processed with the consent of the party from whom the relevant personal data was acquired. In fulfilment of its obligations under this clause each party will have in place an information security management system which will enable it to comply with the Data Protection Act 1998 (in particular in accordance with the 7th Data Protection Principle of Schedule 1 of the DPA).
- 17.2 The Operator shall ensure that it does nothing knowingly or negligently which places the Council in breach of the Council's obligations under the DPA.

18. **CONFIDENTIALITY**

- 18.1 Subject to the clause 31 (**Freedom of Information**) and clause 19 (**TUPE AND OUTSOURCING**) each party undertakes that it shall not at any time during this Contract, and for a period of five years after termination of this Contract, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by sub clause 18.2 immediately below.
- 18.2 Each party may disclose the other party's Confidential Information:
- 18.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Contract, each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause; and
- 18.2.2 as may be required by law, court order or any governmental or regulatory authority.
- 18.2.3 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under this Contract.

19. **TUPE AND OUTSOURCING**

- 19.1 The parties acknowledge and agree that any Services provided under the Contract are in relation to a single specific event or task of short-term duration and are unlikely to give rise to a 'relevant transfer' under TUPE either at the commencement of the Contract or on its expiry or termination.
- 19.2 The Parties agree that the provisions of Schedule 1 shall apply to any Relevant Transfers (and any Service Transfers which do not give rise to a Relevant Transfer under this Contract).
- 19.3 The Parties agree that the provisions of Schedule 2 shall apply to any Relevant Outsourcing of Staff of Services.

20. **PENSIONS**

20.1 Definitions

20.2 For the purposes of this clause 20 (**Pensions**) the following additional definitions and rules of interpretation apply:

20.2.1 Admission Agreement: an agreement entered into in accordance with Part 3 of Schedule 2 to the Local Government Pension Scheme Regulations 2013, as amended, by the administering authority, the Authority or the existing third party employer of the Eligible Employees, the Service Provider or the Sub-contractor, as appropriate;

20.2.2 Appropriate Pension Provision: in respect of Eligible Employees, membership, continued membership or continued eligibility for membership of either:

- (1) the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, prior to the Relevant Transfer; or
- (2) LGPS; or
- (3) a pension scheme, which is certified by the Government Actuary's Department ("GAD") as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members
or such alternative provision as shall be required by law, regulation or government guidance at the time of a Relevant Transfer;

20.2.3 Bond: a bond to be executed in the Authority's standard form.

20.2.4 Effective Pension Date: the date(s) on which the Services (or any part of the Services), transfer from the Authority or any third party employer of the Eligible Employees to the Service Provider or Sub-Contractor, and a reference to the Effective Pension Date shall be deemed to be the date on which the Eligible Employees transferred or will transfer to the Service Provider or Sub-Contractor;

20.2.5 Eligible Employees: the Current Employees who:

- (1) are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Pension Date; or
- (2) are former employees of the Authority who became by the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981 or the Employment Regulations in relation to what was done for the purposes of carrying out a contract between the Authority and a third party, employees of someone other than the Authority, and who are active members of or have the right to acquire benefits under a broadly comparable pension scheme provided by their existing employer on the date

of a Relevant Transfer including the Effective Pension Date, for so long as they are employed in connection with the provision of the Services.

20.2.6 LGPS: Local Government Pension Scheme.

20.2.7 LGPS Regulations: includes:

- (1) the Local Government Pension Scheme Regulations 2013 (SI 2013/2356);
- (2) the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525); and as amended and replaced from time to time.

20.3 General

20.3.1 The Service Provider shall or shall procure that any relevant Sub-Contractor shall ensure all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Pension Date up to and including the date of the termination or expiry of this agreement.

20.3.2 The provisions of this clause [15] shall be directly enforceable by an affected employee against the Service Provider or any relevant Sub-contractor and the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Service Provider or Sub-Contractor under those paragraphs in his own right under section 1(1) of the Contracts Rights of Third Parties Act 1999.

20.4 Admitted Body Status to the LGPS

20.4.1 Where the Service Provider or Sub-Contractor wishes to offer the Eligible Employees membership of the LGPS, the Service Provider shall or shall procure that it and/or each relevant Sub-Contractor shall enter into an Admission Agreement to have effect from and including the Effective Pension Date or, if the Relevant Transfer occurs after the Effective Pension Date, from and including the date of that Relevant Transfer. The Service Provider or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate and Bond value in respect of any Eligible Employee who elects to join the LGPS on or after the Effective Pension Date.

20.4.2 For the purposes of calculating the employer's contribution rate, any termination payment, and any other sums due to the administering authority under the Admission Agreement, the Authority shall ensure that the Eligible Employees' past service benefits accrued prior to the Effective Pension Date are fully funded as at the Effective Pension Date, as determined by the Authority's actuary.

20.4.3 The Service Provider shall indemnify and keep indemnified the Authority and/or any Replacement Service Provider and in each case their relevant subcontractors, on demand from and against all direct losses suffered or

incurred by it or them, which arise from any breach by the Service Provider or Sub-Contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of all or part of this agreement.

20.4.4 The Service Provider shall and shall procure that it and any Sub-Contractor shall as soon as reasonably practicable obtain any indemnity or Bond required in accordance with the Admission Agreement.

20.4.5 The Service Provider shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Authority. The Service Provider shall be responsible for meeting all costs associated with the award of such benefits.

20.5 Service Provider/Sub-contractor pension scheme

20.5.1 Where the Service Provider or relevant Sub-Contractor does not wish to offer, or is otherwise prevented from offering, the Eligible Employees membership or continued membership or continuing rights of membership of the LGPS, the Service Provider shall or shall procure that the relevant Sub-contractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Effective Pension Date or, if the Relevant Transfer occurs after the Effective Pension Date, from and including the date of that Relevant Transfer. Such occupational pension scheme must be:

- (1) established no later than three (3) months prior to the date of the Relevant Transfer; and
- (2) certified by the GAD as providing benefits that are broadly comparable to those provided by the LGPS;

and the Service Provider shall produce evidence of compliance with this sub-clause 15.5.1 to the Authority prior to the date of the Relevant Transfer.

20.5.2 The Authority's actuary shall determine the terms for bulk transfers from the LGPS to the Service Provider or Sub-Contractor's scheme following the Effective Pension Date and any subsequent bulk transfers on termination or expiry of part or all of this agreement.

20.5.3 The Service Provider shall and shall procure that each relevant Sub-Contractor shall:

- (1) maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this agreement (including without limitation identification of the Eligible Employees);

- (2) promptly provide to the Authority such documents and information mentioned in clause 20.5.3(1) which the Authority may reasonably request in advance of the expiry or termination of this agreement; and
- (3) fully cooperate (and procure that the trustees of the Service Provider's or the Sub Contractor's scheme shall fully cooperate) with the reasonable requests of the Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services on expiry or termination of the agreement.

21. INSURANCE

21.1 The Operator shall throughout the Term:

- 21.1.1 effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Operating, arising out of the Operator's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss, and
- 21.1.2 hold employer's liability insurance at a level that meets or exceeds the minimum level required by law.
- 21.1.3 effect and maintain at the Operator's cost a motor insurance policy to cover the liability of the Operator in respect of any act or default for which it may become liable and to indemnify the Council under the terms of the contract. The minimum limit per third party property damage claim under that policy shall be arranged at £5,000,000.00; and
- 21.1.4 effect and maintain at the Operator's cost 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 and to indemnify the Council under the terms of the contract. The minimum limit per third party property damage claim under that policy shall be arranged at £2,000,000.00 and;
- 21.1.5 Effect and maintain professional indemnity insurance cover and ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain appropriate cover. To comply with its obligations under this clause, and as a minimum, the Operator shall ensure professional indemnity insurance held by the Operator and by any agent, sub-contractor or adviser involved in the performance of Services has a limit of indemnity of not less than 1,000,000.00 for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of six years following the expiration or earlier termination of the Contract.
- 21.1.6 maintain at the Operator's cost any other insurance policy necessary to comply with current legislation;

- 21.1.7 The Operator shall make such additional insurance arrangements as the Authorised Officer may require to ensure that the Operator can meet its obligations under this Contract.
- 21.2 The Operator shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Council shall be indemnified in respect of claims made against the Council in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Operator is legally liable.
- 21.3 The Operator must provide the Council with a copy of the policy schedule for the insurances put in place under clauses 21.1 and 21.2 on execution of this Contract and at the Council's request together with evidence that the insurances are in force including a receipt for the last premium payable.
- 21.4 The Operator shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 21.5 The Operator must notify the Council as soon as it becomes aware of any proposal for the alteration, alteration, proposal for cancellation, cancellation or proposal for to change of cover to the Operator's insurance.
- 21.6 If the Council is of the opinion (acting reasonably) that any of the policies of insurance do not provide sufficient cover to comply with clauses 21.1, 10.2 and 21.3 then the Operator must rectify the position as soon as possible at its own expense.
- 21.7 If, for whatever reason, the Operator fails to give effect to and maintain the insurances required by the agreement the Council may make alternative arrangements to protect its interests and may recover the costs (including a reasonable amount for administration) of such arrangements from the Operator.
- 21.8 If the Operator does not pay such amount under clause 21.7 promptly, then the Council may recover the amount as a debt.
- 21.9 The terms of any insurance or the amount of cover shall not relieve the Operator of any liabilities under the Contract.

22. COMPLAINTS PROCEDURE

- 22.1. The Operator must:
- 22.1.1 have in place a complaints procedure that includes the requirements set out in this Contract;
 - 22.1.2 operate it from the Commencement Date;
 - 22.1.3. provide the Council with a copy of it on request and provide the Council with any amendment thereto within 1 month of any such amendment coming into effect; and
 - 22.1.4. provide each Service User with a copy of the complaints procedure if requested to do so.

- 22.2. The Operator must keep an accurate record of all formal complaints and make these available to the Council upon request.
- 22.3. The Operator shall use its reasonable endeavours to resolve all such complaints to the satisfaction of the relevant Service User.
- 22.4. If the Council sends written notice to the Operator advising the Operator of the complaints made by Service Users, the Operator must respond to such notice in writing within 14 days. If the Operator fails to reply within this period then a fee as set out in the General Specification will be charged.
- 22.5. The Operator shall inform the Council when any complaint by a Service User has not been resolved within 1 month. In the event any such complaint has not been resolved within 1 month the Operator shall inform the Council and it shall be resolved by the Authorised Officer.
- 22.6. The Operator will ensure that all its staff engaged in the provision of the Services are fully aware of the complaints procedure and shall designate one employee to act as a complaints manager and the details of such role shall be set out in the Operator's complaints procedure.
- 22.7. At the Council's request, the Operator must supply the Council with a copy of the Operator's records relating to complaints made in relation to the Services and the Operator's response.
- 22.8. The Council must be informed of any complaint within 5 working days of any complaint which is received directly by an Operator from a Service User or Member of the Public and the Council should be copied in on the reply/replies sent to a Service User / Member of the Public.
- 22.9. Where in the view of the Council a complaint relates to a Safeguarding matter, failure to inform the Council in compliance with clause 22.8 will be a Serious Default on the part of the Operator.

23. OPERATOR'S LIABILITIES AND INDEMNITIES

- 23.1 The Operator shall indemnify and keep indemnified the Council against all Losses, to the extent that any Losses are due to any breach of contract, negligence, failure or delay in the performance of the Contract, wilful default or fraud, damage to any property (whether arising out of or in connection with the manufacture, supply or use of the Goods, or the receipt of the Services), by the Operator or any of its staff, agents, sub-contractors or advisers, save to the extent that the Council contributes to such Losses through its negligence, breach of this Contract or applicable law.
- 23.2 Neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 23.3 Neither party limits or excludes its liability for:

- 23.3.1 fraud or fraudulent misrepresentation;
- 23.3.2 death or personal injury caused by its negligence;
- 23.3.3 breach of any obligation as to title implied by statute; or,
- 23.3.4 any other act or omission, liability for which may not be limited under any applicable law;

this clause shall survive termination of the Contract.

24. DEFAULT AND SUSPENSION

- 24.1 If in the reasonable opinion of the Council the Operator is in Default then the Council will be entitled to serve on the Operator a written notice of default, a Default Notice.
- 24.2 The Default Notice will set out the actions the Operator is required to undertake in order to return to a position where it is no longer in Default and is providing level of service required under this Contract and will set out the timescales within which the Operator is to undertake the actions.
- 24.3 The Operator will take the action specified in the Default Notice, within the timescale set out, at the Operator's own cost. If the Council has incurred cost as a result of the Default then the Council will be entitled to claim in respect of the incurred costs and the Operator will pay those costs within 28 days of receiving notice from the Council in respect of the costs incurred.
- 24.4 The Operator will be entitled to apply the provisions of clauses 24.1 and 24.2 to the Council and in addition if the Default concerned is a failure to make an undisputed payment in accordance with clause 10 (**Payment**) to the Operator then the Council must make such late payment within 10 Working Days of the Default Notice being served.
- 24.5 If there is any disagreement between the parties as to whether a Default has occurred and/or about the action required to be taken and/or the timescale within which the remedial action is to be taken, then either party can refer the matter for resolution, in accordance with clause 27 (**Dispute Resolution**).
- 24.6 If in the view of the Council the Operator commits a Persistent Default or a Serious Default or fails to put right a Default within the timescales in a Default Notice of Clause 42 (**Termination of Contract/s and [removal from Dynamic Purchasing System] due to failure to comply with Safeguarding duties**) applies then the Council may without prejudice to any other rights or remedies available to it under this Contract serve on the Operator a notice of suspension ('a Suspension Notice')
- 24.7 The Suspension Notice may direct the Operator to take or desist from taking such actions as specified on the Suspension Notice, within the timescales stated.
- 24.8 If the Council serves a Suspension Notice then:
 - 24.8.1 the Operator will cease providing the Services, or a part thereof, from the date specified in the Suspension Notice; and

- 24.8.2. the Council will be entitled either to provide some or all of the Services, or part thereof, or employ another person to do so on its behalf for as long as the Suspension Notice is in force.
- 24.9 Following service of a Suspension Notice the Council shall regularly review the status of that Suspension Notice and whether it should be withdrawn.
- 24.10 If the Council decides to withdraw a Suspension Notice the Council will serve on the Operator a notice of resumption (a "Resumption Notice") which shall set out the date upon which the Services, or the part thereof, are to be resumed.
- 24.11 The Council may set out in the Resumption Notice such conditions relating to the Operator's resumption of the Services as the Council requires, for the subsequent six months following the date of the Resumption Notice failure to comply with these conditions will constitute a material breach of this Contract.
- 24.12 Throughout any period during which a Suspension Notice is in force, the Operator shall be liable to reimburse the Council for all its reasonable costs and expenses incurred as a result of any such suspension, including but not limited to the additional cost to the Council of providing the Services, or part thereof, under clause 24.7.2. The Council shall provide regular statements of these additional costs it is entitled to by this clause and if these monies are not paid by the Operator to the Council by the date of the Invoice following the Operators receipt of the statement then the Council shall be entitled to deduct any such monies owed to the Council from the monies owed to the Operator under that or any other Invoice, without prejudice to the provisions of clause 35 (**Recovery of Sums Due**).
- 24.13 Should the Operator fail to comply with any directions stated on the Suspension Notice within the timescales stated this will constitute a material breach of this Contract.
- 24.14 Nothing in this clause 24 shall operate to prevent the Council exercising its rights of termination under clauses 25 (**Termination**), 42 (**Termination of Contract due to failure to comply with request to remove Operator's personnel**)
- 24.15 or clause 42 (**Termination of Contract/s and [removal from Dynamic Purchasing system] due to failure to comply with Safeguarding duties**).

25. TERMINATION

- 25.1 Without prejudice to any rights that have accrued under this Contract or any of its rights or remedies, either party may at any time terminate this Contract with immediate effect by giving written notice to the other party if:
- 25.1.1 the other party commits a breach of any material term of this Contract and (if such breach is in the Council's view remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so OR where the breach relates to a Safeguarding matter within a period of 7 days after being notified by to do so; or

- 25.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply; or
- 25.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- 25.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- 25.1.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company); or
- 25.1.6 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- 25.1.7 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- 25.1.8 the other party (being an individual) is the subject of a bankruptcy petition or order; or
- 25.1.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; or
- 25.1.10 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 25.1.11 the provisions of clause 12 (**Performance Management**) clause 26 (**Force majeure**) or clause 41 (**Termination of contract due to failure to comply with request to remove operator's personnel**) apply or clause 42 (**Termination of Contract/s and removal from Dynamic Purchasing System due to failure to comply with safeguarding duties**) apply

- 25.2 The parties acknowledge and agree that any breach of clause 5 (Prevention of Bribery), shall constitute a breach of a material term for the purposes of this clause.
- 25.3 Should any contract between the Operator and another Public Body be terminated resulting in the Operator no longer meeting the selection criteria for the Dynamic Purchasing System the Council may at its complete discretion remove the Operator from the Dynamic Purchasing System without notice and terminate this Contract without notice.
- 25.4 Without prejudice to any rights that have accrued under this Contract or any of its rights or remedies, either party may terminate this Contract on giving not less than the amount of written notice as specified in the Award of Contract to the other party
- 25.5 If this Contract is terminated, then:
- 25.5.1 the provision of clause 30 (**Information and Re-tendering**) shall apply; and
- 25.5.2 the Council will pay the Operator the amount due under clause 10 (**Payment**) for services delivered during the notice period; any money paid to the Operator and held in credit on termination will be returned to the Council within 10 Working Days of that termination becoming effective.
- 25.6 The following clauses are agreed by both parties to be material terms: clause 2 (**Term of Contract, Extension and Service Standard**), clause 5 (**Prevention of Bribery**), clause 6 (**Assignment and Sub-contracting**), clause 14 (**Equalities and Equal Opportunities**), clause 15 (**Human Rights**), clause 16 (**Staff and Safeguarding**), clause 17 (**Data Protection**), clause 18 (**Confidentiality**), clause 19 (**TUPE**), clause 20 (**Insurance**), clause 22 (**Operator's Liabilities and Indemnities**), clause 29 (**Information and Re-tendering**), clause 30 (**Freedom of Information**), clause 31 (**Health & Safety and Accident Reporting**), clause 38 (**Compliance with Law**), clause 40 (**Removal of Operator's Personnel**)

26. **FORCE MAJEURE**

- 26.1 Force Majeure: Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent that such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable.
- 26.2 Where a Force Majeure event has taken place the operation of the Contract will be automatically suspended
- 26.3 Where the Operator becomes aware that a Force Majeure event has taken place it will:
- 26.3.1 notify the Council as soon as possible; and,
- 26.3.2 where possible notify the Council of method by which alternative arrangements can be made for the provision of the Services

- 26.4 Where a Force Majeure event prevents the operation of the Contract for more than 30 days, the Council shall have the right, without limiting its other rights or remedies, to terminate the Contract (or any part of it) with immediate effect by giving written notice to the Operator.
- 26.5 For the avoidance of doubt 'Force Majeure' shall not include any labour dispute between the Operator and the Operator's staff or the failure to provide the Services by any of the Operator's Sub-contractors.

27. DISPUTE RESOLUTION

- 27.1 If there is a dispute between the parties concerning the interpretation or operation of this Contract then either party may notify the other that it wishes the dispute to be referred to a meeting of the Authorised Officer and the Operator Manager to resolve, negotiating on the basis of good faith.
- 27.2 If after 28 Days (or such longer period as both parties agree) of the date of the notice referred to in clause 25.1 the dispute has not been resolved then either party may notify the other that it wishes the dispute to be referred to a meeting of a senior officer of the Council and a senior officer of the Operator, to resolve, negotiating on the basis of good faith.
- 27.3 If after 28 Days (or such longer period as both parties agree) of the date of the notice referred to in clause 25.2 the dispute has not been resolved then either party may notify the other that it wishes to attempt to settle the dispute by mediation, in accordance with the Centre for Effective Dispute Resolution ('CEDR') Model Mediation Procedure in force at that time (the 'Model Procedure')
- 27.4 If the Council and the Operator do not agree on the identity of a mediator then either party may request CEDR to appoint one.
- 27.5 The procedure in the Model Procedure may be amended by written agreement to take account of:
- 27.5.1. any relevant provisions in this Contract; or
- 27.5.2. any other Contract which the Council and the Operator may enter into in relation to the conduct of the mediation.
- 27.6 Both parties must:
- 27.6.1. use their best reasonable endeavours to ensure that the mediation starts within 20 Working Days of service of the notice referred to in clause 27.3; and
- 27.6.2. pay the Mediator's fee in equal shares.
- 27.8 Any agreement that the Council reaches with the Operator as a result of mediation shall be binding on both parties, as set out in the Model Procedure, but if the dispute has not been settled by mediation within 10 Working Days of the mediation starting then either party may commence litigation proceedings (but not before then).

27.9 Neither party shall be precluded by clause 26.7 from taking such steps in relation to court proceedings as the Council or the Operator (as the case may be) may deem necessary or desirable to protect their respective positions. This shall include;

27.9.1 issuing or otherwise pursuing proceedings to prevent limitation periods from expiring; and

27.9.2 applying for interim relief.

27.10 The use of the dispute resolution procedures set out in this clause 27 (Dispute Resolution) shall not delay to take precedence over the provisions for termination set out in clause 25 (**Termination**).

28. VARIATIONS TO THE CONTRACT

28.1 Variations to this Contract will be in writing signed by both Parties. Requests to vary the contract must be made in writing and shall set out the nature of the variation and the reasons for the request.

29. WAIVER

29.1 If either party fails to exercise or delays in exercising any right or remedy to which it is entitled under the Contract or at law then this shall not constitute a waiver of any such right or remedy whether present or future.

30. INFORMATION AND RE-TENDERING

30.1 Subject to clauses 17 (**Data Protection Act**) and 18 (**Confidentiality**), and in accordance with clause 19 (**TUPE**) at the Council's reasonable request, the Operator must provide the Council with such information and data as the Council may reasonably require to enable it to prepare the necessary documentation to appoint another person to provide the Services. The Operator agrees that the information so provided will be used by the Council in tenders and competitions seeking alternative Operators.

31. FREEDOM OF INFORMATION

31.1 Notwithstanding confidentiality clause 18 the Operator acknowledges that the Council is subject to the requirements of FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Operator's expense) to enable the Council to comply with these Information disclosure requirements.

31.2 The Operator shall:

31.2.1 transfer the Request for Information to the Council as soon as practicable after receipt and in any event within three days of receiving a Request for Information;

- 31.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within seven days (or such other period as the Council may specify) of the Council requesting that Information; and
- 31.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of the Environmental Information Regulations.
- 31.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
 - 31.3.1 is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations;
 - 31.3.2 is to be disclosed in response to a Request for Information
- 31.4 In no event shall the Operator respond directly to a Request for Information.
- 31.5 The Operator acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of FOIA, November 2004), be obliged under FOIA or the Environmental Information Regulations to disclose Information:
 - 31.5.1 without consulting with the Operator, or
 - 31.5.2 following consultation with the Operator and having taken its views into account, provided always that where clause 30.5 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.
- 31.6 Any such disclosure made under clause 30.5 is not a breach of the confidentiality provisions of this Contract

32. HEALTH AND SAFETY AND ACCIDENT REPORTING

- 32.1 The Operator must comply with the requirements of the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1992, and all other legislation relating to health and safety insofar as they apply to the provision of the Service.
- 32.2 For as long as this Contract is in force the Operator must have in place a health and safety policy which complies with all statutory requirements, and if requested by the Council, it shall provide a copy of its health and safety policy to the Council.
- 32.3 The Operator must ensure that the Council is notified immediately by telephone in the event of:

- 32.3.1 any accident involving a Vehicle in the Service of the carriage of school or college students, including those not resulting in any passenger being injured;
- 32.3.2 any accident involving a Vehicle where significant damage is sustained to the Vehicle;
- 32.3.3 any injury to a passenger, sustained whilst travelling on any journey, or whilst boarding or alighting from the Vehicle;
- 32.3.4 any accident involving a Vehicle operating a contract covered by the General Specification for Small Vehicle and Specialist Transport Contracts.

In the event of the accident or injury occurring outside normal office hours, the Operator must advise the Council by 10:00am the following Working Day.

- 32.4 The Operator will be required to submit a written record on the circumstances relating to the accident or injury if requested to do so by the Authorised Officer.

33. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

- 33.1 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 33.2 The provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded

34. NOTICES

- 34.1 Any requirement to “notify” or give “notice” under or in relation to the Contract:
 - 34.1.1 shall be in writing and shall be given by letter, wherever possible using the relevant party’s letter headed paper;
 - 34.1.2 shall be signed by or on behalf of the party giving it;
 - 34.1.3 shall be sent to the party for the attention of the Council’s Authorised Officer or Operator Manager and at the postal address or email address/addresses referred to in clause 33.2;
 - 34.1.4 subject to clause 33.5, shall be sent by a method listed in clause 33.4; and
 - 34.1.5 unless proved otherwise is deemed received as set out in clause 33.4 if prepared and sent in accordance with this clause.
- 34.2 Each party’s address and contact details shall be those stipulated at the Contract Certificate unless otherwise notified under clause 8 (**Authorised Officer**) or clause 9 (**Operator Manager**) In the absence of such stipulation or notification, to the party’s registered address (if a company) or the address of its principal place of business and the option of notice by email shall be excluded.

34.3 Where a party has changed its contact details under Clauses 8 (Authorised officer) or 9 (Operator/Manager) by giving notice, such change shall take effect at 9.00 am on the later of:

34.3.1 the date, if any, specified in the notice as the effective date for the change;
or

34.3.2 the date 5 Working Days after deemed receipt of the notice.

34.4 Subject to clause 33.5 the following table sets out the method by which notices may be served under the Contract and the respective deemed time and proof of service provided that all other requirements in this clause have been satisfied:

Delivery method	Deemed delivery time*	Proof of Service
Delivery by hand.	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Pre-paid: first class recorded delivery post or other next Working Day delivery service providing proof of delivery; airmail providing proof of delivery, each "recorded delivery" for the purposes of Clause 33.5 below.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.
Email.	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address / addresses without any error message.
* All references to time are to local time in the place of deemed receipt.		

34.5 Any termination notices served pursuant to clause 25 (**Termination**) or otherwise in relation to the Contract may only be served by pre-paid recorded delivery in the manner set out in the table at clause 33.4, delivery by hand and delivery by email are not acceptable methods of delivery in respect of termination notices

34.6 This clause 33 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution other than as provided for under the Contract.

35. RECOVERY OF SUMS DUE

- 35.1 If the Operator owes the Council money under this Contract, then the Council may set off any such sum against any money it subsequently owes to the Operator under this Contract.

36. LAW AND JURISDICTION

- 36.1 This Contract shall:

36.1.1 be governed by and shall be construed in accordance with English law; and

36.1.2 be subject to the jurisdiction of the Courts of England and Wales, to which both parties shall submit.

37. SEVERABILITY

- 37.1 If one or more of the provisions of this Contract are or become to any extent invalid or unenforceable under any applicable law then the remainder of this Contract shall continue in full force and effect.
- 37.2 If this happens then both parties shall enter into good faith negotiations to amend the provision concerned in such a way that as amended, it is valid and enforceable and to the maximum extent possible, carries out both the parties' original intent.

38. CUMULATIVE REMEDIES

- 38.1 Any remedy or right which either party may exercise in relation to a Default committed by the other shall be in addition to, and shall be capable of being exercised without prejudice to, all other rights and remedies available to either party.

39. COMPLIANCE WITH LAW

- 39.1 The Operator shall provide the Services in complete accordance with this Contract and with all relevant Acts of Parliament or any Statutory Instrument, Regulation or Order made under any Act of Parliament or by any legislative body of the European Union or any regulations or Byelaws of any Local Authority, or any statutory undertaking which has any jurisdiction with regard to the Service, and with any notices served under any such Act, Instrument, Order, Regulation or Byelaw.

40. DELIVERY UP OF DOCUMENTS

- 40.1 When this Contract ends or is terminated the Operator must give the Council, or to any person the Council may specify, all data, information, files, records, documents and the like (in whatever format they may be held) which the Council supplied to the Operator for the purposes of this Contract or which were produced or augmented by the Operator in connection with the carrying out of the Operator's obligations under this Contract.

41. REMOVAL OF OPERATOR'S PERSONNEL

- 41.1 The Council may ask, and the Operator will comply, that any member of staff employed in the operation of the Services is removed from involvement with any aspect of Service delivery or management where the Council deem their behaviour to be incompatible with the operation of the Services.

42. TERMINATION OF CONTRACT DUE TO FAILURE TO COMPLY WITH REQUEST TO REMOVE OPERATOR'S PERSONNEL

- 42.1 If the Operator fails to monitor its staff and comply with clause 41 (**Removal of Operator's Personnel**) the Council may terminate the Contract immediately.
- 42.2 This includes occasions where the relationship between a Service User, their Family/Carers and Driver has broken down even if the Driver is not at fault.
- 42.3 The Council has a duty of care to Service Users including their emotional wellbeing and reserves the right to act in the best interests of the Service User.
- 42.4 The Council shall in no circumstances be liable either to the Operator or to the Operator's employee in respect of any liability loss or damage occasioned by such removal and the Operator shall fully indemnify the Council against any such claim made.

43. TERMINATION OF CONTRACT/S AND REMOVAL FROM DYNAMIC PURCHASING SYSTEM DUE TO FAILURE TO COMPLY WITH SAFEGUARDING OBLIGATIONS

- 43.1 Without prejudice to any of the other rights, remedies or provisions available to the Council under this Contract where the Council reasonably believes the actions or omissions of the Operator amount to a general failure on behalf of the Operator to discharge its Safeguarding obligations under this Contract OR where the Operator has been found to have breached its Safeguarding obligations under this Contract OR where a contract between the Operator and another Public Body has been terminated due to failure to comply with Safeguarding obligations or another equivalent reason relating to Safeguarding THEN the Council may take any or all of the following actions:
- 43.1.1 suspend this Contract under the provisions of clause 24 (**Default and Suspension**) and/or;
- 43.1.2 terminate this Contract without notice; and/or,
- 43.1.3 terminate all contracts between the Operator and the Council without notice; and/or,
- 43.1.4 remove the Operator from the Dynamic Purchasing System without notice; and/or,
- 43.1.5 notify any Service User, person associated with the Service User or any public body or public organisation of any Safeguarding issues.
- 43.2 The Council shall in no circumstances be liable to the Operator or to the Operator's employee in respect of any liability loss or damage occasioned by such termination and removal from the Dynamic Purchasing System.

44. SURVIVAL OF TERMS

- 44.1 Clauses 12 (**Performance Management**), 17 (**Data Protection**), 18 (**Confidentiality**), 21 (**Insurance**), 23 (**Operator's Liabilities and Indemnities**), 25 (**Termination**), 27 (**Dispute Resolution Procedure**), 30 (**Information and Re-tendering**), 36 (**Law and Jurisdiction**), 40 (**Delivery Up of Documents**) and shall continue in force after the expiry or early termination of this Contract.

SCHEDULE 1

STAFF TRANSFER

1. Definitions

In this Schedule, the following additional definitions shall apply:

Employee Liabilities: all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including (but not limited to) in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

Former Service Provider: a Service Provider supplying services to the Council before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such Former Service Provider (or any sub-contractor of any such sub-contractor);

[Notified Sub-contractor: a Relevant Subcontractor whose details are listed at Annex B to this Schedule];

Relevant Sub-contractor: a Sub-contractor to whom Transferring Council Employees and/or Transferring Former Service Provider Employees will transfer on a Relevant Transfer Date;

Relevant Transfer Date: in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

Service Provider's Final Personnel List: a list provided by the Service Provider of all Service Provider's Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

Service Provider's Personnel: all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or any Relevant Sub-contractor engaged in the performance of the Service Provider's obligations under this Agreement;

Service Provider's Provisional Personnel List: a list prepared and updated by the Service Provider of all Service Provider Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Service Provider;

Staffing Information: in relation to all persons identified on the Service Provider's Provisional Personnel List or Service Provider's Final Personnel List, as the case may be, such information as the Council may reasonably request (subject to all applicable provisions of the DPA 1998), but including in an anonymised format:

- (h) their ages, dates of commencement of employment or engagement and gender;
- (i) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (j) the identity of the employer or relevant contracting Party;
- (k) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (l) their wages, salaries and profit sharing arrangements as applicable;
- (m) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (n) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (o) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (p) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (q) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

Transferring Former Service Provider Employees: in relation to a Former Service Provider, those employees of the Former Service Provider to whom the Employment Regulations will apply on the Relevant Transfer Date

2. Interpretation

- 2.1 Where a provision in this Schedule imposes an obligation on the Service Provider to provide an indemnity, undertaking or warranty, the Service Provider shall procure that each of its Relevant Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Council, Former Service Provider, Replacement Service Provider or Replacement Sub-contractor, as the case may be.

TRANSFERRING FORMER SERVICE PROVIDER EMPLOYEES AT COMMENCEMENT OF SERVICES

3. Relevant Transfers

3.1 **The Council and the Service Provider agree that:**

- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Service Provider Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Service Provider and the Transferring Former Service Provider Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Service Provider and/or Notified Sub-contractor and each such Transferring Former Service Provider Employee.

- 3.2 The Council may procure using reasonable endeavours that each Former Service Provider shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Service Provider Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Service Provider shall make, and the Council may procure, using reasonable endeavours, that each Former Service Provider makes, any necessary apportionments in respect of any periodic payments.

4. Former Service Provider indemnities

- 4.1 Where the Council's agreement (or any variations thereto) with the Former Service Provider contains indemnities given by the Former Service provider in respect of Employment Liabilities which benefit the Council or the Service Provider, the Council may or may not choose to procure that the Former Service Provider acts in accordance with the

indemnities given. Any costs incurred by the Council to procure that the Former Service Provider does or does not act accordingly will be borne by the Service Provider.

- 4.2 In any event the Council will not accept an obligation to procure that a Former Service Provider does or not do something where the Service Provider can avail itself of Third party Rights arising from the contract made between the Council and the Former Service Provider.
- 4.3 Paragraph 4.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Service Provider or any Relevant Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Former Service Provider Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Service Provider or any Relevant Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - (b) arising from the failure by the Service Provider and/or any Relevant Sub-contractor to comply with its obligations under the Employment Regulations.

5. SERVICE PROVIDER INDEMNITIES

- 5.1 Subject to paragraph 5.2, the Service Provider shall indemnify the Council and/or the Former Service Provider against any Employee Liabilities in respect of any Transferring Former Service Provider Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission by the Service Provider or any Relevant Sub-contractor whether occurring before, on or after the Relevant Transfer Date;
 - (b) the breach or non-observance by the Service Provider or any Relevant Sub-contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Service Provider Employee; and/or
 - (ii) any custom or practice in respect of any Transferring Former Service Provider Employees which the Service Provider or any Relevant Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Former Service Provider Employees arising from or connected with any failure by the Service Provider or a Relevant Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - (d) any proposal by the Service Provider or a Relevant Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Service Provider Employees to their material detriment on or after their transfer to the Service

Provider or a Relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Service Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- (e) any statement communicated to or action undertaken by the Service Provider or a Relevant Sub-contractor to, or in respect of, any Transferring Former Service Provider Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Council and/or the Former Service Provider in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory Council in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Service Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Service Provider to the Service Provider or a Relevant Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Service Provider or any Relevant Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Service Provider Employees in respect of the period from (and including) the Relevant Transfer Date; and
- (h) any claim made by or in respect of a Transferring Former Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Service Provider Employee relating to any act or omission of the Service Provider or any Relevant Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Service Provider's failure to comply with its obligations under regulation 13 of the Employment Regulations.

5.2 The indemnities in paragraph 5.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Service Provider whether occurring or having its origin before, on or after the Relevant Transfer Date including,

without limitation, any Employee Liabilities arising from the Former Service Provider's failure to comply with its obligations under the Employment Regulations.

- 5.3 The Service Provider shall comply, and shall procure that each Relevant Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Relevant Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Service Provider Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Service Provider and the Former Service Provider.

6. Information

- 6.1 The Service Provider shall, and shall procure that each Relevant Sub-contractor shall, promptly provide to the Council and/or at the Council's direction, the Former Service Provider, in writing such information as is necessary to enable the Council and/or the Former Service Provider to carry out their respective duties under regulation 13 of the Employment Regulations. The Council may, by using reasonable endeavours, procure that the Former Service Provider shall promptly provide to the Service Provider and each Notified Sub-contractor in writing such information as is necessary to enable the Service Provider and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

COUNCIL EMPLOYMENT EXIT PROVISIONS

7. Pre-service transfer obligations

- 7.1 The Service Provider agrees that within 20 Working Days of the earliest of:
- (a) receipt of a notification from the Council of a Service Transfer or intended Service Transfer;
 - (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
 - (c) the date which is 12 months before the end of the Term; and
 - (d) receipt of a written request of the Council at any time

it shall provide in a suitably anonymised format so as to comply with the DPA 1998, the Service Provider's Provisional Personnel List, together with the Staffing Information in relation to the Service Provider's Provisional Personnel List and it shall provide an

updated Service Provider's Provisional Personnel List at such intervals as are reasonably requested by the Council.

- 7.2 At least 28 Working Days prior to the Service Transfer Date, the Service Provider shall provide to the Council or at the direction of the Council to any Replacement Service Provider and/or any Replacement Sub-contractor:
- (a) the Service Provider's Final Personnel List, which shall identify which of the Service Provider Personnel are Transferring Service Provider Employees; and
 - (b) the Staffing Information in relation to the Service Provider's Final Personnel List (insofar as such information has not previously been provided).
- 7.3 The Council regards compliance with paragraphs 7.1 and 7.2 as fundamental to this Agreement. In particular, failure to comply with paragraphs 7.1 and 7.2 in respect of the provision of accurate information about the Service Provider's Personnel shall entitle the Council to withhold Payment until such information is provided. The maximum sum that may be withheld under this paragraph shall not exceed an amount equivalent to [the Payment relating to the first quarter following the Provider's failure to comply].
- 7.4 The Council shall be permitted to use and disclose information provided by the Service Provider under paragraph 7.1 and paragraph 7.2 for the purpose of informing any prospective Replacement Service Provider and/or Replacement Sub-contractor.
- 7.5 The Service Provider warrants, for the benefit of the Council, any Replacement Service Provider, and any Replacement Sub-contractor that all information provided pursuant to paragraph 7.1 and paragraph 7.2 shall be true and accurate in all material respects at the time of providing the information.
- 7.6 From the date of the earliest event referred to in paragraph 7.1(a), paragraph 7.1(b) and paragraph 7.1(c), the Service Provider agrees, that it shall not, and agrees to procure that each Relevant Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Service Provider's Provisional Personnel List and shall not without the approval of the Council (not to be unreasonably withheld or delayed):
- (a) replace or re-deploy any Service Provider Personnel listed on the Service Provider Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Service Provider Personnel (including any payments connected with the termination of employment);
 - (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Service Provider Personnel save for fulfilling assignments and projects previously scheduled and agreed;

- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Service Provider's Provisional Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Service Provider's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Relevant Sub-contractor shall promptly notify, the Council or, at the direction of the Council, any Replacement Service Provider and any Replacement Sub-contractor of any notice to terminate employment given by the Service Provider or Relevant Sub-contractor or received from any persons listed on the Service Provider's Provisional Personnel List regardless of when such notice takes effect.

7.7 During the Term, the Service Provider shall provide, and shall procure that each Relevant Sub-contractor shall provide, to the Council any information the Council may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

7.8 The Service Provider shall provide, and shall procure that each Relevant Sub-contractor shall provide, all reasonable cooperation and assistance to the Council, any Replacement Service Provider and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Service Provider Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Service Provider Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five Working Days following the Service Transfer Date, the Service Provider shall provide, and shall procure that each Relevant Sub-contractor shall provide, to the Council or, at the direction of the Council, to any Replacement Service Provider and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Service Provider's Final Personnel List who is a Transferring Service Provider Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;

- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

8. Employment regulations exit provisions

- 8.1 The Council and the Service Provider acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Service Provider and/or a Replacement Sub-contractor. Such change in the identity of the Service Provider of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Council and the Service Provider further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Service Provider and the Transferring Service Provider Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Service Provider and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Service Provider Employee.
- 8.2 The Service Provider shall, and shall procure that each Relevant Sub-contractor shall, comply with all its obligations in respect of the Transferring Service Provider Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Relevant Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Service Provider Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Service Provider and/or the Relevant Sub-contractor (as appropriate); and (ii) the Replacement Service Provider and/or Replacement Sub-contractor.
- 8.3 Subject to paragraph 8.4, the Service Provider shall indemnify the Council and/or the Replacement Service Provider and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Service Provider Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission of the Service Provider or any Relevant Sub-contractor whether occurring before, on or after the Service Transfer Date;

- (b) the breach or non-observance by the Service Provider or any Relevant Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Service Provider Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Service Provider Employees which the Service Provider or any Relevant Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Service Provider Employees arising from or connected with any failure by the Service Provider or a Relevant Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory Council in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Service Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Service Provider to the Council and/or Replacement Service Provider and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Service Provider or any Relevant Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Service Provider Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Service Provider or any Relevant Sub-contractor other than a Transferring Service Provider Employee for whom it is alleged the Council and/or the Replacement Service Provider and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Service Provider Employee relating to any act or omission of the Service Provider or any Relevant Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Council and/or Replacement Service Provider to comply with regulation 13(4) of the Employment Regulations.

- 8.4 The indemnities in paragraph 8.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Service Provider and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Service Provider Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Service Provider and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
 - (b) arising from the Replacement Service Provider's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 8.5 The Service Provider shall comply, and shall procure that each Relevant Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Relevant Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Service Provider Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Service Provider and/or any Relevant Sub-contractor; and
 - (b) the Replacement Service Provider and/or the Replacement Sub-contractor.
- 8.6 The Service Provider shall, and shall procure that each Relevant Sub-contractor shall, promptly provide to the Council and any Replacement Service Provider and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Council, the Replacement Service Provider and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Replacement Service Provider and/or Replacement Sub-contractor, shall promptly provide to the Service Provider and each Relevant Sub-contractor in writing such information as is necessary to enable the Service Provider and each Relevant Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

9. Third Party Rights

- 9.1 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraph 8.2 to paragraph 8.6, to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Provider or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

10. Where THE EMPLOYMENT REGULATIONS DO Not Apply

10.1 In the event of a Service Transfer to which the Employment Regulations do not apply, the following provisions shall apply:

- (a) the Council and/or the Replacement Service Provider can, at its discretion, make to any of the employees listed on the Service Provider's Provisional Personnel Staff List or any Service Provider or Sub-contractor's personnel assigned to the Services an offer, in writing, to employ that employee under a new contract of employment to take effect at the earliest reasonable opportunity;
- (b) when the offer has been made by the Council or Replacement Service Provider and accepted by any employee or worker, the Service Provider shall and shall procure that any Sub-contractor shall permit the employee or worker to leave his or her employment, as soon as practicable depending on the business needs of the Service Provider or Sub-contractor which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow;
- (c) if the employee does not accept an offer of employment made by the Council or Replacement Service Provider the employee shall remain employed by the Service Provider or Sub-contractor and all claims in relation to the employee shall remain with the Service Provider or Sub-contractor; and
- (d) if the Council or the Replacement Service Provider does not make an offer to any employee on the Service Provider's Provisional Staff List or any Provider's or Sub-contractor's personnel, then that employee and all claims in relation to that employee shall remain with the Service Provider or Sub-contractor.

Schedule 2 - OUTSOURCING

1. Interpretation

The definitions in this Paragraph apply in this Schedule, in addition to those in Schedule 1 (Definitions):

2013 Regulations: the Local Government Pension Scheme Regulations 2013 (SI 2013/2356);

Administering Authority: the Council in its capacity as an administering authority within the meaning of the 2013 Regulations. The Administering Authority administers and maintains the Wiltshire Pension Fund within the LGPS;

Admission Agreement: the agreement to be entered into in accordance with the 2013 Regulations, by the Administering Authority, the Council or relevant Third Party Employer, and the Provider or the Sub-Contractor, as appropriate, in the Administering Authority's standard form (currently as attached at Annex A to this Schedule);

Appropriate Pension Provision: in respect of Eligible Employees:

- (e) membership, continued membership or continued eligibility for membership of the LGPS;
- (f) membership or eligibility for membership of a pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of the LGPS; or
- (g) such alternative pension provision as shall be required by Law at the time of a Relevant Transfer of the Eligible Employees;

Effective Date: the date(s) upon which the Provider or any relevant Sub-Contractor commences provision of all or any part of the Services and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Provider or Sub-Contractor;

Eligible Employees:

- (a) the Transferring Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Date; and/or
- (b) the Third Party Employees who are former employees of the Council and who were active members of (or who were eligible to join) the LGPS on the date of a previous Relevant Transfer of the Services,
- (c) for so long as they spend at least 50% of their time working on the provision of the Services;

Employment Claims: any claim against the Council arising under Paragraphs 2.5 or 2.10 of this Schedule;

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE:

- (a) the identity and age of the employee;
- (b) the employee's written statement of employment particulars (as required under

- section 1 of the Employment Rights Act 1996);
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Provider arising out of the employee's employment with the transferor;
information about any collective agreement that will have effect after the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE;
- (e) Employment Liabilities: means all claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses;
- (f) Employment Losses: means all claims, liabilities, reasonable costs and reasonable expenses (including reasonable legal expenses) arising from any Employment Claims, provided that nothing in this Contract shall restrict or limit the relevant party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to an indemnity claim under this Contract, but excluding indirect or consequential losses or loss of profit and Employment Losses shall be construed accordingly;

LGPS: the Local Government Pension Scheme;

LGPS Regulations: includes:

- (a) the 2013 Regulations;
- (b) the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525);

Pension Pass-through Costs: as defined in Paragraph 5.3(c) of this Schedule;

Provider's Final Staff List: the list of all the Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date;

Provider's Provisional Staff List: the list prepared and updated by the Provider of all the Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list;

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Provider by virtue of the application of TUPE;

Relevant Transfer: a relevant transfer for the purposes of TUPE;

Service Transfer: as defined in Paragraph 3.1 of this Schedule;

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Provider or Sub-Contractor to the Council or any Replacement Provider;

Staffing Information: in relation to all persons detailed on the Provider's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including but not limited to:

- (i) their ages, dates of commencement of employment or engagement and gender;
- (ii) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (iii) the identity of the employer or relevant contracting party;
- (iv) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (v) their wages, salaries and profit sharing arrangements as applicable;
- (vi) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (vii) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (viii) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (ix) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (x) the organised groupings including an indication of the amount of time spent by each employee engaged on the provision of the Services and a description of the nature of the work undertaken by each employee and location;
- (xi) any other "employee liability information" as such term is defined in regulation 11 of the TUPE;

Third Party Employees: employees of Third Party Employers whose contracts of employment transfer with effect from the Effective Date to the Provider or Sub-Contractor by virtue of the application of TUPE. An indicative list of the Third Party Employees, as at the date of execution of this Contract, is attached at Part 2 of Annex B to this Schedule. For the avoidance of doubt, this list may change significantly before the Effective Date;

Third Party Employer: a service provider engaged by the Council to provide services to the Council that are the same as or substantially similar to the Services or any part of the Services (and shall include any sub-contractor of such provider or any sub-contractor of any such sub-contractor) before the Effective Date and whose employees will transfer to the Provider on the Effective Date;

Transferring Employees: means the Third Party Employees or those employees of the Council whose contracts of employment transfer to the Provider or Sub-Contractor as at the Effective Date. An indicative list of the employees of the Council who are Transferring Employees, as at the date of execution of this Contract, is attached at Part 1 of Annex B to this Schedule. For the avoidance of doubt, this list may change significantly before the Effective Date;

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

2. TUPE OUT PROVISIONS

- 2.1 The Council believes that, pursuant to TUPE, at the Effective Date, the Provider or the relevant Sub-Contractor will become the employer of the Transferring Employees.
- 2.2 For those Transferring Employees who are not employed or engaged by the Council before the Effective Date the Council shall use reasonable endeavours to ensure the third party employers of Transferring Employees work with the Provider and any Sub-Contractor to facilitate compliance with TUPE.
- 2.3 For those Transferring Employees who are employed by the Council immediately before the Effective Date the Council warrants to the Provider that as far as it is aware or should be aware:
 - (a) the Employee Liability Information is complete and accurate;
 - (b) no amounts due to or in respect of any of the Transferring Employees (including PAYE and National Insurance) are in arrears or unpaid;
 - (c) the Council has provided the Employee Liability Information to the Provider in respect of its Transferring Employees transferring to them (or any Sub-Contractor) either in writing or by making it available to the Provider in a readily accessible form;
 - (d) the Council's Employee Liability Information contains information as at a specified date;
 - (e) the Council has notified the Provider in writing of any change in the Employee Liability Information since the date on which it was provided and will notify of any changes up to 28 days before the Effective Date;
 - (f) the Employee Liability Information was provided not less than 28 days before the Effective Date.
- 2.4 The Provider acknowledges, warrants and confirms that:
 - (a) it has had carried out a thorough due diligence exercise in relation to the Transferring Employees and has raised all relevant due diligence questions concerning the Transferring Employees; and
 - (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the information supplied and the nature and extent of the risk and any costs associated with and in respect of the Transferring Employees.
- 2.5 Subject to Paragraph 2.6, the Council shall indemnify and keep indemnified the Provider against any reasonable Employment Losses incurred by the Provider or any relevant Sub-Contractor in connection with or as a result of:

- (a) any claim or demand by any of the Council's Transferring Employees (whenever made and whether in contract, tort, under statute, pursuant to European law or otherwise) including any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, personal injury, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Council in respect of any of its Transferring Employees relating to the period prior to the Effective Date;
- (b) any failure by the Council to comply with its obligations under Regulations 13 and 14 of TUPE, or any award of compensation under Regulation 15 of TUPE, save where such failure arises from the failure of the Provider or any Sub-Contractor to comply with its duties under Regulation 13 of TUPE;
- (c) any claim (whenever made and including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing the Council's Transferring Employees (or other employees of the Council) arising from or connected with any failure by the Council to comply with any legal obligation to such trade union, body or person,

to the extent that such claims arise from the Council's fault or failure to act in relation to matters of which it was aware or ought reasonably to have been aware with regard to the Council's Transferring Employees in the period prior to and including the Effective Date, and the Council's liability for such claims shall only extend to Employment Losses attributable to the period prior to and including the Effective Date and the period ending 12 calendar months after the Effective Date.

2.6 The indemnity in Paragraph 2.5 shall not apply to the extent that the Employment Losses in respect of the Employment Claims arise or are attributable to an act or omission of or anything done or omitted to be done by the Provider or any Sub-Contractor whether occurring before, on or after the Effective Date arising out of:

- (a) the resignation of any Transferring Employee on account of any proposed or actual changes to terms and conditions of employment or proposed or actual measures the Provider or Sub-Contractor may consider taking or does take on or after the Effective date;
- (b) any failure by the Provider or any Sub-Contractor to comply with its obligations pursuant to TUPE; and/or
- (c) any of the Transferring Employees informing the Council they object to being employed by the Provider or Sub-Contractor.

2.7 The Provider shall procure that itself and its successors in title and shall procure that any Provider Party shall promptly:

- (a) take such action in connection with the Employment Claims as the Council shall from time to time reasonably request;
- (b) provide free of charge all such assistance and information as the Council may reasonably request relating to the Employment Claims to enable the Employment Claims to be pursued;

- (c) subject to any restriction imposed by Law, provide the Council, its legal and other advisers with access to all documents, records or other information held by the Provider or any Sub-Contractor relating to the Employment Claims;
- (d) provide the Council and/or its professional advisers and experts with access from time to time to such members of staff as may be necessary to assist the Council with the preparation of its cases in relation to the Employment Claims;
- (e) permit and require such employees as the Council and/or its professional advisers may reasonably request to meet with the Council and/or its legal advisers in normal working hours to prepare witness statements for trial, attend meetings with Counsel or experts and/or to attend any court hearing or trial in connection with the Employment Claims for so long and as frequently as the Council and/or its legal or other professional advisers may reasonably require;
- (f) provide such other assistance as the Council may reasonably request in order to ensure the due and timely prosecution of the Employment Claims;
- (g) resist in connection with the Employment Claims any request for documents, information, access to relevant premises or to employees of the business by any third party without first informing the Council and obtaining its consent to any approval of the request; and
- (h) preserve and not waive legal professional privilege or any other privilege attaching to any of the documents or other information relating to the Employment Claims in their possession without first obtaining the Council's consent to such waiver, such consent not to be unreasonably withheld.

2.8 All salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the Transferring Employees shall be borne by the Council up to the Effective Date and by the Provider or the relevant Sub-Contractor with effect from and including the Effective Date.

2.9 The Provider shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under TUPE (including its obligation to inform and consult in accordance with regulation 13 of TUPE).

2.10 Subject to 2.17, the Provider shall indemnify and keep indemnified in full the Council and Third Party Employers against any Employment Liabilities in respect of any Transferring Employees (or where applicable any employee representative as defined in TUPE) whatsoever and howsoever arising in relation to:

- (a) any act or omission by the Provider or any Sub-Contractor whether occurring before, on or after the Effective Date;
- (b) The breach or non-observance by the Provider or any Sub-Contractor on or after the Effective Date of:
 - (i) any collective agreement applicable to the Transferring Employees; and/or
 - (ii) any custom or practice in respect of any the Transferring Employees which the Provider or any Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any of the Transferring Employees arising from or connected with any failure by the

- Provider or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Effective Date;
- (d) any proposal by the Provider or a Sub-Contractor prior to the Effective Date to make changes to the terms and conditions of employment or working conditions of any of the Transferring Employees to their material detriment on or after their transfer to the Provider or a Sub-Contractor (as the case may be) on the Effective Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of TUPE) before the Effective Date as a result of or for a reason connected to such proposed changes;
 - (e) any statement communicated to or action undertaken by the Provider or a Sub-Contractor to, or in respect of, any Transferring Employee before the Effective Date which has not been agreed in writing in advance with the Council and/or the Third Party Employer in writing;
 - (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;
 - (g) a failure of the Provider or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Employees in respect of the period from (and including) the Effective Date; and
 - (h) any claim made by or in respect of a Transferring Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Employee relating to any act or omission of the Provider or any Sub-Contractor in relation to obligations under regulation 13 of TUPE, except to the extent that the liability arises from the Council's or Third Party Employer's failure to comply with its obligations under regulation 13 of TUPE.

2.11 The indemnities in Paragraph 12.10 shall not apply to the extent that the Employment Liabilities arise or are attributable to an act or omission of the Council whether occurring or having its origin before, on or after the Effective Date including, without limitation, any Employment liabilities arising from the Council's or Third Party Employers' failure to comply with its/their obligations under TUPE

2.12 The Provider shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under TUPE and shall on request by the Council (and/or any Third Party Employer of the Transferring Employees) provide details of any measures that the Provider or any Sub-Contractor envisages it will take in relation to the Transferring Employees, including any proposed changes to terms and conditions of employment. If there are no measures envisaged the Provider will give confirmation of that fact.

3. Employment exit provisions

3.1 This Contract envisages that subsequent to the Services Commencement Date, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or expiry of this Contract (in whole or part) or otherwise) resulting in a transfer of the Services in whole or in part (a "Service Transfer"). If a Service Transfer is a Relevant Transfer then the Council or Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date. Accordingly:

- (a) if TUPE applies on a Service Transfer the provisions in Paragraphs 3.8 to 3.11 shall apply;

- (b) Paragraph 3.13 shall apply to a Service Transfer which is not a Relevant Transfer for the purposes of TUPE; and
- (c) for the avoidance of doubt, all other provisions in this Paragraph 3 (Employment exit provisions) shall apply to all Service Transfers, whether or not TUPE applies.

3.2 The Provider shall and shall procure that any Sub-Contractor shall:

- (a) within 10 Working Days of the earliest of:
 - receipt of a notification from the Council of a Service Transfer or intended Service Transfer;
 - receipt of any notice of expiry or earlier termination of this Contract or any part thereof; or
 - receipt of any written request from the Council at any time during the Term; or as may otherwise be required by TUPE,
 - provide to the Council or, at the direction of the Council, to a Replacement Provider, the Provider's Provisional Staff List and the Staffing Information. The Provider shall and shall procure that any Sub-Contractor shall notify the Council of any material changes to this information as and when they occur and shall provide an updated Provider's Provisional Staff List when reasonably requested by the Council or any Replacement Provider;
- (b) at least 28 days before the intended Service Transfer Date, prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Provider, the Provider's Final Staff List and Staffing Information. The Provider's Final Staff List shall identify which of the Provider's and Sub-Contractor's personnel named are Relevant Employees;
- (c) permit the Council to use and disclose the Provider's Provisional Staff List, the Staffing Information and the Provider's Final Staff List for informing any tenderer or other prospective Replacement Provider for any services which are substantially the same type of services (or any part thereof) as the Services;
- (d) at least 28 days before the intended Service Transfer Date, prepare and provide to the Council or any Replacement Provider in respect of each person on the Provider's Final Staff List who is a member of Relevant Employees, their:
 - pay slip data for the most recent month;
 - cumulative pay for tax and pension purposes;
 - cumulative tax paid;
 - tax code;
 - voluntary deductions from pay; and
 - bank or building society account details for payroll purposes;
- (e) on reasonable request by the Council provide the Council (or at the request of the Council, the Replacement Provider) with access (on reasonable notice and during normal working hours) to and copies of such employment records as the Council reasonably requests.

3.3 The Council regards compliance with Paragraph 3.2 as fundamental to the Contract. In particular, failure to comply with [Paragraph 3.2](#) in respect of the provision of accurate information about the Relevant Employees shall entitle the Council to withhold payment of the Contract Price until such information is provided. The maximum sum that may be withheld under this Paragraph shall not exceed an amount equivalent to the Charges

that would be payable in the two (2) months following the Provider's failure to comply with [Paragraph 3.2](#).

- 3.4 The Provider warrants to the Council and the Replacement Provider that the Provider's Provisional Staff List, the Staffing Information and the Provider's Final Staff List ("TUPE Information") will be complete and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Provider's Final Staff List.
- 3.5 The Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation
- 3.6 Subject to all applicable Law and without prejudice to the requirements of Clause 22 (Key Personnel) and Clause 23 (Other personnel), from the date of the earliest event referred to in Paragraph 3.2(a) the Provider shall not and shall procure that any Sub-Contractor shall not without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed):
 - (a) increase or reduce the total number of employees listed on the Provider's Provisional Staff List save for fulfilling tasks and projects previously scheduled and agreed with the Council;
 - (b) make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Provider's Provisional Staff List (including but not limited to any payments connected with the termination of employment);
 - (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Provider's Personnel save for fulfilling tasks and projects previously scheduled and agreed with the Council;
 - (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Provider's Provisional Staff List; and
 - (e) replace or redeploy any of the Provider's Personnel listed on the Provider's Provisional Staff List, assign any person to the provision of the Services (or the relevant part of the Services) which is the subject of a Service Transfer who is not listed in the Provider's Provisional Staff List or terminate or give notice to terminate the employment or contracts of any persons on the Provider's Provisional Staff List.
- 3.7 The Provider shall and shall procure that any Sub-Contractor shall promptly notify the Council or, at the direction of the Council, the Replacement Provider of any notice to terminate employment received from any persons listed on the Provider's Provisional Staff List regardless of when such notice takes effect.
- 3.8 In connection with a Service Transfer to which TUPE applies, the Parties agree that the Provider shall and shall procure that any Sub-Contractor shall perform and discharge all its or their obligations in respect of all the Relevant Employees and their representatives for its or their own account up to and including the Service Transfer Date (including (but not limited to) the payment of all remuneration, emoluments, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in

any case are attributable in whole or in part to the period ending (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (a) the Provider and/or Sub contractor (as appropriate); and
- (b) the Replacement Provider and/or replacement Sub-Contractor.

3.9 Subject to Paragraph 3.10, the Provider shall indemnify and keep indemnified in full the Council and any Replacement Provider against all actions, proceedings, costs, claims, demands, liabilities, losses, interest and expenses (including reasonable legal fees and other professional costs arising in connection with the same together with any VAT thereon) whatsoever and howsoever arising, incurred or suffered by the Council or any Replacement Provider in relation to:

- (a) the Provider or any Sub-Contractor's failure to perform and discharge any obligation in accordance with Paragraph 3.8 above;
- (b) all Employment Liabilities in respect of any person who is or has been employed or engaged by the Provider or any Sub-Contractor in connection with the provision of any Services under this Contract;
- (c) any act or omission by the Provider or any Sub-Contractor on or before the Service Transfer Date or any other matter, event or circumstance occurring before the Service Transfer Date;
- (d) any proceedings, claims or demands by HMRC or other statutory authority in respect of any financial obligation including but not limited to, PAYE and primary and secondary national insurance contributions in relation to the Relevant Employees (or an employee whom it is alleged or it is determined that his/her contract transfers to the Council or any Replacement Provider) to the extent that the proceedings, claims, or demands by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Provider or any Sub-Contractor other than any of the Relevant Employees for which it is alleged the Council or any Replacement Provider may be liable by virtue of this Contract and/or TUPE;
- (f) any act or omission of the Provider or any Sub-Contractor in relation to its or their obligations under regulations 11, 13 or 14 of TUPE, or in respect of an award of compensation under regulations 12 or 15 of TUPE except to the extent that the liability arises from the Council's or Replacement Provider's failure to comply with regulation 13(4) of TUPE;
- (g) any claim by any trade union or other body or person representing any Relevant Employee arising from or connected with any failure by the Provider or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (h) the breach or non observance by the Provider or any Sub-Contractor occurring on or before the Service Transfer Date of any collective agreement applicable to the relevant Employees and/or any other custom or practice with a trade union or staff association in respect of any Relevant Employees which the Provider or any Sub-Contractor is contractually bound to honour.

3.10 The indemnities in paragraph 3.9 shall not apply to the extent that the Employment Liabilities arise or attributable to an act or omission of the Replacement Provider and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date and arise including any Employment Liabilities which arise from:

- (a) the resignation of any Relevant Employee before the Service Transfer Date on account of detrimental changes to his/her working conditions proposed by the Replacement Provider and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date: or
 - (b) arising from the Replacement Provider's and/or any Replacement Sub-Contractor's failure to comply with its obligations under TUPE.
- 3.11 The Parties shall co-operate to ensure that any requirement to inform and consult with employees and/or employee representatives in relation to any Relevant Transfer as a consequence of a Service Transfer will be fulfilled.
- 3.12 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from Paragraph 3.2 to Paragraph 3.11, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Provider or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.13 In the event of a Service Transfer to which TUPE does not apply, the following provisions shall apply:
 - (a) the Council and/or the Replacement Provider can, at its discretion, make to any of the employees listed on the Provider's Provisional Staff List or any Provider or Sub-Contractor's personnel assigned to the Services an offer, in writing, to employ that employee under a new contract of employment to take effect at the earliest reasonable opportunity;
 - (b) when the offer has been made by the Council or Replacement Provider and accepted by any employee or worker, the Provider shall and shall procure that any Sub-Contractor shall permit the employee or worker to leave his or her employment, as soon as practicable depending on the business needs of the Provider or Sub-Contractor which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow;
 - (c) if the employee does not accept an offer of employment made by the Council or Replacement Provider the employee shall remain employed by the Provider or Sub-Contractor and all claims in relation to the employee shall remain with the Provider or Sub-Contractor; and
 - (d) if the Council or the Replacement Provider does not make an offer to any employee on the Provider's Provisional Staff List or any Provider's or Sub-Contractor's personnel, then that employee and all claims in relation to that employee shall remain with the Provider or Sub-Contractor.

General Specification for Wiltshire Council
Small Vehicle and Specialist Transport Contracts

DEFINITIONS

1. The terms and expressions used in this General Specification shall have the meanings set out in Clause 1 of the General Terms and Conditions for Passenger Transport Services. The headings to these conditions are only given for the sake of textual clarity and are not contractual.

INITIAL REQUIREMENTS

2. The Operator must ensure that the conditions contained in this document are observed at all times during the performance of the journeys detailed in the route specification.
3. Where the Contract is awarded on the basis of a "Non Regular Contract" the Operator must ensure that the additional conditions as set out in Appendix A of this document are also observed.
4. If any vehicle used to operate the Contract is fitted with 8 or fewer passenger seats, the Operator must ensure that the vehicle and driver are appropriately licensed.
5. If any vehicle used to operate the Contract is fitted with more than 8 passenger seats, the Operator must hold either:-
 - (a) a Public Service Vehicle Operator's licence (as defined by the Acts);
 - (b) a Special Public Service Vehicle Operator's licence (as defined by the Acts); or
 - (c) a Community Bus Permit (as defined by the Acts);as required for the service to be operated.

DRIVERS

6. The council has recently adopted additional guidelines with regard to drivers' criminal convictions and allowing them to drive on council contracts through the Disclosure and Barring Service (DBS) checking mechanism. Appendix C provides clear instruction about how any previous convictions and cautions may be viewed with regard to clearing a bus driver to drive on Wiltshire Council contracts. Any driver found to be driving on a contract who has a conviction which has not been cleared by the Council's Passenger Transport clearing panel, could be asked to 'stand down' from the contract until the council is satisfied that the conviction or caution does not pose a risk to passengers.
7. The Operator must have in place at all times:-
 - (a) a system to ensure that any driver used to operate the Contract reports for work in adequate time for the Contract to operate correctly;
 - (b) adequate contingency arrangements to ensure that the Contract is operated

correctly in the event of a driver failing to report for work.

- (c) A system that ensures that references are obtained for new employees from their previous employers and that only drivers for whom satisfactory references have been obtained are used to operate this contract)
- 8. Any driver of a vehicle must hold the requisite and valid driving licence for the vehicle as required by current legislation
- 9. Drivers operating Private Hire, Hackney Carriage Vehicles, Section 19, or PSV vehicles must wear the identification issued to them by the Council at all times during Service provision.
- 10. Any driver or other employee of the Operator travelling on the vehicle must be smart and tidy in appearance (football shirts and shorts are not deemed acceptable).and be polite and considerate to passengers, Council Officers, School, College employees, Day Centre staff, parents or guardians of pupils travelling on the vehicle and to other road passengers.
- 11. The Operator must ensure that any driver used to operate the Contract is in a fit condition to undertake the journey in a safe and legal manner.
- 12. The Operator must not employ as a driver on any journey covered by the Contract, any person who has:
 - (a) already worked on a night shift prior to the commencement of the morning journey;
 - (b) started work before 0400 hours that day;
 - (c) has undertaken paid employment during the 7 hours immediately prior to starting work.
- 13. Drivers and other employees of the Operator or Council must not smoke whilst on board the vehicle and must not encourage passengers to smoke whilst travelling on the vehicle. This includes the use of electronic cigarettes or any other device which emits a vapour or smoke.
- 14. Drivers must not use a mobile phone at any time while the vehicle is in motion even if it is a hands free kit.
- 15. Drivers must be aware of the exact Pick Up Point and Drop Off Point and of any special transport requirements of the passengers being conveyed prior to the commencement of the Service.
- 16. Drivers must not deviate from any route that they have been given by Council Officers, unless in an emergency. Under no circumstances should a Pick Up Point or a Drop Off Point be changed by a request from the passenger.
- 17. All drivers who may use a tail lift or ramp in the course of their duties must have received appropriate and recognised training in their operation. Evidence of such training should be available upon request.

18. The Operator must not employ for the purposes of the Contract any person committed of an offence listed in schedule 1 of the Children and Young Persons Act 1933 or any person who could reasonably be considered or suspected of being deemed to be unsuitable for work with children or vulnerable adults. The Council reserves the right to decide whether a person is suitable and to demand immediate replacement of any person convicted of an offence against or with children, or otherwise considered to be unsuitable for employment with children.
19. To enable the Council to undertake DBS disclosures on drivers, used to operate the Contract, the Operator must:
 - (a) ensure that the Contract is only operated by drivers who hold a current enhanced DBS certificate that has been approved by staff in the Passenger Transport Unit of Wiltshire Council. Holding a DBS certificate that has been approved by another body, including Wiltshire Councils own licensing team will not be acceptable.
 - (b) Immediately remove from the Contract, any employee deemed by the Council to be unsuitable for work with children or vulnerable adults;
 - (c) assist the Council in maintaining an up-to-date database of approved drivers.
20. In the event of the Contract being operated by a driver who is not included on the Council's database of approved drivers, the operator will be subject to disciplinary action. Repeated or wilful breaches of this condition will also result in immediate termination of the Contract in accordance with General Terms and Conditions for Passenger Transport Services.
21. The Operator must ensure that any driver used to operate the Contract has been supplied with a copy of the Council's Drivers Handbook and Managing Behaviour on School Transport and that they are fully conversant with them and evidence can be produced on request that drivers have received and understood the documents. The Operator must ensure that all drivers abide by this Code of Conduct. These documents may be updated from time to time.
22. Operators will be required to distribute to their staff any literature produced by the Council concerning disability awareness, and to participate in any training programmes that may be organised by the Council from time to time. These documents may be updated from time to time.

VEHICLES

23. Unless otherwise stated on the Route Specification, all vehicles:-
 - (a) must be licensed, maintained, equipped and operated as required by current legislation and must display a valid Public Service Vehicle Operator's licence disc, Section 19 Permit, Hackney Carriage and Private Hire.
 - (b) must conform to the specifications detailed in the Route Specification;
 - (c) must not be allowed to carry more passengers than permitted under current legislation affecting that vehicle;

- (d) must have adequate heating and ventilation and must be in a clean and tidy internal and external condition so far as is reasonably possible or practicable. All vehicles used to operate the Contract must be cleaned inside and out at least once per day and the surfaces and seats inside the vehicle must be thoroughly cleaned at least once every 7 days;
 - (e) must display notices clearly inside the vehicle requesting passengers not to smoke in the vehicle;
 - (f) must display notices clearly inside the vehicle requesting passengers to wear seatbelts, where the vehicle has more than 8 passenger seats.
 - (g) must display notices clearly inside the vehicle on the correct use of wheelchairs and passenger restraint systems.
24. Seats must not be fitted in such a manner that a seated passenger is facing either the offside or the nearside of the vehicle.
25. On vehicles where seatbelts are fitted to any passenger seat, the operator must ensure that all aspects of the installation, fitment and maintenance of the belts and anchorage points meet the requirements of the relevant sections of the Motor Vehicles Construction and Use Regulations 1986 as amended. Failure to meet this requirement may result in termination of the contract and/or the vehicle being prohibited from use on any passenger transport contract.
26. Where the Contract is awarded on the basis of vehicles or drivers operating the Contract being equipped with mobile phones, the Operator must ensure that these are able to receive incoming calls and transmit outgoing calls throughout the time the vehicle or driver is operating the Contract.
27. The Operator shall ensure that no greater number of passengers is conveyed on the vehicle than that permitted by the Acts or any other statutory provision or regulation currently in force or that in the specification.
28. Vehicles used to operate the Contract must be fitted with mirrors that enable the driver to view the outside of the passenger doors when closed.
29. The Operator must ensure that any vehicle used to operate the Contract is not fitted with:
- (a) bull bars or equivalent bars;
 - (b) any other external protection system made of metal and fitted to the bumper or other part of the vehicle front or side and intended (or purporting) to protect either the driver or passengers or external surfaces from damage or injury in the event of a collision.

OPERATING REQUIREMENTS

30. The Operator must ensure that details of the School Term, Holiday and Staff Training dates for each of the Schools, Colleges or Day Centres served by the Contract are obtained at the start of each academic term. In the event of the Contract operating on

an occasion when all of the Schools or Colleges served are closed, the Council must be informed immediately. Payment for operation on these occasions will only be considered where it can be shown that the School, College, Day Centre and Council failed to provide the Operator with 5 working days notice of the closure.

31. On each journey, before allowing passengers to board the vehicle, the Operator must ensure that any items that could harm or corrupt the passengers, or which are inappropriate for passengers, are removed from the passenger area of the vehicle.
32. The Operator must ensure that passengers boarding or alighting from the vehicle are under the supervision of the driver, and/or Passenger Assistant. Stopping places, unless specified specifically, must be selected so that the safety of passengers boarding, alighting and on board the vehicle and other road passengers is protected. Any doubt over any stopping position must be referred to the Authorised Officer.
33. The Operator must ensure that seatbelts are fitted to all passenger seats and that passengers should use them at all times throughout the journey.
34. Where a connection with another vehicle is specified in the route specification, the Operator must make arrangements which are satisfactory to the Council concerning the procedure to be undertaken in the event of a problem occurring to either of the connecting vehicles. Under no circumstances must a passenger be left to await the connecting vehicle unless supervised by a responsible adult.
35. The Operator must ensure that, unless specified otherwise in the route specification, only authorised passengers and Passenger Assistants are conveyed. In exceptional circumstances parents or guardians of Special Needs children may travel on the vehicle, provided that agreement to this has been supplied to the Operator from the Authorised Officer.
36. The Operator must convey to the School safely any children involved in incidents of ill-discipline or vandalism to property of the Contractor. The incident must be reported immediately to the Council, the Head Teacher or other person in charge at the School. If such an incident occurs on the homeward journey then the children must be conveyed to their home destination. The Council must then be informed as soon as practicable. In very serious situations the Operator may request assistance from the Police or instruct the driver to proceed to the nearest Police Station.
37. Where a driver arrives at a Pick Up Point and the passenger is not in attendance, the following procedure shall be adopted:
 - (a) If the passenger is a School or College student the driver shall wait at least 3 minutes after the agreed departure time and then inform the Operator. If the passenger concerned has Special Needs the Operator must inform the Authorised Officer immediately. The driver must also inform a member of staff on arrival at the School or College;
 - (b) If the passenger is attending a Day Centre, the driver should wait at least 3 minutes after the agreed departure time and then proceed with the remainder of the journey. On arrival at the Day Centre the driver must advise the Day Centre Manager that the passenger was not present at the Pick Up Point;

- (c) Where a driver arrives at a Pick Up Point and the passenger is not ready to board the vehicle, the driver should wait at least 3 minutes after the agreed departure time and then inform the Operator, who in turn should inform the Authorised Officer. The driver should then proceed with the remainder of the journey and on arrival at the destination inform the Headteacher, Principal, Day Centre Manager or their representative of the reason why the passenger was not picked up.
38. Where there is no one to receive a Vulnerable Passenger at the home address the driver must contact the Operator who in turn shall contact the Authorised Officer for advice. In normal circumstances the driver will be advised to complete the remainder of the route and then return to the address. If there is still no one to receive the passenger a note should be passed through the door explaining that the passenger has been taken to the nearest Social Services office, or the nearest Police Station and a contact number where they can be collected should also be indicated. Under no circumstances should a Vulnerable Passenger be left unattended.

ACCIDENT OR VEHICLE BREAKDOWN PROCEDURE

39. The Operator must ensure that the Council is notified immediately in the event of:
- (a) any accident involving a vehicle operating a Contracted journey;
 - (b) any injury to a passenger, sustained whilst travelling on any Contracted journey, or whilst boarding or alighting from the vehicle.
40. The Operator will be required to submit a written report on the circumstances relating to the accident or injury if requested to do so by the Authorised Officer.
41. In the event of the accident or injury occurring outside normal office hours, the Operator must advise the Council by 10.00am on the following working day.
42. In the event of a vehicle breakdown or accident, the driver must, providing it is safe to do so, instruct the passengers to remain in the vehicle while a message requesting the provision of a replacement vehicle is passed to his/her base. If it is unsafe for the passengers to remain in the vehicle, then the driver shall ensure that the passengers are kept together in one group in a safe place off the road working in conjunction with the Passenger Assistant if one has been allocated to the vehicle. If the driver is unable to get a response from his base, then he must notify either the Council's Passenger Transport Unit, or failing this contact the School, College or Day Centre.
43. In the event of a vehicle breakdown or accident, the passengers must not be instructed or encouraged to make their own way on foot to their destination unless the distance is very short and the driver is able to escort the passengers safely himself. This should not be attempted where it is dark or the visibility is poor.
44. The Operator must ensure that any accident, vehicle breakdown or other defect in the service is reported to the Head Teacher, Manager or Principal of the establishment to which the passengers are conveyed, and to the Council's Passenger Transport Unit. The report must be made immediately that the incident occurs, and the Operator must state what steps have or will be taken to resolve the problem.

45. The Operator must ensure that, in the event of a vehicle breakdown or similar emergency, arrangements exist to ensure that a replacement vehicle is able to reach any point on the Contracted route within a reasonable time. Where the Operator is unable to do this using his own vehicles or staff, the Council will expect the Operator to demonstrate prior to the commencement of the Contract and at any time during the period of the Contract, that an agreement to provide this facility has been made with another Operator that is acceptable to the Authorised Officer.
46. In the event of a breakdown or similar emergency, or significant delay to the vehicle operating the service, the Operator must:
- (a) provide alternative transport at no extra cost to the Council. Failure to do so will result in the Council making its own arrangements, and any additional cost may be charged to the Operator;
 - (b) inform the Council of the incident and the action being taken within 15 minutes of the incident being reported;
 - (c) make every effort to inform the Schools or Colleges or other establishments for whom the passengers are being carried on the journeys affected.

SAFETY AND CHILD SEATS

47. Where the Service involves the carriage of any special seating or harnesses, the Operator must:
- (a) allow the Authorised Officer and or their representative access to the vehicle at all reasonable times to fit and inspect any equipment that the Council decides is necessary.
 - (b) ensure that the seat/harness fittings are not removed from the Vehicle unless specific instructions on their refitting have been issued by the Authorised Officer or his representative;
 - (c) ensure that the seat/harness is securely fitted on each and every journey;
 - (d) ensure that the seats/harnesses and fittings are returned to the Council on demand or on termination of the Contract.
 - (e) Where a driver or passenger assistant is not confident a seat or harness is secured correctly they should not continue with the journey and should inform the operator, who should contact the council for further advice.

WHEELCHAIR ACCESSIBLE VEHICLES

48. The Operator must ensure that they and all drivers who operate wheelchair accessible vehicles have read and understood the following documentation, which is available via the internet prior to operating such a Contract. Failure to comply with the guidance outlined in these documents will be deemed as a breach of these Contract conditions.

• *Guidance on the Safe Transportation of Wheelchairs –
MDA DB2001 (03) JUNE 2001 (Medical Devices Agency)*

• *Guidance on the Safe Use of Wheelchairs and Vehicle-mounted Passenger Lifts – MDA DB2003 (03) MARCH 2003 (Medical Devices Agency)*

Before a wheelchair accessible vehicle is operated on any Contract it must be inspected and approved by the Authorised Officer or their representative

- (a) Clamps used in the restraint of wheelchairs are prohibited on Vehicles used to operate the Service. Where it is discovered that clamps are being used the driver must refrain from transporting the Passenger and contact the Authorised Officer immediately and await instruction.
- (b) All drivers operating wheelchair accessible vehicles must be trained by their employer in the safe operation of all equipment including the appropriate Wheelchair Tie-down and Occupant Restraint System (WTORS) and tail lift or ramp.
- (c) All wheelchairs transported on behalf of the Council will be subject to an assessment undertaken by an Authorised Officer. After the assessment the Authorised Officer will attach a tag to the wheelchair, clearly outlining the restraint and harnessing equipment necessary. If a tag is **NOT** present then the wheelchair must **NOT** be moved and the Authorised Officer contacted.
- (d) Where an Operator wishes to offer an alternative Wheelchair Accessible Vehicle to that which has been assessed by the Authorised Officer pursuant to clause A50 above, they must inform and receive the consent of the Authorised Officer before doing so.
- (e) When Wheelchair Tie-down and Occupant Restraint System (WTORS) are not in use they must be stowed in such a manner that they do not cause a risk to passengers.

COMPLAINTS PROCEDURE

49. The Supplier must ensure that:

- (a) all enquiries, comments and complaints received from members of the public are dealt with in an accurate, polite, courteous and sympathetic manner as specified in the Suppliers complaints procedure;
- (b) staff are available at the Supplier's base to deal with passenger enquiries about the journeys covered by the Contract, during normal office hours at reasonable times to operate the Contract successfully;
- (c) all complaints are handled and recorded in the manner prescribed in clause 21 of the Terms and Conditions for Passenger Transport Services.

50. The Operator must have in place a complaints procedure and operate it from the Commencement Date of the contract.

- (a) provide the Council with a copy of it and provide the Council with any amendment within 1 month of any such amendment coming into effect;

- (b) provide each Service User with a copy of the complaints procedure if requested to do so.
51. The Operator must inform the Council of any Complaints they receive directly from a Service User or Member of the Public and send copies of any reply/replies.
52. The Operator shall use its reasonable endeavours to resolve all such complaints to the satisfaction of the relevant Service User.
53. If the Council sends written notice to the Operator advising the Operator of the complaints made by Service Users, the Operator must respond to such notice in writing within 14 days. If the Operator fails to reply within this period then a fee as set out in the General Specification will be charged.
54. The Operator shall inform the Council when any complaint by a Service User has not been resolved within 1 month. In the event any such complaint has not been resolved within 1 month the Operator shall inform the Council and it shall be resolved by the Authorised Officer.
55. The Operator will ensure that all its staff engaged in the provision of the Service are fully aware of the complaints procedure and shall designate 1 employee to act as a complaints manager and the details of such role shall be set out in the Operator's complaints procedure.
56. At the Council's request, the Operator must supply the Council with a copy of the Operator's records relating to complaints made in relation to the Service and the Operator's response.

RECORDS INFORMATION AND INSPECTIONS

57. The Operator must compile and maintain such information as the Council may reasonably require (including, but not limited to, financial and budgetary information) to enable it to evaluate the achievement of the Outcomes, with such baseline Monitoring Information listed in the General Specification and the Route Specification.
58. In addition to its obligation under clause 11 (**Contract Management Meetings**), the Operator must make available to the Council the information referred to in clause 20.1 at quarterly intervals starting from the Commencement Date and at such other times as the Council may reasonably require.
59. In addition, at the Council's reasonable request (but subject to clauses 17 (**Data Protection Act**) and 18 (**Confidentiality**)) the Operator must provide the Council with all other information which the Council may reasonably require for the purpose of assessing how the Operator is carrying out its obligations under this Contract and the safety and welfare of the Service Users.
60. The Operator shall co-operate with the Authorised Officer and shall comply with all reasonable requests from the Authorised Officer in monitoring and evaluating the quality, value for money and the effectiveness of the Operator's provision of the Service.
61. The Operator must allow the Authorised Officer or any person authorised by him, together with appropriate staff, at all reasonable times to inspect or witness the Vehicles and the provision of the Service.

62. Where the Operator fails to provide a specified Vehicle for inspection at a time and place agreed in advance with the Council, an administration charge may be made as set out in the General Specification.
63. Where, following a Vehicle Inspection, a Vehicle does not meet the various requirements of current legislation, the Operator shall ensure that the Vehicle is not used until the defect has been rectified and the Vehicle has been re-inspected and approved by either;
- (a) an authorised officer of the Council; OR
 - (b) an authorised officer of the Department for Transport; OR
 - (c) in the case of a Vehicle licensed with a District or Borough Council; an authorised officer of that Council.
64. In the event of the re-inspection being carried out by an officer of the Council, a fee may be charged as set out in General Specification.
65. Where, following a Vehicle Inspection, a Vehicle does not meet the specific requirements of the Contract, the Operator shall ensure that the Vehicle is not used in the Service until such time as the Vehicle has been re-inspected by an authorised officer of the Council and is approved for use.

The Operator must notify the Council if:

- (a) there is a change in who controls the majority of the shares in, or the voting rights amongst shareholders or members of, its organisation;
 - (b) it proposes to merge with another organisation;
 - (c) it proposes to transfer its engagements to another organisation;
 - (d) it proposes to transfer its business to another organisation;
66. As a result of any misconduct or mismanagement on its part a Regulatory Body directs an inquiry into, or makes an order of any kind in relation to, its affairs; or
67. Any registration which it must maintain in order to provide any of the Service is withdrawn or cancelled or is threatened to be withdrawn or cancelled.

VEHICLE BREAKDOWNS AND EMERGENCY COVER

68. The Operator must ensure that, in the event of a vehicle breakdown or similar emergency, arrangements exist to ensure that a replacement vehicle is able to reach any point on the contracted route within one hour of the incident occurring. Where the Operator is unable to do this using his own vehicles or staff, the Council will expect the Operator to demonstrate prior to the commencement of the contract and at any time during the period of the contract, that an agreement to provide this facility has been made with another Operator that is acceptable to the Authorised Officer.
69. In the event of a breakdown or similar emergency, or significant delay to the vehicle operating the service, the Operator must:

- (a) provide alternative transport at no extra cost to the Council. Failure to do so will result in the Council making its own arrangements, and any costs incurred may be charged to the Operator.
- (b) inform the Council of the incident and the action being taken within 15 minutes of the incident being reported.
- (c) make every effort to inform the schools or colleges whose students are carried on the journeys adversely affected.

PASSENGER ASSISTANTS EMPLOYED BY WILTSHIRE COUNCIL

- 70. Where Passenger Assistants are provided by the Council for assisting children and Vulnerable Passengers, the Supplier will be required to collect the Passenger Assistant from their home address and return them to their home address after the Service has been completed, unless specifically advised by the Council.
- 71. On occasions it may be a requirement for the Supplier to drop the Passenger Assistant at an alternative address. This will only take place with prior notification from the Authorised Officer or his representative. Any reasonable additional costs incurred by the Supplier will be paid by the Council if agreed by the Authorised Officer in advance.
- 72. The Passenger Assistant is an employee of the Council and all reasonable requests from them must be adhered to by the driver.

PASSENGER ASSISTANTS EMPLOYED BY THE SUPPLIER

- 73. Where a council employed Passenger Assistant's post becomes vacant, the council may consider it an option for a supplier to employ the Passenger Assistant. Any Passenger Assistant employed by a supplier will need to meet the following criteria. The option for a supplier to provide a Passenger Assistant will be tested for its financial viability to the Council.
- 74. Wiltshire Council requires a consistency of Passenger Assistant, which is an essential requirement for the needs of the passengers. Many passengers have specific requirements, which can mean they find it difficult to cope with a change of personnel. For these reasons, the council cannot accept a situation where Passenger Assistants are rotated around contracts at frequent intervals and the service user does not know whom to expect. The council expects that one or two passenger assistants at most are used on any contract and an opportunity should be provided for parents to 'meet and greet' all Passenger Assistants. Prior to the first journey, the council will provide as much information to the supplier about a passenger, in accordance with the relevant Act. Regular feedback from drivers and Passenger Assistants to the supplier and from the supplier to the PTU, is therefore vital. The Passenger Assistants must be capable and competent to work with children/adults with complex mental and/or physical disabilities. They must be able to empathise with the passengers and be able to treat them with dignity and respect even when dealing with difficult behavioural issues.
- 75. The Supplier must have in place at all times:-
 - (a) a system to ensure that any Passenger Assistant used to operate the Contract has reported for work in adequate time for the Contract to operate correctly;

- (b) adequate contingency arrangements to ensure that the Contract is operated correctly in the event of a passenger assistant failing to report for work.
- 76. Passenger Assistants must wear the identification issued to them by the Council at all times and must insure it is worn in such a way, so that it cannot cause harm to either the driver or passenger.
- 77. Any Passenger Assistant must be smart and tidy in appearance and be polite and considerate to passengers, Council Officers, School staff, parents or guardians of pupils travelling on the vehicle and to other road passengers.
- 78. The Supplier must ensure that any passenger assistant used on the Contract is in a fit condition to undertake the journey in a safe manner.
- 79. Passenger Assistants must not smoke whilst on board the vehicle and must not encourage passengers to smoke whilst travelling on the vehicle. This includes the use of electronic cigarettes or any other device which emits a vapour or smoke.
- 80. Passenger Assistants must be aware of the exact Pick Up Point and Drop Off Point and of any special transport requirements of the passengers being conveyed prior to the commencement of the Service.
- 81. The Operator must not employ for the purposes of the Contract any person committed of an offence listed in schedule 1 of the Children and Young Persons Act 1933 or any person who could reasonably be considered or suspected of being deemed to be unsuitable for work with children or vulnerable adults. The Council reserves the right to decide whether a person is suitable and to demand immediate replacement of any person convicted of an offence against or with children, or otherwise considered to be unsuitable for employment with children.
- 82. To enable the Council to undertake DBS disclosures on drivers, used to operate the Contract, the Operator must:
 - (a) ensure that the Contract is only operated by drivers who hold a current enhanced DBS certificate that has been approved by staff in the Passenger Transport Unit of Wiltshire Council. Holding a DBS certificate that has been approved by another body, including Wiltshire Councils own licensing team will not be acceptable.
 - (b) Immediately remove from the Contract, any employee deemed by the Council to be unsuitable for work with children or vulnerable adults;
 - (c) assist the Council in maintaining an up-to-date database of approved passenger assistants.
- 83. In the event of the Contract being operated by a Passenger Assistant who is not included on the Council's database of approved Passenger Assistant, will be dealt with under the disciplinary procedures set out in Appendix C Performance Management. Repeated or wilful breaches of this condition will also result in immediate termination of the Contract in accordance with General Terms and Conditions for Passenger Transport Services.
- 84. Operators will be required to distribute to their staff any literature produced by the Council concerning disability awareness, and to participate in any training programmes that may be organised by the Council from time to time. These documents may be updated from time to time.

85. The council reserves the right to remove a Passenger Assistant from its contracts without notice or reason.

MONITORING INFORMATION / PERFORMANCE TARGETS

86. The Operator is responsible for ensuring that the Contract is performed in accordance with the conditions of Contract and the Route Specification and must ensure that adequate systems are in place to provide day to day managerial control and supervision of the Contract, including a method whereby the driver can report operational problems as they occur.
87. The Operator must undertake regular inspections of the service to ensure it is being operated in accordance with the Contract conditions and Route Specification and be able to demonstrate to the Council that these inspections have taken place.
88. Inspections may also be made by representatives of the Council and authorised Council staff must be allowed access to the Vehicles in order to monitor the Service, inspect the roadworthiness of the Vehicle and the use of equipment issued by the Council.
89. The Operator must maintain a record of the reason why any journey or part of a journey covered by the Contract has not been operated, or has been operated late.

CONTRACT PRICE AND ACCOUNTING PROCEDURE

90. The Contract shall be a No-Fares Contract as specified in the Route Specification and the Contract Price shall be the price submitted by the Operator on the Form of Tender.
91. Where a Contract is awarded as a Non Regular Contract as specified by the Authorised Officer or his representative the Contract Price is the price agreed over the telephone at the time of Booking.
92. The Operator must submit to the Council by the 14th day of each calendar month, an Invoice for the Service during the preceding calendar month. Where the Contract provides journeys to/from a School, College or Day Centre the Council will require the Operator to arrange for the Head Teacher, Principal or Manager of the School, College or Day Centre to sign the Invoice in order to confirm that the Service has operated on the days invoiced.
93. Invoices for Non Regular work should include the entire Non Regular Services carried out by the Operator for the preceding month. All other Invoices should be submitted separately, i.e. one Invoice per Contract.
94. Invoices should be presented as per the examples in Appendix D and E. Failure to complete invoices in this format will result in them being returned to the Operator.
95. The Contract Price may be increased by the Council with effect from 1st April each year after the Commencement Date of the contract. The increase will be based on RTPI and the budgetary position of Wiltshire Council at the time of the decision whether to award an increase is made. Where the Commencement Date of the Contract was

after 1st April of the previous year the amount awarded shall be 1/12th of the annual increase for each complete calendar month that has been worked by the Operator. The award of any such increase in price shall be subject to confirmation of any such increase being made in writing by the Council.

96. A Non Regular Contract will not be subject to an annual inflationary increase.
97. Where a passenger no longer requires transport and the Council does not receive any notice of such change of requirements, the last payment to the Operator in respect of the Service will be for the last journey operated by the Operator. The Operator will not be entitled to claim any other financial remuneration from the Council in respect of the Service.
97. Payment may be withheld for any journey which fails to operate without reasonable cause.
98. Journeys arriving at their destination more than fifteen minutes late without reasonable cause will, for the purposes of payment, be regarded as having failed to operate.
99. In the event of the closure of a School, College or Day Centre served by a Contracted journey through unavoidable causes, the Operator shall be entitled to be paid for each day of closure, subject to a maximum of ten days in any one year. Any period or periods in excess of ten days closure in any one year may result in the Contract being suspended until notification of reinstatement is given by the Authorised Officer.

NON REGULAR CONTRACTS

The Conditions contained in this Appendix apply to journeys that are of a non regular nature and are not based on a form of tender or service specification, but must still be operated in accordance with the “General Specification for Small Vehicle and Specialist Transport Contracts”

BOOKING PROCEDURE

- A1 The Authorised Officer or his representative will contact the Operator when the Council requires a Booking from the Operator.
- A2 Once the Operator has accepted the Booking a Contract will have been formed and the conditions within “The Wiltshire Council General Terms and Conditions for Passenger Transport Services and General Specification for Small Vehicle and Specialist Transport Contracts 2017” will apply.
- A3 Each Booking will specify the locations, times and dates at which vehicles are required, the nature of any special equipment required, the nature of the passengers, and any other relevant information.
- A4 Each party will make a written record of each such Booking and will keep such records for a period of at least 6 months following the date of the last Booking.

BOOKING ALTERATION AND CANCELLATION

- A5 The Authorised Officer or his representative may alter and/or cancel any Booking with immediate effect.
- A6 In the event that the Council cancels the Booking, no fee shall be payable by the Council to the Operator in respect of that booking.
- A7 If the Authorised Officer or his representative requires the alteration of any Booking, the Operator shall use its best endeavours to perform the Service according to the Council's altered requirements, but if the Operator is unable to then perform the Service in relation to that altered Booking the Operator shall inform the Council and shall not be in breach of the Contract if it is unable to perform the Service.

PRICE

- A8 The Contract Price for each Booking shall be agreed between the Authorised Officer and the Operator at the time each Booking is made and a record of the amount should be recorded by the Operator and the Authorised Officer.

PASSENGER REFUSING OR UNABLE TO TRAVEL

- A9 In the event that any passenger either refuses or is unable to travel on the Vehicle or is not at the address specified by the Council, the Driver shall inform the Council as soon as reasonably practicable.

Safeguarding

B1 Drivers and Passenger Assistants must always maintain a strictly professional relationship with the children and vulnerable adults that they transport. Whilst drivers should always be helpful and polite, it is very important that they do not act in a way that could be misunderstood by a child, vulnerable adult, parent or any other observer. Children and Vulnerable adults include;

- B1.1 Children and young people
- B1.2 Children and young people with physical or learning difficulties
- B1.3 Adults with learning difficulties
- B1.4 Adults with physical disabilities
- B1.5 Adults with mental health problems or dementia

B2 Over Familiarity/Friendliness

B2.1 Drivers and Passenger Assistants who are aware that a child, young person or vulnerable adult is becoming over friendly with them, should discuss this at the earliest opportunity with the Line Manager so appropriate actions can be taken to avoid any hurt, distress or embarrassment.

B2.2 To minimise the chance of a child, young person or vulnerable adult becoming over friendly and potentially leading to infatuation drivers and Passenger Assistants must not;

- B2.2.1 hug, cuddle, tickle or have any unnecessary contact with a child or vulnerable adult;
- B2.2.2 enter into horseplay with children or vulnerable adults on or off the vehicle;
- B2.2.3 discuss with a child or vulnerable adult anything of a personal or intimate nature;
- B2.2.4 make any personal remark about, or to, a child or vulnerable adult even if it is complimentary;
- B2.2.5 call any child or vulnerable adult by an endearment such as love, darling etc; please use their appropriate title or given name;
- B2.2.6 use bad language (swearing), innuendos or sexual comments and should discourage others from doing so;
- B2.2.7 give children or vulnerable adult gifts, send them cards, letters or text messages, see section on Giving of Gifts below;
- B2.2.8 exchange phone numbers, email addresses (including 'Facebook' or similar) or personal details with children or vulnerable adults; Also see section called Electronic Communication and Social Networks below.
- B2.2.9 take photographs of children or vulnerable adults, including pictures using mobile phones;

- B2.2.10 enter the home of a child or vulnerable adult unless specifically instructed to do so;
 - B2.2.11 look through a child or vulnerable adult's personal contact book, handbag or personal belongings, except to locate the key to their premises;
 - B2.2.12 handle any money on behalf of a child or vulnerable adult unless specifically instructed to do so.
 - B2.2.13 have any social contact with the child or vulnerable adults that they meet as passengers. Also see section called Social Contact below
- B2.3 This list is not exhaustive but it illustrates the type of actions which could be misunderstood and must be avoided.
- B2.4 Any information about passengers must be treated as confidential and not be discussed with anyone such as your family or friends. This also applies to anything that passengers may tell you in the course of conversation.
- B2.5 Please be aware that some transport is for 'Contact visits'. In such cases staff must be very careful not to give any information to parents that has not been authorised.

B3 Giving of Gifts

- B3.1 It is acknowledged that there are specific occasions when staff may wish to give a child, young person or vulnerable adult a personal gift, i.e. to acknowledge good behaviour etc, this is only acceptable practice where, in line with the agreed policy, the staff member has first discussed the giving of the gift and the reason for it, with a Senior Manager and/or parent or carer and the action is recorded.
- B3.2 Any gifts should be given openly and not be based on favouritism.
- B3.3 Drivers and Passenger Assistants need to be aware that the giving of gifts can, in certain circumstances, can be misinterpreted by others as a gesture either to bribe or groom that child, young person or vulnerable adult.

B4 Electronic Communication and Social Networks

- B4.1 Drivers and Passenger Assistants should not engage in person, email or telephone contact with pupils, including instant messaging, text messaging, social networking sites or other similar methods of communication.
- B4.2 Communication by Drivers and Passenger Assistants between children, young people and vulnerable adults, by whatever methods, should take place within clear and explicit professional boundaries. This includes the wider use of technology such as digital cameras, videos, web-cams, websites such as Facebook, Twitter, Youtube, Instagram, Snapchat and Facetime as well as blogs.
- B4.3 Drivers and Passenger Assistants should not share any personal information with a child, young person or vulnerable adult.
- B4.4 Drivers and Passenger Assistants should not request, or respond to, any

personal information from the child, young person or vulnerable adult, other than which might be appropriate as part of their professional role.

- B4.5 Drivers and Passenger Assistants should ensure that all communications are transparent and open to scrutiny.
- B4.6 Drivers and Passenger Assistants should not seek to have social contact with children, young people, vulnerable adults and their families, unless the reason for this contact has been firmly established and agreed with your Line Manager. If a child, carer or parent seeks to establish social contact, or if this occurs coincidentally, the Driver or Passenger Assistant should exercise his/her professional judgement in making a response but should always discuss the situation with their Line Manager, parent or carer.

This means that staff should:

- B4.6.1 Have no secret social contact with children, young people and vulnerable adults or the parents and carers.
- B4.6.2 Consider the appropriateness of the social contact according to their role and the nature of their work.
- B4.6.3 Always approve any planned social contact with children, young people and vulnerable adults with your Line Manager.
- B4.6.4 Advise your Line Manager of any social contact if and when it happens and keep a record of the incident.
- B4.6.5 Record the sending of personal communications such as birthday or faith cards should always be recorded and discussed with your Line Manager.
- B4.6.6 Understand that some communications may be called into question and need to be justified.

B.5 Sexual Contact

- B5.1 Drivers and Passenger Assistants must clearly understand the need for boundaries in their contacts with children, young people and vulnerable adults. Intimate or sexual relationships between children, young people and vulnerable adults will be regarded as a grave breach of trust and is illegal. Allowing or encouraging a relationship to develop in a way which might lead to a sexual relationship is also illegal.

This means that drivers and Passenger Assistants should:

- B5.1.1 Not have relationships with children, young people and vulnerable adults.
- B5.1.2 Not have any form of communication with children, young people and vulnerable adults which could be interpreted as sexually suggestive or provocative i.e. verbal comments, letters, notes, electronic mail, phone calls, texts, social networks or physical contact.
- B5.1.3 Not make sexual remarks to, about, a child young person or vulnerable adult.
- B5.1.4 Not discuss your own sexual relationships with or in the presence of children, young people and vulnerable adults.

This means that drivers and Passenger Assistants should:

B5.1.5 Ensure that their relationship with children, young people and vulnerable adults clearly B5.1.7 takes place within the boundaries of a respective professional relationship.

B5.1.6 Take care that their language or conduct does not give rise to comment or speculation.

B5.1.7 Pay particular attention to their attitudes, demeanour and language as all require care and thought, particularly when staff are dealing with adolescent boys and girls.

B6 Acceptable Physical Contact

B6.1 Drivers and Passenger Assistants should note that some physical contact with passengers may be necessary, such as:

B6.1.1 assist a person who has difficulty in walking.

B6.1.2 assist a person who has become ill.

B6.1.3 help an older person get in and out of a vehicle.

B6.1.4 assist someone to put on a seat belt or restraint.

B6.1.5 transferring from wheelchair/buggy to a seat.

B6.1.6 to stop self harming or harming others

B6.2 Drivers and Passenger Assistants must ensure that they inform the person first, and keep physical contact to a sensible minimum.

B6.3 These instructions have been written to help drivers and Passenger Assistants understand their actions, however well intentioned, may be viewed differently by others. It is important to be aware that an allegation made against a driver or Passenger Assistant may result in an investigation by the Council and/or the Police, during which time the person may have to be removed from providing any transport service to the Council that carries children or vulnerable adults.

B6.4 Not all children, young people or vulnerable adults feel comfortable about physical contact, and you should not make the assumption that this is acceptable practice to use as a means of communication. Seek permission if possible, where a child is very young, there should be a discussion with the parent or carer about what physical contact is acceptable and/or necessary.

B6.5 It is recognised that some children who have experienced abuse may seek inappropriate physical contact. Drivers and Passenger Assistants should be particularly aware of this when it is known that a child young person or vulnerable adult has suffered previous abuse or neglect. In the child young person or vulnerable adults view, physical contact might be associated with such experiences and lead to some actions being misinterpreted. In all circumstances where a child young person or vulnerable adult initiates inappropriate physical contact, it is the responsibility of the driver or Passenger Assistant to sensitively deter the child and help them understand the importance of personal boundaries.

Such circumstances must always be reported and discussed with your Line Manager.

This means that drivers and Passenger Assistants should:

- B6.5.1 Be aware that even well intentioned physical contact may be misconstrued by the child, an observer or any anyone to whom this action is described.
- B6.5.2 Never touch a child young person or vulnerable adult in a way that may be considered indecent.
- B6.5.3 Always be prepared to report and explain actions and accept that all physical contact be open to scrutiny.
- B6.5.4 Not indulge in 'horseplay'.
- B6.5.5 Always encourage children, young people and vulnerable adults where possible to undertake safe-care tasks independently.
- B6.5.6 Work within Health and Safety Regulations.
- B6.5.7 Be aware of cultural and religious views about touching and always be sensitive to issues of gender.
- B6.5.8 Understand that physical contact in some circumstances can be easily misinterpreted.

B7 Safeguarding Reporting Procedure

What to do if you are concerned that a child or adult is being abused

If a child or adult is at immediate risk or needs medical attention, contact the Police or call an ambulance on 999.

Always address immediate risks first before referring to Wiltshire Council.

If there is not an immediate risk then report your concerns to your employer or Wiltshire Council during office hours 8.00am and 5.20pm:

CHILDREN:

If you, are concerned about a child, or a disclosure is made to you, you should report your concerns to the PTU on 01225 713580, or consult with / refer to children's social care based in the Multi-Agency Safeguarding Hub (MASH) during office hours on 0300 456 0108.

ADULTS:

If abuse of an adult is discovered / suspected or a disclosure is made to you, you should report your concerns to the PTU on 01225 713580, or consult / refer to the adult social care customer advisors on 0300 456 0111 Text phone: 01225 712501.

OUT OF OFFICE HOURS (After 5.20pm and before 8.00am weekdays and weekends and public holidays) - children and adults

Call the Emergency Duty Team on 0845 607 0888

Driver Conviction Policy

**GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS FOR NEW
AND CONTINUING DRIVER APPLICANTS**

1. **General Policy**

Each case will be decided on its own merits. Although an applicant may have convictions, which would fall under the guidelines of the policy, the Council will always consider the full facts of the case and any mitigating or other circumstances, before making a decision.

An applicant with previous conviction(s) need not be permanently banned from driving on Wiltshire Council contracts, but depending on the offences involved, they will be expected to have remained **free of conviction** for the periods indicated in these guidelines before an application is considered. The term **free of conviction** will be calculated to run from the date of conviction for each offence recorded. The Council will however retain the discretion to refuse a request to drive even after such a period has elapsed.

If the offence is isolated, there are mitigating circumstances and/or the period free of conviction has not been satisfied, some discretion may be appropriate, but the overriding consideration should be the safety and protection of the public.

In cases where applicants have been disqualified from driving, the period **free of conviction** will run from the date of the restoration of the driving licence or if required to take a driving test, from the date of passing the test.

Please see examples of how the term **free of conviction** is calculated by referring to paragraph 12 **“Applicants With Previous Convictions”**.

The following examples afford an illustration of the likely response of the Council where convictions or police cautions are revealed.

2. **Traffic Offences**

Minor Traffic Offences

(A list of offences to which this paragraph applies is attached as **Annex 1**)

If an applicant has received a conviction for a minor traffic offence, 6 months **free of conviction** should have elapsed before an application will be considered.

If an applicant has more than one conviction, in the last three years, 12 months **free of conviction** should have elapsed since the most recent conviction, before an application will be considered.

Major Traffic Offences

(A list of offences to which this paragraph applied is attached as **Annex 2**)

Drivers are responsible for the safety of members of the public who travel in their vehicles and a serious view will always be taken of a conviction for a major traffic offence.

If an applicant has a conviction for a major traffic offence, without disqualification, 12 months **free of conviction** should have elapsed before an application will be considered.

If an applicant has more than one conviction, in the last three years, 2 years **free of conviction** should have elapsed since the most recent conviction, before an application will be considered.

Hybrid Traffic Offences

(A list of offences to which this paragraph applies is attached as **Annex 3**)

Offences of this type will be treated as major traffic offences if the court awarded 4 or more penalty points for the offence and as a minor traffic offence if the court awarded 3 or less penalty points for the offence.

Disqualification

Where an applicant has been disqualified from driving for a major traffic offence, 3 years **free of conviction** should have elapsed before an application will be considered.

If an applicant has previously accrued sufficient penalty points to require a period of disqualification (totting up), a period of 12 months **free of conviction** should have elapsed before an application will be considered.

In 'totting up' cases where disqualification is considered by the court but because of 'exceptional circumstances' they decide not to disqualify a driver, 12 months from the date the court made its finding should have elapsed before an application will be considered.

3. **Drunkenness and Related Offences**

With a Motor Vehicle

A very serious view will be taken of convictions of driving or being in charge of a vehicle whilst under the influence of drink or drugs or failing to provide a specimen for analysis.

If an applicant has been disqualified from driving as a result of a conviction for this type of offence, then before an application is considered, 3 years free of conviction should have elapsed.

If an applicant has more than one conviction for this type of offence then serious doubts should be raised as to his/her suitability to drive a bus. Although each case will always be considered on its own merits, the council will always retain the discretion to refuse an application, with the overriding consideration being the safety of the public.

If there is any suggestion that an applicant is or was an alcoholic then grave doubts should arise as to their suitability to drive a bus. A special medical examination should be arranged and depending on the medical evidence and advice given, at least 6 years should have elapsed after any treatment has been completed before an application is considered. Although each case will be considered on its own merits, the Council will retain the discretion to refuse a request to drive on contracts for the council, with the overriding consideration being the safety and protection of the public.

Not in a Motor Vehicle

An isolated conviction for a drink related offence should not necessarily debar an applicant from obtaining driving on a council contract.

If an applicant has more than one conviction for this type of offence, at least 3 years free of conviction should have elapsed since the most recent conviction before an application is considered.

A number of convictions for offences of this type may indicate a medical problem and grave doubts should arise as to the suitability of the applicant to drive on council contracts. In these circumstances a special medical examination should be arranged and depending on the medical evidence and advice given, at least 6 years should have elapsed after any treatment has been completed before an application is considered. Although each case will be considered on its own merits, the Council will retain the discretion to refuse an application, with the overriding consideration being the safety and protection of the public.

4. Drugs

A serious view will always be taken of a conviction for any offence involving drugs. Drivers are responsible for the safety of members of the public who are traveling in their vehicles.

An applicant with a conviction for a drug related offence involving a Class A, B or C drug will be required to show a period free of conviction as follows:

1. Class A drug the period will be 5 years
2. Class B drug the period will be 4 years
3. Class C drug the period will be 3 years

If an applicant has more than one conviction for a drug related offence, then depending on the type of drug involved, the period free of conviction which should have elapsed since the most recent conviction will be either double or a combination (if the class of drug is different) from the periods shown above.

If there is any suggestion that an applicant is or was a drug addict then grave doubts should arise as to their suitability to drive on council contracts. A special medical examination should be arranged and depending on the medical evidence and advice given at least 6 years should have elapsed after any treatment has been completed before an application is considered. Although each case will be considered on its own merits, the Council will retain the discretion to refuse an application, with the overriding consideration being the safety and protection of the public.

5. Indecency/Sexual Offences

Drivers often carry unaccompanied passengers and a serious view will always be taken of a conviction for an indecency/sexual offence. When considering the seriousness of any indecency/sexual offence, the overriding consideration will always be the safety and protection of the public.

As such, an applicant with a conviction for any sexual offence will raise very grave doubts of his/her suitability to drive on council contracts and so will generally be refused.

6. Dishonesty

Drivers are expected to be trustworthy persons. The widespread practice of delivering unaccompanied property is indicative of the trust that business people put in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare or knowing that a property is empty, whilst the occupants are away on holiday after taking them to the railway station or airport etc. For these reasons a serious view will be taken of any convictions involving dishonesty.

An applicant with a conviction for an offence such as theft, bilking, handling stolen goods or deception, should be required to show a period of at least 3 years free of conviction before an application is considered. If an applicant has more than one conviction for this type of offence, then at least 5 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

An applicant with a conviction for a more serious offence such as Burglary, Fraud or Forgery should be required to show a period of at least 5 years free of conviction before an application is considered. If an applicant has more than one conviction for this type of offence, then at least 7 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

7. Criminal Damage

A minor offence of criminal damage should not necessarily debar an applicant from driving on council contracts.

If an applicant has more than one conviction for this type of offence, at least 3 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

Offences such as arson are considered much more serious and applicants will generally be refused.

8. Violence

As drivers maintain a close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding, assault or any other type of offence of a violent nature, with the overriding consideration being the safety and protection of the public.

An applicant with a conviction for a minor offence of assault such as common assault, battery, or obstruction should be required to show a period of at least 3 years free of conviction before an application is considered. If an applicant has more than one conviction for this type of offence, then at least 5 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

An applicant with a conviction for a more serious offence of assault such as ABH, Assault on Police, Affray, Resisting Arrest, Possessing an Offensive Weapon, Racially-aggravated criminal damage or Racially-aggravated offence, should be required to show a period of at least 5 years free of conviction before an application is considered. If an applicant has more than one conviction for this type of offence, then at least 7 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

An applicant with a conviction for the most serious offences of assault such as GBH, Malicious Wounding or Robbery, should be required to show a period of at least 8 years free of conviction before an application is considered. If an applicant has more than one conviction for this type of offence, then at least 10 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

An applicant with a conviction for an offence of Murder, Manslaughter or Manslaughter or Culpable Homicide While Driving, should raise grave doubts as to the applicants suitability to drive on council contracts. The Council will normally refuse an application, the overriding consideration being the safety of the public.

9. Police Cautions

A Police Caution is considered and administered when a person comes to the notice of the Police for the first time. A formal caution is only offered if there is sufficient evidence to lead to a prosecution and the offender admits his/her guilt. A formal Police Caution will be viewed as a conviction. The period free of conviction will be the same as for a conviction and will run from the date the caution was administered.

10. Other Offences

Where a Binding Order, Community Service Order or a Restraining Order have been imposed by the Court, then no application should be considered, whilst that order is still current. A period of at least 2 years should have elapsed, after the expiry of the order, before an application is considered and even then the overall consideration will be the protection of the public.

11. Pending Offences

An applicant is required to disclose details of any charges pending against him. If there is a pending charge, the application will not be considered until the result of the case is known. The application will then be considered in line with the guidelines relating to the relevance of convictions.

12. **Applicants with Previous Convictions**

The following are illustrations of how the term 'free **of conviction** 'will be calculated:-

(1)	<u>Offence</u>	<u>Court Date</u>	<u>Date Free of Conviction</u>	
	Theft	25.7.02.	1 st Offence	25.7.05
			2 nd Offence	25.7.07
(2)	<u>Offence</u>	<u>Court Date</u>	<u>Date Free of Conviction</u>	
	ABH	9.7.98.	1 st Offence	9.7.03
			2 nd Offence	9.7.05
(3)	<u>Offence</u>	<u>Court Date</u>	<u>Date Free of Conviction</u>	
	Driving a Motor	12.11.99.	1 st Offence	12.11.03
	Excess Alcohol	Disqualified 12 months	2 nd Offence	12.11.05

Annex 1

MINOR TRAFFIC OFFENCES

MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street Offences
MS40	Driving with uncorrected defective eyesight or refusing to submit to a test
MS70	Driving with uncorrected defective eyesight
MS80	Refusing to submit to an eyesight test
MS90	Failure to give information as to identity of driver etc

MW10	Contravention of Special Road Regulations (excluding speed limits) PC10 Undefined contravention of Pedestrian Crossing Regulations
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PC20	Contravention of Pedestrian Crossing Regulations with moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with stationary vehicle

TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with a 'Stop' sign
TS40	Failing to comply with direction of a constable or traffic warden
TS50	Failing to comply with traffic sign (excluding 'Stop' sign, traffic lights or double white lines)
TS60	Failing to comply with school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

Aiding, abetting, counseling or procuring Offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)

Causing or permitting Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)

Inciting Offences as coded above, but with 0 changed to 6 (e.g. PC10 becomes PC16)

Annex 2

MAJOR TRAFFIC OFFENCES

AC10	Failing to stop after an accident
AC20	Failing to give particulars or to report an accident within 24 hours
AC30	Undefined accident offences
BA10	Driving while disqualified by order of court
BA20	Attempting to drive while disqualified by order of court
CD10	Driving without due care and attention
CD20	Driving without reasonable consideration for other road users
CD30	Driving without due care and attention or without reasonable consideration for other road users
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death by careless driving when unfit through drugs
CD60	Causing death by careless driving with alcohol level above the limit
CD70	Causing death by careless driving then failing to supply a specimen for analysis
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
DR10	Driving or attempting to drive with alcohol level above limit
DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR40	In charge of a vehicle while alcohol level above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive
DR70	Failing to provide specimen for breath test
DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle when unfit through drugs
IN10	Using a vehicle uninsured against third party risks
LC20	Driving otherwise than in accordance with a licence
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle having failed to notify a disability
LC50	Driving after a licence has been revoked or refused on medical grounds
MS50	Motor racing on the highway
MS60	Offences not covered by other codes
UT50	Aggravated taking of a vehicle

Aiding, abetting, counseling or procuring Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)

Causing or permitting Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)

Inciting Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16)

HYBRID TRAFFIC OFFENCES

CU10	Using vehicle with defective brakes
CU20	Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
CU30	Using a vehicle with defective tyre(s)
CU40	Using a vehicle with defective steering
CU50	Causing or likely to cause danger by reason of load or passengers
SP10	Exceeding goods vehicle speed limit
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30	Exceeding statutory speed limit on a public road
SP40	Exceeding passenger vehicle speed limit
SP50	Exceeding speed limit on a motorway
SP60	Undefined speed limit offence

Aiding, abetting, counseling or procuring Offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12)

Causing or permitting Offences as coded above, but with 0 changed to 4 (e.g. CU10 becomes CU14)

Inciting Offences as coded above, but with 0 changed to 6 (e.g. CU10

Example invoice for a REGULAR Contract

Example Transport Ltd
Unit XYZ
The Industrial Estate
Trowbridge Wiltshire
BA00 XXX

INVOICE / CREDIT

VAT Number: 000000

DATE: 30/04/10

INVOICE NO. 123

CONTRACT NO. 1234

Invoice to:-
Wiltshire Council
Shared Services/Finance
Transport Contract Invoices
PO Box 3485
Trowbridge
Wiltshire BA14 4DS

Susy Smith - 12 White Road, Salisbury to Whiteways School, Swindon

21 days @ £10.00

	£210.00
VAT @17.5%	£ 36.75
Invoice amount	£246.75

Example invoice for NON REGULAR bookings

Example Transport Ltd
Unit XYZ
The Industrial Estate
Trowbridge Wiltshire
BA00 XXX

INVOICE / CREDIT

VAT Number: 000000

DATE: 30/04/10

INVOICE NO. 123

CONTRACT NO. 30519

Invoice to:-
Wiltshire Council
Shared Services/Finance
Transport Contract Invoices
PO Box 3485
Trowbridge
Wiltshire BA14 4DS

Job No	Date	Time	Client	Journey details	Cost
59999	1/9/05	8.30	Suzy Smith	12 White Road, Salisbury to Whiteways School, Swindon	15.00
66666	5/9/05	8.30	John Jones	14 The Laverton, Swindon to 34 Winters Lane, Exeter	130.00
99999	8/9/05	8.30	Suzy Smith	12 White Road, Salisbury to Whiteways School, Swindon	15.00
22222	12/9/05	8.30	Suzy Smith	12 White Road, Salisbury to Whiteways School, Swindon	<u>15.00</u>
					175.00
					VAT @17.5%
					30.63
					Invoice amount
					£205.63

Performance Management

Wiltshire Council is seeking to adopt a performance management culture, to enable a robust, efficient and transparent governance mechanism

The table below sets out a number of acts and omissions; 'Performance Management Indicator' events, that serve as indicators of poor performance. Should any of these events take place as part of the provision of the Services it will serve as indication that, at the very least, the Operator is not performing the Services to the agreed contractual standards. This is an indicative list; other actions or omissions on behalf of the Operator may also be deemed poor performance, this list has been compiled to assist the Operator in identifying poor performance where it may arise.

The Council expects the Operator to make every effort to avoid poor performance. The inclusion of an event on this list does not preclude the Council from deeming such an event, should it occur, from being a Default, Serious Default or Material breach of the Contract.

The Council may choose to exercise any of its contractual rights in respect of the events on the list which include (but are not limited to) the rights prescribed at:

- Clause 12 (Performance Management)
- Clause 23 (Default and Suspension)
- Clause 24 (Termination)

The Operator should be aware that clause 12 (Performance Management) will take effect to operate across all Wiltshire Council Public Transport and School Bus Contracts in respect of which the Operator is a party.

	<u>Performance Management Table</u>
	Performance Management Indicator:
	Failure to allow the Authorised Officer and or their representative access to the vehicle.
	Failure to provide a specified vehicle for inspection at a time and place agreed in advance with the Council.
	Failure to provide a suitably trained driver in the use of special seating and WTORS:
	Failure to provide a vehicle meeting the specification contained in the conditions of contract or tender specification without reasonable explanation.
	The operator cannot use, at any time, a driver or Passenger Assistant who is not authorised
	Driver or other member of staff observed smoking on board the vehicle.
	Failure to operate a journey without reasonable explanation.
	Refuelling whilst on a contracted journey.
	Driver using hand held mobile phone while driving.
	Carriage of unauthorised passengers.
	Omission of part of route or operation via incorrect route without reasonable explanation.
	Failure to report an accident or incident on the vehicle:
	Failure to attend any meetings as requested by the council without reasonable explanation.
	Failing to Display Correct Destination / Route Number at front of vehicle
	Failure to inspect student passes or report students without a pass or unable to pay a fare
	Failure to send drivers and or Passenger Assistants on training requested by the council
	Failure to notify the Council of a cancellation or serious delay to any part of the service covered by the Contract within 30 minutes of the incident occurring:
	Failure to follow the instructions of an authorised officer in regards to the route or allocated passengers or any other reasonable requests.
	Failure to carry a ticket machine or ticket book or faretable on a journey which fares can be collected.
	Failure to issue a fare paying passenger with a ticket showing correct fare issued or date issued.
	Failure to wait for arrival of connecting vehicle (including trains)
	Failure to display approved school signs at the front and rear of a vehicle when operating journeys which are subject to Education journey Requirements, Appendix A.
	No means of communication with the driver and / or Passenger Assistant.
	Operator's staff not complying with the law in respect of the Data Protection Act 1998
	Incorrect WTOR's being used on contract.
	Failure to provide written response to the Authorised Officer about complaints from members of the public or a School within 14 days
	Failure to provide documentation or statistical information to the Council, within the required timescale.
	Departure from any timing point more than 2 minutes early or 10 minutes late without reasonable explanation.

Appendix G: Days of Operation

All services must be operated on the days shown in the Tender specification. On public holidays and during the Christmas and New Year period, services shall be operated as detailed below unless stated otherwise in the Route Specification:-

Good Friday - Sunday service

Easter Monday - Sunday service

May Day - Sunday service

Spring Bank Holiday - Sunday service

Late Summer Bank Holiday - Sunday service

Christmas Eve - Normal service (no early finish)

Christmas Day - No service

Boxing Day - (26th December) - No service

27th - 30th December Normal service (except as detailed below)

New Year's Eve - Normal service (no early finish)

New Year's Day - No service

In the event that either 27 or 28 December or the 2 January are declared to be a public holiday (as a result of Christmas Day, Boxing Day or New Years Day falling on a Saturday or Sunday), a Sunday service shall be operated. However in the event that the Council considers that this level of service will be insufficient to meet the requirements of passengers on these days, the Operator will co-operate with the Council by operating additional journeys or an alternative timetable.

NOTE: Where the above patterns of service differ from those being operated on commercially provided services in the areas served by the contracted service, consideration will be given to amending these arrangements after the contract has been awarded, but only where to do otherwise could result in confusion or inconvenience to passengers. In the event that this results in a reduced level of service being operated, a pro-rata reduction will be made to the contract price.

Where a service is required to operate on certain days of the week only and the arrangements detailed above would adversely affect passengers normally using the service, the Council may require the service to operate on a different day of the week, to that shown in the Route Specification timetable.

Safeguarding Reporting Procedure

What to do if you are concerned that a child or adult is being abused

If a child or adult with care needs is at immediate risk or needs medical attention, contact the police or call an ambulance on 999;

Always address immediate risks first before referring to Wiltshire Council

To report your concerns to your employer or Wiltshire Council

During office hours 8:30- 17:00:

CHILDREN:

If you are concerned about a **child** or a disclosure is made to you

- If you are a contracted taxi, bus or volunteer driver for the Passenger Transport Unit you should report your concerns to the PTU on **01225 713580**
- Or consult with/refer to children's social care based in the Multi-Agency Safeguarding Hub (MASH) during office hours – **0300 456 0108**
- Also inform your manager without delay

ADULTS:

If abuse of an **adult** is discovered/suspected or a disclosure is made to you

Call the Wiltshire Council adult social care customer advisors

Tel: **0300 456 0111** Text phone: 01225 712501

OUT OF OFFICE HOURS - children and adults

(Including weekends and bank holidays)

Call the Emergency Duty Team **0845 607 0888**