**Dated**

**WEST BERKSHIRE DISTRICT COUNCIL**

**- and -**

**AGREEMENT**

**relating to**

**THE PROVISION**

**of**

**HOME TO SCHOOL TRANSPORT**

**Reference**

Legal Services

West Berkshire District Council

Council Offices Market Street Berkshire RG14 5LD

SAS/

**THIS AGREEMENT is made on the [ ] day of [ ] 2018**

**BETWEEN:**

**(1) WEST BERKSHIRE DISTRICT COUNCIL** of Council Offices, Market Street, Newbury, Berkshire, RG14 5LD **(“the Council”);** and

**(2)** ofof the other part **(“the Service Provider”)**

**WHEREAS:**

(a) On \*\*\*\*\*\*\*\* the Council placed an Invitation to Quote ref \*\*\*\*\*\* on its Procurement Portal seeking a quote for the delivery of Home to School Transport

(b) The Service Provider submitted a tender on \*\*\*\*\*\*\*;

(c) On the basis of the Service Provider’s tender the Council selected the Service Provider to enter into an Agreement;

(d) The Service Provider has agreed to enter into this Agreement with the Council for the provision of services;

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

1. The Service Provider shall complete the services in accordance with the attached Conditions.**CONTRACT PARTICULARS**

|  |  |  |
| --- | --- | --- |
| *Clause etc* | *Subject*  |  |
| 1.1.5 | Commencement Date  |  |
| 1.1.10 | Contract Period  |  |
| 1.1.15 | Extension Period  |  |
| 1.1.16 | Expiry Date  |  |
| 1.1.28 | Termination Date  |  |
| 7 | Authorised Officer  | Name: Address: West Berkshire District Council, Transport Services Team, Council Offices, Market Street, Newbury RG14 5LD Telephone: 01635 Fax: Email:  |
| 8 | Contract Manager | Name: Address: Telephone: Fax:Email:  |
| 17.3 (i) | Employers Liability Insurance  | £10 million  |
| 17.3 (ii) | Public Liability Insurance  | £5 million  |
| 17.3 (iii) | Motor Vehicle Insurance | £5 million |
| Schedule 1 | Contract Price |  |

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

[for contracts above £50k]

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

|  |  |
| --- | --- |
| Executed as a deed by the Service Provider acting by 2 Directors or a Director and Company Secretary:Director:Director/Company Secretary: |  |
|  |
| Executed as a deed by the Service Provider acting by a single Director:Director:Witness’ signature:Witness’ name:Witness’ address: |  |

[for contracts below £50k]

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

|  |  |
| --- | --- |
| Signed by or on behalf of the Council:In the presence of Witness’ signature:Witness’ name:Witness’ address:  |   |
|   |
| Signed by or on behalf of the Service Provider:In the presence of Witness’ signature:Witness’ name:Witness’ address:  |   |

**WEST BERKSHIRE DISTRICT COUNCIL’S HOME TO SCHOOL TRANSPORT STANDARD CONDITIONS OF CONTRACT**

**CONTENTS**

[1 Definitions and Interpretation 7](#_Toc459371538)

[2 Start and Duration of this Agreement 9](#_Toc459371539)

[3 Service Provider’s Status 10](#_Toc459371540)

[4 Council’s Obligations 10](#_Toc459371541)

[5 Notices 10](#_Toc459371542)

[6 Conflicts of Interest 11](#_Toc459371543)

[7 Authorised Officer 11](#_Toc459371544)

[8 Contract Manager 11](#_Toc459371545)

[9 Service Standard 11](#_Toc459371546)

[10 Sufficiency of Information 12](#_Toc459371547)

[11 Service Provider’s Staff & Disclosure Barring Service Disclosures 13](#_Toc459371548)

[12 Statutory Requirements 14](#_Toc459371549)

[13 Contract Price 15](#_Toc459371550)

[14 Not Used 15](#_Toc459371551)

[15 Payment and VAT 15](#_Toc459371552)

[16 Recovery of Sums Due 15](#_Toc459371553)

[17 Insurance 16](#_Toc459371554)

[18 Vehicles and Equipment 16](#_Toc459371555)

[19 Liabilities and Indemnities 17](#_Toc459371556)

[20 Equalities 17](#_Toc459371557)

[21 The Contracts (Rights of Third Parties) Act 1999 18](#_Toc459371558)

[22 Bribery and Corruption 18](#_Toc459371559)

[23 Data Protection Act 19](#_Toc459371560)

[24 Confidentiality 19](#_Toc459371561)

[25 Freedom of Information 19](#_Toc459371562)

[26 Audit 20](#_Toc459371563)

[27 Waiver 21](#_Toc459371564)

[28 Defaults 22](#_Toc459371565)

[29 Termination 22](#_Toc459371566)

[30 Break 23](#_Toc459371567)

[31 Force Majeure and Non-Performance 23](#_Toc459371568)

[32 Dispute Resolution 24](#_Toc459371569)

[33 Variations 24](#_Toc459371570)

[34 Assignment, Subletting and Emergency Cover 25](#_Toc459371571)

[35 Monitoring of the Services 25](#_Toc459371572)

[36 Health and Safety 26](#_Toc459371573)

[37 TUPE 26](#_Toc459371574)

[38 Governing Law and Jurisdiction 27](#_Toc459371575)

[39 General 27](#_Toc459371576)

[**SCHEDULE 1 – Contract Price** 28](#_Toc459371577)

[**SCHEDULE 2 - Default List** 29](#_Toc459371578)

**SCHEDULE 3 – Code of Practice**

**SCHEDULE 4 – Applicant Consent Form**

# Definitions and Interpretation

## In this Agreement, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

### “Agreement” or “Conditions” means this written agreement between the Council and the Service Provider consisting of these Clauses and any attached Schedules, the Invitation to Tender and the Tender (whether accepted in whole or in part and including any tender conditions imposed by the Council).

### “Approval” means the written consent of the Council.

### “Authorised Officer” means the person stated in the Contract Particulars or any other representative authorised to act on their behalf.

### “Code of Practice” means the Schedule (Schedule 3) which comprises the required performance level of Service Provider’s staff carrying out the performance of the Service.

### “Commencement Date” means the date stated in the Contract Particulars.

### “Consents” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory or otherwise) necessary for the provision of the Services.

### “Consent Form” means the form at Schedule 4.

### “Contract” means the Agreement.

### “Contract Manager” means the person appointed by the Service Provider to manage the delivery of the Services.

### “Contract Particulars” means the particulars in the Agreement and there described as such, including entries made by the Parties.

### “Contract Period” means the period starting on the Commencement Date and continuing until the date stated in the Contract Particulars unless the Agreement shall be terminated as provided in these Clauses.

### “Contract Price” means the price (exclusive of any applicable VAT), payable to the Service Provider by the Council under the Agreement, as set out at Schedule 1, for the full and proper performance by the Service Provider of its obligations under the Agreement.

### “Default” means any failure, on the part of either Party to carry out their respective obligations under this Agreement or any such items as set out at Schedule 2.

### “Default Notice” means a notice from the Council to the Service Provider as more particularly described in clause 28.

### “EIR” means the Environmental Information Regulations 2004.

### “Extension Period” means the period stated in the Contract Particulars as agreed between the Parties.

### “Expiry Date” means the date stated in the Contract Particulars.

### “FOIA” means the Freedom of Information Act 2000.

### “Invitation to Tender” means an invitation for the Service Provider to bid for the Services required by the Council.

### “Legislation” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Service Provider is bound to comply.

### “Party/Parties” means the Council or the Service Provider or both the Council and the Service Provider.

### “Pricing Schedule” means the Schedule containing details of the Contract Price(s).

### “Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule.

### “Schedules” means those documents accompanying the Agreement which provide additional information and instructions in relation to the performance of the Services.

### “Services” means the services to be provided by the Service Provider in accordance with the Specification annexed or included in the Invitation to Tender and any subsequent variation to the Services as agreed between the Parties.

### “Specification” means the requirement of the Council for the provision of the Services as set out in the Invitation to Tender.

### “Staff” means any person employed by the Service Provider to provide any part of the Services.

### “Tender” means the Service Provider’s response to the Invitation to Tender (and any subsequent clarifications) and written offer to perform the Services.

### “Termination Date” means the date stated in the Contract Particulars.

###  “Variation Notice” means a notice served in accordance with Clause 33.

### “Variation” means a variation to this Agreement or to the Services, made in accordance with Clause 33.

### “VAT” means Value Added Tax.

## The interpretation and construction of this Agreement shall be subject to the following provisions:

### words importing the singular meaning include where the context so admits the plural meaning and vice versa;

### words importing the masculine include the feminine and the neuter;

### reference to a Clause is a reference to the whole of that Clause unless stated otherwise;

### reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

### reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

### the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

### headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

# Start and Duration of this Agreement

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

## The Council may offer an Extension Period and shall serve written notice on the Service Provider no later than one [1] month before the Expiry Date of any intention to extend the term under this Clause 2.

## The Service Provider shall within 14 days of receiving the Council’s offer of an Extension Period serve written notice on the Council indicating whether they wish to continue to discharge the Services under this Agreement.

## If the Service Provider does not accept the Council’s offer pursuant to Clause 2.2 this Agreement will terminate on the Expiry Date.

## If the Service Provider does accept the Council’s offer pursuant to Clause 2.2 this Agreement shall continue on these terms or on such terms as agreed in accordance with the Variations Clause of this Agreement.

# Service Provider’s Status

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

# Council’s Obligations

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

# Notices

## Any notice or other communication under this Agreement must be in writing and can only be sent by:

1. Pre paid post; or
2. Recorded delivery post; or
3. Personal delivery; or
4. E-enabled technology, as agreed in writing in advance by the Council.

## For the purposes of sending notices the Council’s contact details are set out in the Contract Particulars. All notices and communications must be sent to the Authorised Officer.

## For the purposes of sending notices the Service Provider’s contact details are set out in the Contract Particulars. All notice and communications must be sent to the Contract Manager.

## If either party’s contact details change, it must notify the other party in accordance with this Clause 5.

## Subject to Clauses 5.2 and 5.3 (above), all notices and communications shall be deemed to have been served:

* 1. if posted first class, three [3] Working Days after the date when posted; or
	2. if posted second class, six [6] Working Days after the date when posted; or
	3. if personally delivered or emailed or via e-enabled technology, on the date of delivery.

## Notwithstanding Clause 5.5 (above), if by applying its provisions a notice is deemed to have been served on a day which is not a working day or it is not received between the hours of 9am to 5pm on a working day then it shall be deemed to have been served on the next immediately following working day.

## For the avoidance of doubt, everyday operational communication between the Authorised Officer and the Service Provider may be sent by email.

# Conflicts of Interest

## The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Council under the provisions of the Agreement. The Service Provider will disclose to the Council full particulars of any such conflict of interest which may arise.

## The Council reserves the right to terminate the Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Council under the provisions of the Agreement. The actions of the Council pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

# Authorised Officer

## The Council shall appoint the Authorised Officer as a principal contact in respect of its rights and powers under this Agreement. This will not limit in any way any other of the Council’s rights or obligations.

## Details of the person the Council has appointed to act as Authorised Officer from the Commencement Date (his telephone number, fax number, e-mail address and postal address) are set out in the Contract Particulars.

## All notifications of changes under this Clause will be made in accordance with Clause 5 (Notices).

# Contract Manager

## The Service Provider shall appoint the Contract Manager to be a principal contact in respect of the Service Provider’s rights and powers under this Agreement.

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

## All notifications of changes under this Clause should be made in accordance with Clause 5.

# Service Standard

## For the duration of the Agreement, the Service Provider will comply with all the requirements for the provision of the Services as set out in the Agreement.

## In providing the Services the Service Provider will:

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

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

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

### obtain, maintain and comply with all Consents;

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

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

### assist the Council in the investigation of complaints, monitoring of this Agreement, disciplinary matters and claims where it is alleged that pupils have damaged Service Provider’s vehicle and similar matters.

## The Service Provider’s failure to comply with this Clause can be regarded as a fundamental breach of this Agreement.

# Sufficiency of Information

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

## The Council will, at its own expense, provide the Service Provider with such information as is available to it and reasonably required by the Service Provider in order to discharge its obligations under the Agreement.

## The Service Provider will be deemed to have examined the Agreement and to have satisfied itself as to the correctness and sufficiency of its Tender to cover all its obligations under the Agreement.

# Service Provider’s Staff & Disclosure Barring Service Disclosures

## The Service Provider shall procure that in respect of its Staff or all potential Staff before a member of Staff begins to perform any of the Services:

### each member of Staff is questioned as to whether he or she has any convictions; and

### the results are obtained of a disclosure of the most extensive available kind made with the Disclosure Barring Service in accordance with Part V of the Police Act 1997 in respect of each member of Staff.

### the disclosures referred to in clause 11.1.2 must be renewed at such intervals as directed by the Council for each member of permanent Staff and agency Staff. It is the Council’s intention not to renew such disclosures on a more frequent than three [3] year basis (or agency Staff one [1] year basis). Any request for renewal will be made by the Council in writing.

## The Service Provider shall obtain written consent of the Staff referred to in 11.1 to enable the Service Provider to pass the disclosures to the Council together with the Consent Form.

## The Service Provider shall procure that no person who discloses any convictions, or who is found to have any convictions following the results of a Disclosure Barring Service disclosure, is engaged by the Service Provider or on the Service Provider’s behalf without Approval where that conviction is incompatible with the type of work being undertaken by the member of Staff in providing the Services.

## The Service Provider shall procure that the Council is kept advised at all times of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Service Provider.

## The Service Provider is responsible for procuring disclosures under clause 11.1 and shall pay all costs associated with obtaining such disclosures directly.

## The Service Provider will be responsible for carrying out a Risk Assessment for positive disclosures. This should be in the format of a Disclosure Barring Service (“DBS”) Positive Disclosure Risk Assessment. A template of the same can be made available on request to the Service Provider by the Council.

## The Service Provider shall share the details of such risk assessment with the Council.

## The Council and the Service Provider shall comply at all times with the DBS Code of Practice, and the Council’s own DBS Policy. Copies of these documents will be provided to the Service Provider on request, and may also be viewed on the Council’s website.

## When requested by the Council on reasonable grounds, the Service Provider will cease to use any member of Staff specified by the Council for the provision of the Services.

## The Service Provider shall ensure that every person engaged in the provision of the Services is at all times properly and sufficiently trained and instructed with regard to:

### the task or tasks that that person has to perform and the Service Specification; and

### health and safety at work; and

### fire risks and fire precautions; and

### the need to observe the highest standards of courtesy and consideration; and

### the provisions within the Code of Practice (Schedule 3); and

### the need to report to the Council any situations which involve an injury or potential danger to any person during the provision of the contracted services; and

### the need to take all reasonable steps to ensure the safety of passengers when boarding or alighting from the vehicle and during transit.

## The Service Provider shall ensure that every person engaged in the provision of the Services has attended, actively engaged with and successfully completed all appropriate training co-ordinated through the Council as required in the Specification and within the timescales given. Staff will also need to complete refresher training where specified.

## All drivers and passenger assistants shall be of neat and tidy appearance and with the exception of on public transport services, have identity badges approved by the Council, and shall wear these at all times whilst undertaking the Agreement.

# Statutory Requirements

## The Service Provider shall ensure that all Staff and vehicles are licensed and insured in accordance with all the Legislation in respect of the Services to be undertaken and make available to the Council relevant documentation.

## Vehicles and drivers shall be licensed in accordance with PSV, Section 19, District Council Hackney Carriage or Private Hire Vehicle regulations. In circumstances where Services could be undertaken legally outside the licensing regulations, such licences will nevertheless be required for this Agreement. For the avoidance of doubt ‘School only’ taxi plates will not be acceptable for the purposes of this Agreement.

## The Service Provider shall ensure all vehicles are maintained in a clean, safe and roadworthy condition, conforming with all statutory requirements and legislation in respect of the Services to be undertaken.

## Failure by the Service Provider to comply with its obligations under this Clause may be regarded as a fundamental breach of this Agreement.

## The Service Provider shall comply with any local bye-laws relating to such Services.

## The Service Provider shall immediately inform the Council of any summons on the Service Provider, or the Staff thereof, to appear in a Magistrates Court or before the Traffic Commissioners.

# Contract Price

## In consideration of the Service Provider’s performance of its obligations under the Agreement, the Council shall pay the Contract Price in accordance with Clause 15 (Payment and VAT).

## The Council shall, in addition to the Contract Price and following receipt of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Agreement.

# Not Used

# Payment and VAT

## The Council shall pay all sums due to the Service Provider within 30 days on receipt of a correct invoice in accordance with clause 15.4, submitted monthly in arrears, and upon the confirmation by the Authorised Officer that the Service(s) have been provided to the Council’s satisfaction.

## No payment shall be made by the Council when the school/establishment detailed in the Specification is closed, except as referred to in Schedule 1.

## No payment shall be made by the Council when no Service is required and the Service Provider has been notified in advance.

## The Service Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice, including the Invoice Verification Form signed by the school or college. A template Invoice Verification Form can be made available to the Service Provider by the Council on request.

## The Service Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Council at any time in respect of the Service Provider’s failure to account for or to pay any VAT relating to payments made to the Service Provider under the Agreement. Any amounts due under this Clause shall be paid by the Service Provider to the Council not less than 5 working days before the date upon which the tax or other liability is payable by the Council.

# Recovery of Sums Due

## If the Service Provider owes the Council money under this Agreement, then the Council may set off any such sum against any money it subsequently owes to the Service Provider under this Agreement.

# Insurance

## For as long as this Agreement is in force the Service Provider must take out and maintain as a minimum the insurances set out in Clause 17.3 (below). The Service Provider must also ensure that any of its sub-contractors who are providing any or all of the Services on its behalf take out and maintain equivalent insurances, as a minimum.

## All insurances must be taken out and maintained with a reputable insurance company.

## The insurances referred to in Clause 17.1 are as follows:

* + 1. employers liability insurance with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars for each and every claim, act or occurrence or series of claims, acts or occurrences which complies with statutory requirements;
		2. public liability insurance with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars for each and every claim, act or occurrence or series of claims, acts or occurrences; and
		3. motor vehicle insurance which, at a minimum, protects the Service Provider against third party claims (including claims by passengers being carried) which arise from or are caused by the execution of this Agreement.

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

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

# Vehicles and Equipment

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

## The Service Provider shall provide in the vehicle a mobile telephone (or equivalent means of communication) to permit effective means of communication with the driver in the event of a breakdown, accident or other emergency.

## Passengers are not to be conveyed in any sideways facing seat except on Public Transport Services. Wheelchair passengers are not to be conveyed sideways in any circumstances.

## Standing passengers should not be permitted on any Service with the exception of Public Transport Services.

## The Council may require the Service Provider, at his own expense, to submit the vehicle for inspection by the Council. The Council will also from time to time carry out brief random checks on vehicles.

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

## Where the Service Specification indicates the carriage of clients in their wheelchairs or in special seats, the Service Provider will be required to comply with the relevant Code of Practice and legislation.

## The Service Provider will be required to comply with national regulations on the fitting of seat belts on all vehicles. For vehicles with 9 or more seats, the Service Provider will ensure all seat belt installations shall have undergone an installation inspection and the vehicle shall hold an appropriate current PSV Test Certificate specifying the number of inspected seat belted passenger seats. All seat belts and anchorage points must meet EC defined standards.

## The Service Provider shall be responsible for the security of all equipment belonging to the Council and used by the Service Provider in the provision of the Services, and for the return of such equipment at the end of the Contract Period. In the event of loss or damage a replacement charge will be made.

# Liabilities and Indemnities

## Subject to Clause 19.2 (below) the Service Provider shall indemnify the Council against all losses, damages, costs, expenses (including valeting), liabilities, claims or proceedings, in respect of claims by third parties made against the Council whether these arise under statute or common law, (together referred to as ‘the Council’s losses’) which the Council suffer as a result of any negligence, default or breach of statutory duty on the Service Provider’s part in carrying out its obligations under this Agreement or on the part of any person it employs or engages to carry out its obligations under this Agreement.

## The Service Provider will not be liable to indemnify the Council as set out in Clause 19.1 (above) to the extent that the Council’s losses are due to any negligence, default or breach of statutory duty on the Council’s part.

# Equalities

## The Service Provider as an employer and provider of the Services shall take all reasonable steps to ensure elimination of all forms of discrimination in relation to gender, gender identity, religion, belief, race, disability, age and sexual orientation and protected characteristics in both its employment practice and in its delivery of the Services in accordance with an established equal opportunities policy, which policy shall include effective monitoring.

## In complying with its obligations under clause 20.1, the Service Provider shall have due regard to the Council’s Equality Scheme, a copy of which can be made available on request, and the Service Provider shall ensure compliance with its obligation under:

### The Equality Act 2010;

### The Equality and Human Rights Commission’s Guidance for Employers

and all amendments, re-enactments, or any subsidiary legislation , enactments, regulations, codes of practice or guidance issued or in force during the Contract Period.

## The Service Provider shall take all reasonable steps to secure the observance of clause 20 by servants, employees or agents of the Service Provider and all suppliers and sub-contractors employed in the execution of the Agreement.

# The Contracts (Rights of Third Parties) Act 1999

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

# Bribery and Corruption

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

* + 1. have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done, or refrained from doing any action in relation to the obtaining for execution of this Agreement or any other agreement with the Council; or
		2. for showing, or forbearing to show, favour or disfavour to any person in relation to this Agreement or any other agreement with the Council or if any like acts shall have been done by any person employed by the Service Provider, or acting on the Service Provider’s behalf (whether with or without the knowledge of the Service Provider); or
		3. if in relation to any agreement with the Council, the Service Provider, or any person employed by the Service Provider or acting on the Service Provider’s behalf shall have committed any offence under the Bribery Act 2010, or any amendment of them; or
		4. shall have given any fee or reward the receipt of which is an offence under the Bribery Act 2010, or any amendment of them.

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

## Any dispute relating to:

i) the interpretation of clause 22; or

ii) the amount or value of any gift, consideration or commission,

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

# Data Protection Act

## The Service Provider shall (and shall procure that any of its Staff involved in the provision of the Agreement) comply with any notification requirements under the Data Protection Act 1998 (“DPA”) and both Parties will duly observe all their obligations under the DPA which arise in connection with the Agreement.

## Notwithstanding the general obligation in Clause 23.1, where the Service Provider is processing personal data (as defined by the DPA) as a data processor for the Council (as defined by the DPA) the Service Provider shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

### provide the Council with such information as the Council may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the DPA;

### promptly notify the Council of any breach of the security measures required to be put in place pursuant to Clause 23.2; and

### ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council’s obligations under the DPA

## The provisions of this Clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

# Confidentiality

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

# Freedom of Information

## Notwithstanding the provisions of this Clause 25, the Service Provider understands that the Council is a public authority to which the FOIA and the EIR applies and shall co-operate with and provide assistance to the Council at its own cost in enabling the Council to comply with the FOIA and the EIR relating to disclosure of information arising from the performance of the Service.

## All requests to the Service Provider for information in relation to the FOIA and the EIR must be passed without delay, with the Service Provider’s opinion on disclosure in accordance with the provisions of the FOIA and the EIR to the Council for a decision to be made as to whether disclosure of such information should be made.

## The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information:

### is exempt from disclosure in accordance with the provisions of the FOIA and the EIR;

### is to be disclosed in response to a request for information.

## The Service Provider shall and shall procure that its sub-contractors shall:

### transfer the request for information to the Council as soon as practicable after receipt and in any event within three working days of receiving a request for information;

### provide the Council with a copy of all information in its possession or power in the form that the Council requires within seven working days (or such other period as the Council may specify) of the Council requesting that information; and

### provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a request for information within the time for compliance set out in section 10 of the FOIA and the EIR;

### in no event respond directly to a request for information unless expressly authorised to do so by the Council.

## The Service Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with this clause.

## Both the FOIA and the EIR imposes time scales for compliance by the Council. The Service Provider will ensure that the information requested is supplied to the Council within sufficient time for the Council to comply with the timescales set out in the FOIA and the EIR.

# Audit

## The Service Provider shall keep and maintain until seven [7] years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Service Provider shall on request afford the Council or the Council’s representatives such access to those records as may be requested by the Council in connection with the Agreement.

# Waiver

## If either Party fails to exercise or delays in exercising any right or remedy to which it is entitled under this Agreement or at law then this shall not constitute a waiver of any such right or remedy.

## If either Party waives a Default on the part of the other then this shall not constitute a waiver of any future Default.

## No waiver shall be effective unless it is:

1. expressly stated to be a waiver;
2. in writing; and
3. signed by the Authorised Officer or Contract Manager as appropriate.

# Defaults

## If the Service Provider commits a Default then the Council will be entitled to serve on the Service Provider a Default Notice. This will be without prejudice to any other right or remedy which may be available to the Council, either under this Agreement or at law.

## If the Council serves on the Service Provider a Default Notice which relates to a Default which can be corrected then on receiving such a Default Notice, the Service Provider will take the action specified in the Notice to correct matters, within the timescale set out, at its own cost.

## If there is any disagreement between the Parties as to whether a Default has occurred and/or about the action required to be taken and/or the timescale within which the action is to be taken, then either of the Parties can refer the matter for resolution, in accordance with Clause 32 (Dispute Resolution).

## If the Service Provider commits a serious Default or fails to correct a Default within the timescale set out in the Default Notice, then the Council will be entitled to terminate this Agreement with immediate effect.

# Termination

## If the Service Provider:

1. commits or causes the commission of any criminal offence in providing the Services (except for any minor offence or minor traffic offence); or,
2. fails to comply with Clause 22 Bribery and Corruption; or,
3. commits a Default which is a fundamental breach of its obligations under this Agreement; or,
4. becomes bankrupt or insolvent or unable to provide the Services.

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

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

1. the Service Provider will continue to provide the Services during the period of notice unless the Council request otherwise;
2. the Council shall be entitled:
	1. to retain any monies owed to the Service Provider under this Agreement until the Service Provider has paid any monies owed to the Council under this Agreement; or
	2. to deduct any such monies owed to the Council under this Agreement from the monies owed to the Service Provider under this Agreement;

in either case without prejudice to the provisions of Clause 16 (Recovery of Sums Due).

# Break

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

# Force Majeure and Non-Performance

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

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

## If the Council has to secure the services of an alternative service provider due to any non-performance by the Service Provider (other than through Force Majeure), the Service Provider will be liable to meet any additional costs incurred by the Council in securing the alternative services.

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

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

## If an event of Force Majeure occurs then the Council shall meet with the Service Provider to discuss how best the Service Provider can continue to provide the Service until the Force Majeure event ceases, which may include the Service Provider subcontracting.

## In this Clause Force Majeure means:

1. acts of war;
2. acts of God;
3. decrees of Government;
4. riots;
5. civil commotion; and
6. any event or circumstance which is both beyond the control of whichever Party is affected and which could not have been prevented by acting prudently, diligently or with reasonable foresight.

## For the avoidance of doubt Force Majeure shall not include any labour dispute between the Service Provider and its Staff, any other staffing problem, or the failure to provide the Service by any of its sub-contractors.

## In the event that a Party is prevented from carrying out its obligations under the Agreement by any act of Force Majeure which continues for a period of thirty [30] days, the other Party may terminate the Agreement by notice in writing giving seven [7] days notice.

# Dispute Resolution

## If there is a dispute between the Service Provider and the Council concerning the interpretation or operation of this Agreement, then either Party may notify the other in writing that it wishes the dispute to be referred to a meeting of the Authorised Officer and the Contract Manager to resolve, negotiating on the basis of good faith.

## If after twenty-eight [28] Days (or such longer period as both Parties may agree) of the date of the notice referred to in Clause 32.1(above), the dispute has not been resolved then either Party may notify the other that it wishes the dispute to be referred to a meeting of a Chief Officer of the Council, (or a person appointed by the Chief Officer to act on their behalf) and a Chief Executive (or equivalent) of the Service Provider, to resolve, negotiating on the basis of good faith.

## If after twenty-eight [28] Days (or such longer period as both Parties may agree) of the date of the notice referred to in Clause 32.2 (above), the dispute has not been resolved then either Party may notify the other that it wishes to attempt to settle the dispute by mediation, in accordance with the Centre for Effective Dispute Resolution (‘CEDR’) Model Mediation Procedure 2001 (the ‘Model Procedure’) or such later edition as may be in force from time to time.

## If the Council and the Service Provider do not agree on the identity of the Mediator then either Party may request CEDR to appoint one.

## Any agreement the Parties reach as a result of mediation shall be binding on both of them, as set out in the Model Procedure, but if the dispute has not been settled by mediation within ten [10] working days of the mediation starting then either Party may commence litigation proceedings (but not before then).

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

# Variations

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

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

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

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

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

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

## less than 3 miles, there will be no change to the price payable to the Service Provider for that route;

## more than 3 miles, the Contract Price will be increased or decreased by negotiation.

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

# Assignment, Subletting and Emergency Cover

## The Council shall be entitled to assign the benefit of this Agreement and shall give written notice of any assignment to the Service Provider.

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

## The Service Provider may arrange short term cover for the Services in cases of emergency, but must obtain the prior agreement of the Council as to the suitability of the arrangements. In any instance of emergency cover it remains the responsibility of the Service Provider to ensure that the Services are provided in accordance with all terms of the Agreement.

## Where the Service Provider fails to provide the Services, the Council may arrange coverage and any cost so incurred, including an administration fee, will be charged to the Service Provider.

# Monitoring of the Services

## The Service will be monitored in accordance with the procedures and service standards referred to in the Specification.

# Health and Safety

## The Service Provider must comply with the requirements of the Health and Safety at Work etc Act 1974 insofar as they apply to the provision of the Services.

## Failure by the Service Provider to comply with its obligations under this Clause 36 may be regarded as a fundamental breach of this Agreement.

# TUPE

## The Service Provider recognises that TUPE may apply in respect of this Agreement, and should they so apply that for the purposes of TUPE, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Service Provider on the commencement of full operations. At the termination and/or expiry of this Agreement the provision detailed below shall apply.

## During the period of six months preceding the expiry of the Agreement or after the Council has given notice to terminate the Agreement or the Service Provider stops trading, and within 20 working days of being so requested by the Council, the Service Provider shall fully and accurately disclose to the Council for the purposes of TUPE all information relating to its employees engaged in providing Services under the Agreement, in particular, but not necessarily restricted to, the following:

### the total number of Staff whose employment with the Service Provider is liable to be terminated at the expiry of this Agreement but for any operation of law; and

### for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given); and

### full information about the other terms and conditions on which the affected Staff are employed (including but not limited to their working arrangements), or about where that information can be found; and

### details of pensions entitlements, if any; and

### job titles of the members of Staff affected and the qualifications required for each position.

## The Service Provider shall permit the Council to use the information for the purposes of TUPE and of re-tendering. The Service Provider will co-operate with the re-tendering of the Agreement by allowing the transferee to communicate with and meet the affected employees and/or their representatives.

## The Service Provider agrees to indemnify the Council fully and to hold it harmless at all times from and against all losses, actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under clause 37.2.

## The Service Provider agrees to indemnify the Council from and against all losses, actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee on any date upon which the Agreement is terminated and/or transferred to any third Party (“Relevant Transfer Date”) arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.

## In the event that the information provided by the Service Provider in accordance with clause 37.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Service Provider becoming aware that the information originally given was inaccurate, the Service Provider shall notify the Council of the inaccuracies and provide the amended information.

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

# Governing Law and Jurisdiction

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

# General

## The Service Provider shall ensure that its employees and agents are made aware of the Council’s Whistleblowing Policy and that the details of this policy are fully explained to them and the Service Provider shall provide the Council with evidence of doing so upon request.

## The Service Provider shall, and shall use reasonable endeavours to ensure that its employees, agents and subcontractors shall, at all times, act in a way which is compatible with the Convention Rights within the meaning of Section 1 of the Human Rights Act 1998.

## The Service Provider shall not issue any press release or make any public statement concerning the Council, its employees, agents, councillors or the Services without the prior written consent of the Council.

## These conditions constitute the entire understanding between the parties relating to the subject matter of the Agreement and, save as may be expressly referred to or referenced herein, supersede all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

**SCHEDULE 1 – Contract Price**

The pricing provisions for this Agreement are as stated in the Contract Particulars.

All invoices should be submitted by the Service Provider, with the Invoice Verification Form, which has been signed by the relevant school or college.

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

* not to claim or invoice for the Contract Price as above for the relevant day or period; and
* may only claim 80 percent of the daily Contract Price for the relevant day for PSV or Section 19 vehicles or 50 percent of the daily Contract Price for the relevant day for Private Hire or Hackney Carriage vehicles, but such claim may not exceed ten days in any financial year (01 April - 31 March).

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

* not to claim or invoice for the Contract Price as above for the relevant day or period.

Contract Price is fixed for the term of the Agreement.

**SCHEDULE 2 - Default List**

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

* Any journeys that operate in excess of two minutes early or in excess of ten minutes late without good reason.
* Failure to observe the correct route and/or stopping places unless for reasons beyond the Service Provider’s control.
* Failure to provide vehicle(s) of sufficient capacity determined by the Service Specification except with the Council’s prior approval.
* Failure to provide vehicle(s) conforming to the Service Specification in respect of special features, e.g. suitability for carriage of wheelchairs.
* Failure to provide a vehicle equipped with power operated passenger door(s) where required in the Service Specification.
* Use of an incorrectly licensed vehicle or a vehicle found to be unsafe.
* Failure to maintain reasonable standard of cleanliness in vehicle, including vehicle tracking, where applicable.
* Failure to display a correct and clearly visible route number and/or yellow school bus sign when operated by a PSV.
* Failure to carry route schedule and/or travel plan, if applicable.
* Sub-contracting other than as permitted by the Agreement.
* Use of drivers without the appropriate licence, or drivers and/or passenger assistants without an authorised enhanced Disclosure Barring Service disclosure.
* Use of a driver or passenger assistant without prior authorisation by the Council.
* Failure to provide a driver or passenger assistant adequately trained in the use of special seating and/or wheelchair restraints, where applicable to the Specification.
* Use by driver of a mobile phone whilst vehicle in service is in motion, unless a hands-free kit is used.
* Driver or passenger assistant observed smoking on the vehicle.
* Use of inappropriate language by a driver or passenger assistant.
* Giving of gifts, inappropriate contact or misconduct of a driver or passenger assistant with relation to passengers or other Parties in association with the Services.
* Failure of driver or passenger assistant to wear appropriate identification.
* Speeding or traffic offences.
* Carriage of passengers not authorised by the Council.
* Failure to report an accident to the Council within 24 hours.
* Failure to report a serious incident of pupil misbehaviour to the Council at the earliest opportunity.
* Failure to make suitable arrangements so that matters concerning complaints received from the public or a school/college can be discussed with the Authorised Officer between 8am and 5pm on normal working days.
* Failure to provide a formal report where requested to the Council about complaints received from the public or a school/college within 5 working days
* Failure to allow a Council officer access to the vehicle