

## HOME TO SCHOOL TRANSPORT

### SPECIAL NEEDS PUPILS CONDITIONS OF CONTRACT

#### 1.0 DEFINITIONS AND INTERPRETATION

1.1 The following words and expressions shall have these meanings in the Contract:-

Best Practice Guide	The Council's guide to Best Practice in Transport Services which can be found in the appendix and referred to in 2.12 and such amendments to the guide as the Council may issue from time to time.
Contract	The Agreement for Service made between the Council and the Contractor and the documents referred to in it
Contract Charges	The amounts payable by the Council to the Contractor for the Service, details of which are set out in the Schedule
Authorised Officer	The Corporate Director of Business and Environmental Services and his authorised representatives
Contract Standards	The standards to which the Service is to be provided and which are contained or referred to in the Contract and Best Practice Guides and where no specific standard is stated in the Contract, the Contract Standard is to be to the Council's satisfaction
Contractor Manager	The person appointed by the Contractor under Clause 2.2
DBS Disclosure & Barring Service	A government department established to help organisations make safer recruiting decisions.
Designated Person	The person appointed by the Contractor to act for it in connection with Disclosure & Barring Service checks.
Driver	A person employed or otherwise provided by the Contractor to drive Vehicles used for the Service
Highway Authority	The Highway Authority(ies) for the roads over which the Service is to be provided, details of which are contained in the Schedule
Home to School Transport Service	A service provided for school pupils as part of the Council's obligations under Section 509 of the Education Act 1996.
ISA Independent Safeguarding Authority	An agency responsible for helping to prevent unsuitable people working with children and vulnerable people
Local Bus Service	A service provided for members of the public as part of the Council's obligations under the Transport Act 1985
Passenger Assistant	A person employed or otherwise provided by the Contractor or Council to supervise and assist passengers on Vehicles used for the Service

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PCV	Passenger Carrying Vehicle
Route	The route(s) over which the Service is to be provided which are referred to in the Schedule
Schedule	The Schedule to this Agreement
Service	The Passenger Transport Service(s) to be provided under this Agreement
Health and Adult Services Transport Service	A service provided for children and adults under the care of the Council's Health and Adult Services Directorate
Special School Transport Service	A service provided for children with special transport needs
Start Date	The date on which the Service is to commence which is referred to in the Schedule
Tender	The Contractor's tender for the Service which has been accepted by the Council relevant details of which are included in the Schedule
Term	The period referred to in the Schedule during which the Service is to be provided which will commence on the Start Date
Vehicle	The vehicle(s) used for the Service referred to in the schedule

1.2 This Contract is governed by English Law

1.3 References to:

- (a) any Act, Order, Regulation, Statutory Instrument etc include any amendment or re-enactment
- (b) one gender include any other gender
- (c) persons include corporations
- (d) singular include the plural
- (e) clauses are to clauses in the Conditions
- (f) the Contractor's staff includes partners, directors, employees, agent's subcontractors and volunteers.

1.4 This Contract represents the entire agreement between the Council and the Contractor and supersedes all previous statements and agreements relating to the Service.

## 2.0 THE CONTRACTOR'S OBLIGATIONS

### 2.1 Contract Standards

2.1.1 The Contractor agrees with the Council to provide the Service to the Contract Standards for the Term with effect from the Start Date.

2.1.2 The Contractor shall provide the Service in accordance with all relevant legislation and codes of practice relating to the Service.

### 2.2 Contractor's Representative and Designated Person

2.2.1 Before the Start Date the Contractor must nominate:-

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

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

2.2.3 The Contractor's Contract Manager: -

- must be empowered to act on behalf of the Contractor for all purposes connected with the Contract
- must have continuous and effective responsibility for the management of the transport operations of the business in so far as they relate to the carriage of passengers and North Yorkshire County Council transport contracts

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

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

## **2.3 Operator Licences**

2.3.1 The Contractor shall hold the appropriate permit and/or licence for the Service.

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

## **2.4 Drivers & Passenger Assistants**

2.4.1 The Contractor shall ensure that any Driver or Passenger Assistant used on a Home to School Transport Service is a suitable person to drive Vehicles carrying school children or to act as a Passenger Assistant upon such Vehicles. Drivers and Passenger Assistants must be recruited using the minimum standards set out in the Best Practice Guide.

2.4.2 Without prejudice to Clause 2.5.4 the Contractor shall ensure that all persons associated with the operation of this Contract are properly covered by employer's liability insurance.

2.4.3 All Drivers must undertake an eyesight test every 24 months and the Contractor shall retain written evidence of this for inspection by the Authorised Officer.

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- 2.4.4 Any person over the age of 65 who is used as either a Driver or a Passenger Assistant must have an annual medical check and the Contractor shall retain written evidence of this for inspection by the Authorised Officer.
- 2.4.5 The Contractor shall comply with DBS vetting procedures as required by the Council and any new statutory legislation introduced.
- 2.4.6 Where self-employed drivers are to be used the Contractor must maintain personnel records including training records as if such drivers were employees and such records should be available for inspection on request.
- 2.4.7 The Contractor will ensure that payroll records are maintained for all employees
- 2.4.8 The Contractor must ensure that all Drivers wear a seatbelt where one is fitted to the Vehicle.
- 2.4.9 The Contractor shall immediately remove a Driver or Passenger Assistant from any Service upon the Authorised Officer's instruction with or without a reason first being given. The Council undertakes not to act unreasonably or maliciously in the application of this power. Any costs and expenses payable in connection with such removal are the liability of the Contractor alone.
- 2.4.10 The Contractor shall ensure that all Drivers shall hold the appropriate driver's licence for the Vehicle
- 2.4.11 Where a Vehicle will be operated under a permit issued under section 19 or 22 of the Transport Act 1985 or in association with an approved voluntary car scheme then all drivers must have successfully completed a MIDAS assessment.
- 2.4.12 The licences referred to in 2.4.10 shall be current, valid and in accordance with the requirements of any Licensing Authority.
- 2.4.13 The Contractor must have in place a system which monitors checks of all the Driving Licenses of all the individuals working on the councils contract(s). The system must include a six monthly check and must be kept available for inspection by the Authorised Officer at any time without notice.
- 2.4.14 The Contractor shall ensure that staff engaged by it for the purposes of the Service are issued with, understand and use where necessary, the information contained in the Best Practice Guide.
- 2.4.15 The Contractor shall take all such steps as are reasonably necessary to ensure that all Drivers are fit to work whilst engaged on the Service and are not rendered unsuitable by reason of alcohol/substance/drug abuse or sleep deprivation, illness or any other cause.

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2.4.16 The Contractor shall ensure that all Drivers are equipped with a mobile telephone connected to the network most appropriate to the area served. A mobile telephone is not required if the Vehicle is fitted with a two way radio system that will function over most of the route.

2.4.17 The Contractor shall ensure that the Service is operated in accordance with the relevant drivers' hours regulations.

2.4.18 The Contractor shall ensure that the all drivers and passenger assistants must wear, and have visible, the NYCC DBS Badge when working on NYCC Contract(s).

## **2.5 Insurance**

2.5.1 The Contractor shall ensure that adequate motor insurance for hire and reward covering third party injury and losses arising in connection with the Service is maintained by itself and by any self-employed drivers throughout the Term. The minimum period of insurance renewal is 3 months. The limitation in respect of third party property damage caused by either private car or commercial vehicle should be for a minimum of £10million separately for each.

2.5.2 The Contractor shall indemnify the Council against all actions, claims, damages, costs and other expenses in relation to the injury to, or death of, any person, and loss of, or damage to, any property, real or personal which is attributable to the negligent act or default of the Contractor, its servants or agents and subcontractors in connection with the Service.

2.5.3 The Contractor shall take out and maintain and shall ensure that any self-employed drivers also take out and maintain insurance against its liabilities under Clause 2.5.2 for the minimum sum of £5million in respect of any one incident.

2.5.4 The Contractor must take out and maintain employer's liability insurance in a minimum amount for each and every claim, act or occurrence or series of claims, acts or occurrences which complies with statutory requirements (which at the date of this Contract is £10million). The Contractor must ensure that the liability insurance covers volunteers and those who work on a self-employed basis on the contract.

2.5.5 The Contractor shall supply to the Council on request copies of all insurance policies, cover notes, premium receipts and other documents necessary to establish compliance with Clause 2.5. This also relates to self-employed drivers and copies of these documents must be retained by the Contractor where such drivers are undertaking work on their behalf

## **2.6 Vehicles**

2.6.1 The Contractor shall ensure that Vehicles shall comply with all relevant requirements of law relating to construction, equipment and use and shall ensure that the Vehicles are properly taxed, tested, licensed and insured

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- 2.6.2 Vehicles with fewer than nine passenger seats must not in any circumstances be operated under a PCV operator's licence unless agreed by the Authorised Officer.
- 2.6.3 Where required by law, the Contractor shall ensure that all Vehicles shall be equipped with one 3-point seat belt in good working order for each person carried and will operate in accordance with the law and further guidance issued by the Department of Transport or the Council through the Best Practice Guide.
- 2.6.4 Any vehicle with fewer than 9 passenger seats must have 3-point seat belts fitted. Any seats fitted with lap belts are not to be used by any person carried. One forward facing seat for each person carried should be available, however vehicles with rear facing seats and 3-point seat belts may be considered for use only following a Transport Assessment by the Council. Seatbelts must be suitable for those using them or adapted where possible and required.
- 2.6.5 The Contractor shall ensure that where the Service comprises a Home to School Transport Service, for a Vehicle with fewer than nine passenger seats seatbelts are properly worn by all passengers and appropriate restraints and seats are provided in accordance with the law and further guidance issued by The Department of Transport or the Council through the Best Practice Guide.
- 2.6.6 Where seatbelts are fitted to a vehicle with nine or more passenger seats then the Contractor shall ensure that it takes all reasonable steps to ensure that the passengers are notified that they are required to wear a seatbelt at all times. This is to be done by means of an announcement or audio-visual presentation as passengers join the bus and/or a designated sign, approved by the Department for Transport (DfT). See the Best Practice Guide for further information.
- 2.6.8 The Contractor shall ensure that Vehicles are kept in good repair, meet the minimum legal requirements and are maintained to the Council's satisfaction. The Vehicles must be clean and tidy, both internally and externally, and the interior must be free from strong odours or perfumes.
- 2.6.9 A daily walk round (first use) check must be undertaken by a responsible person acting on behalf of the Contractor before a vehicle is first used. Details of the items to be checked are included in the Best Practice Guide.
- 2.6.10 A copy of the defect sheet recording the First Use check each day must be kept with the Vehicle and be available for inspection unless otherwise agreed by the Authorised Officer.
- 2.6.11 The Authorised Officer and any person nominated by him shall be allowed reasonable access by the Contractor to examine Vehicles, the Contractor's premises and records relating to the maintenance and operation of the Vehicles and the provision of the Service.

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- 2.6.12 The Contractor shall ensure that scheduled vehicle inspections are undertaken by a competent person and the Council recommends as a minimum has completed the VOSA "PSV inspection standards and procedures including vehicle roadworthiness checks (CoD) training". Non PCV vehicles must be inspected every 13 weeks (this can include MOT and the Taxi Licensing Authority test )
- 2.6.13 Maintenance, inspection and first use check records must be kept for a minimum of fifteen months for all Vehicles operating on the Service.
- 2.6.14 The Contractor shall ensure that all Vehicles shall be fitted with a serviceable foam or water fire extinguisher which complies with current legislation and that Drivers have received adequate training in its use.
- 2.6.15 The Contractor shall ensure that all PCVs are fitted with a serviceable reversing horn which must be used when the Vehicle is reversing except where otherwise agreed by the Authorised Officer.
- 2.6.16 All PCVs must be fitted with wheel nut indicators except where otherwise agreed by the Authorised Officer.
- 2.6.17 The Contractor shall ensure that all Vehicles comply with the details submitted in the Tender, or as otherwise agreed in writing by the Authorised Officer.
- 2.6.18 The Contractor shall ensure that all Vehicles, including taxis, display the destination, service number and other information required by the Schedule.
- 2.6.19 Local Bus Contracts, The following condition applies to contracts for Local Bus Services:

**Vehicle Age:**

Unless otherwise stated in the Schedule 1, the maximum age for vehicles used for the duration of this contract will be:

- 7 years for vehicles of 21 seats and fewer
- 12 years for vehicles of 22 seats and over

- 2.6.20 Vehicles fitted with passenger wheelchair lifts, which must conform to LOLER 98 Regulations, require an annual LOLER weight test certificate and evidence of an inspection by a competent person every 6 months.

**2.7 Training and Introductory Visits**

- 2.7.1 The Contractor will arrange for Drivers and Passenger Assistants to participate in training programmes for the safety and well being of passengers organised by the Council. These will be of up to half a day's duration and the Council would not normally require any individual to attend more than one such training session during each academic year.

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2.7.2 Where the Service is provided to a primary school for the first time by the Contractor and where a Vehicle with fewer than 30 seats is being used to provide the Service at any school the Authorised Officer may require the Contractor to arrange for the Driver (and any Passenger Assistant) to attend either the home or the school to meet the pupils who are to be carried.

## **2.8 Passengers**

2.8.1 The Council will issue all pupils entitled to free home to school transport with a travel permit. The Contractor shall ensure that Drivers shall check such permits on a regular basis and the Contractor will provide the Authorised Officer with details of the name and school of any child travelling on Home to School Transport Service without such a permit ; on a local bus Service, non-permit holders shall pay the appropriate fare to the Contractor. Pupils should not be refused travel without the prior agreement of the Authorised Officer on a home to school Service.

2.8.2 The Contractor shall ensure the safety and well-being of all passengers on any Vehicle.

2.8.3 The Contractor shall not eject any pupil from a Vehicle before the desired stop except in circumstances where the actions of the pupil have constituted a genuine threat to the safety of the Driver or other passengers. If such action takes place, the Contractor shall notify the Authorised Officer immediately.

2.8.4 The Contractor shall ensure that wherever practicable no standing passengers are carried on a journey which caters principally for school children. Where overloading occurs the Authorised Officer should be informed immediately.

## **2.9 Provision of Information**

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

2.9.2 The Contractor shall notify the Contract Manager immediately the Contractor becomes aware of any action or prosecution in relation to any Vehicle, operating base or facility, Driver, Passenger Assistant or any other person connected with the Service. This includes any investigations or public inquiries carried out by a Taxi Licensing authority or the Traffic Commissioner regardless of whether they relate to North Yorkshire County Council contract operations or not.

2.9.3 The Contractor shall permit access with reasonable notice to nominated representatives of the Council to relevant accounts and other financial records.



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- 2.9.4.1 In clause 2.9.4 “FOI” means the Freedom of Information Act 2000; “exempt information” means information falling into the exemptions set out in the FOI; “confidential information” means information to which confidentiality or commercial interests exemptions within FOI may apply and “working day” means Monday to Friday inclusive except Bank Holidays.
- 2.9.4.2 The Council is bound by the provisions of the Freedom of Information Act (FOI) and information relating to this Contract and to the Service may need to be disclosed to third parties in order for the Council to meet its obligations under the FOI.
- 2.9.4.3 The Contractor shall make all reasonable efforts to assist the Council in meeting its obligations under the FOI. If the Council receives an access request under the FOI, the Contractor shall upon request provide:
- (a) to the Council a copy of information requested which is held by the Contractor on behalf of the Council within a period of 5 Working Days;
  - (b) access to the Contract Manager, within a period of 5 Working Days, to inspect information held by the Contractor on behalf of the Council.
- 2.9.4.4 Where it is necessary for the Contractor to provide information to the Council which it believes to be Exempt Information it shall state in writing to the Council the nature of the information and the relevant exemption. The Council will use reasonable endeavours to consult with the Contractor before disclosing such information under the FOI. The Contractor acknowledges that the final decision whether to disclose such information will rest with the Council and not with the Contractor. Nothing contained in this Contract or any documents or negotiations relating to this Contract shall prevent the Council from disclosing any information which (in the Council's reasonable opinion or in accordance with any recommendation, notice or decision of a competent authority) it is required to disclose under the FOI.
- 2.9.4.5 The Contractor shall observe the Council's Retention and Destruction Policy (details of which shall be provided by the Council to the Contractor upon request) and shall not destroy information other than in accordance with this policy. If the Council notifies the Contractor of a request for information held by the Contractor which is due for destruction the Contractor shall immediately suspend destruction of that information to allow disclosure to take place. Upon the termination of this Contract the parties shall agree which party has the control of the retained information. Should the Contractor retain control of the information this clause shall remain in force beyond the termination of this Contract.

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2.9.4.6 The Contractor shall maintain an adequate records management system which will enable it to access the information within the time limits prescribed.

2.9.4.7 The Contractor shall indemnify the Council against all claims, demands, actions, costs, proceedings and liabilities which the Council directly incurs due to the Contractor's (or any subcontractor's) breach of this clause 2.9 or any part of it.

## **2.10 Surveys**

2.10.1 The Contractor shall complete or distribute survey forms relating to the Service as the Contract Manager may require from time to time.

2.10.2 The Council may itself undertake surveys on any Vehicle at any time without notice.

## **2.7 Training and Introductory Visits**

2.7.1 The Contractor will arrange for Drivers and Passenger Assistants to participate in training programmes for the safety and well being of passengers organised by the Council. These will be of up to half a day's duration and the Council would not normally require any individual to attend more than one such training session during each academic year.

2.7.2 Where the Service is provided to a primary school for the first time by the Contractor and where a Vehicle with fewer than 30 seats is being used to provide the Service at any school the Authorised Officer may require the Contractor to arrange for the Driver (and any Passenger Assistant) to attend either the home or the school to meet the pupils who are to be carried.

## **2.8 Passengers**

2.8.1 The Council will issue all pupils entitled to free home to school transport with a travel permit. The Contractor shall ensure that Drivers shall check such permits on a regular basis and the Contractor will provide the Authorised Officer with details of the name and school of any child travelling on Home to School Transport Service without such a permit ; on a local bus Service, non-permit holders shall pay the appropriate fare to the Contractor. Pupils should not be refused travel without the prior agreement of the Authorised Officer on a home to school Service.

2.8.2 The Contractor shall ensure the safety and well-being of all passengers on any Vehicle.

2.8.3 The Contractor shall not eject any pupil from a Vehicle before the desired stop except in circumstances where the actions of the pupil have constituted a genuine threat to the safety of the Driver or other passengers. If such action takes place, the Contractor shall notify the Authorised Officer immediately.

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2.8.4 The Contractor shall ensure that wherever practicable no standing passengers are carried on a journey which caters principally for school children. Where overloading occurs the Authorised Officer should be informed immediately.

## 2.9 Provision of Information

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

2.9.2 The Contractor shall notify the Contract Manager immediately the Contractor becomes aware of any action or prosecution in relation to any Vehicle, operating base or facility, Driver, Passenger Assistant or any other person connected with the Service. This includes any investigations or public inquiries carried out by a Taxi Licensing authority or the Traffic Commissioner regardless of whether they relate to North Yorkshire County Council contract operations or not.

2.9.3 The Contractor shall permit access with reasonable notice to nominated representatives of the Council to relevant accounts and other financial records.

2.9.4.1 In clause 2.9.4 "FOI" means the Freedom of Information Act 2000; "exempt information" means information falling into the exemptions set out in the FOI; "confidential information" means information to which confidentiality or commercial interests exemptions within FOI may apply and "working day" means Monday to Friday inclusive except Bank Holidays.

2.9.4.2 The Council is bound by the provisions of the Freedom of Information Act (FOI) and information relating to this Contract and to the Service may need to be disclosed to third parties in order for the Council to meet its obligations under the FOI.

2.9.4.3 The Contractor shall make all reasonable efforts to assist the Council in meeting its obligations under the FOI. If the Council receives an access request under the FOI, the Contractor shall upon request provide:

(a) to the Council a copy of information requested which is held by the Contractor on behalf of the Council within a period of 5 Working Days;

(b) access to the Contract Manager, within a period of 5 Working Days, to inspect information held by the Contractor on behalf of the Council.

2.9.4.4 Where it is necessary for the Contractor to provide information to the Council which it believes to be Exempt Information it shall state in writing to the Council the nature of the information and the relevant exemption. The Council will use reasonable

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endeavours to consult with the Contractor before disclosing such information under the FOI. The Contractor acknowledges that the final decision whether to disclose such information will rest with the Council and not with the Contractor. Nothing contained in this Contract or any documents or negotiations relating to this Contract shall prevent the Council from disclosing any information which (in the Council's reasonable opinion or in accordance with any recommendation, notice or decision of a competent authority) it is required to disclose under the FOI.

2.9.4.5 The Contractor shall observe the Council's Retention and Destruction Policy (details of which shall be provided by the Council to the Contractor upon request) and shall not destroy information other than in accordance with this policy. If the Council notifies the Contractor of a request for information held by the Contractor which is due for destruction the Contractor shall immediately suspend destruction of that information to allow disclosure to take place. Upon the termination of this Contract the parties shall agree which party has the control of the retained information. Should the Contractor retain control of the information this clause shall remain in force beyond the termination of this Contract.

2.9.4.6 The Contractor shall maintain an adequate records management system which will enable it to access the information within the time limits prescribed.

2.9.4.7 The Contractor shall indemnify the Council against all claims, demands, actions, costs, proceedings and liabilities which the Council directly incurs due to the Contractor's (or any subcontractor's) breach of this clause 2.9 or any part of it.

## **2.10 Surveys**

2.10.1 The Contractor shall complete or distribute survey forms relating to the Service as the Contract Manager may require from time to time.

2.10.2 The Council may itself undertake surveys on any Vehicle at any time without notice.

## **2.11 Smoking Policy, Carriage of Goods**

2.11.1 The Contractor shall ensure that no smoking (whether by Drivers, Passenger Assistants or passengers) is permitted on any Vehicle used for the Service.

2.11.2 The Contractor shall ensure that except with the Contract Manager's consent, goods are not carried on any Vehicle unless it is registered as a local bus service.

## **2.12 Best Practice Guides**

2.12.1 The Contractor shall comply with the best practice guides: the Council reserve the right from time to time to issue amendments to the best practice guide and

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shall provide copies of the same to the contractor. Such amendments shall be deemed to form part of the Conditions of Contract and the Contractor shall comply with their requirements.

### **3.0 SERVICE DETAIL**

- 3.1 The Contractor shall operate the Service on the Routes in accordance with the Contract including the details in the Schedule.
- 3.2 The Contractor shall not vary any Route or the location of any stopping place, without the prior approval of the Contract Manager.
- 3.3 The Contractor shall obtain such consents as are necessary to ensure that the Service may be provided over any part of a Route which is not on the public highway.
- 3.4 The Contractor shall be responsible for obtaining all necessary consents to use any bus station for a Route and shall be responsible for the payment of any fees for such use or for road/bridge tolls.
- 3.5 If a connecting service is provided for primary school children then the Driver must wait with any child(ren) for the arrival of the connecting service. The Contractor will be responsible for ensuring the safety of any such child(ren) where such a connection fails (including, but not limited to, making alternative arrangements for the journey).
- 3.6 The Contractor shall be responsible for obtaining all necessary consents to use any bus station for a Route and shall be responsible for the payment of any fees for such use or for road/bridge tolls.
- 3.7 If a connecting service is provided for primary school children then the Driver must wait with any child(ren) for the arrival of the connecting service. The Contractor will be responsible for ensuring the safety of any such child(ren) where such a connection fails (including, but not limited to, making alternative arrangements for the journey).
- 3.8 The Contractor may not register a Home to School contracted service as a Local Bus Service without first seeking the written consent of the Council
- 3.9 The Contractor shall ensure that any Vehicle used to operate the Service is suitable for the route followed.

### **4.0 INVOICES AND PAYMENT**

- 4.1 The Contractor shall submit invoices to the Council in such format as the Council may require. Invoices shall be submitted monthly (or four weekly as may be agreed) in arrears. The Council shall pay an undisputed invoice (or the undisputed part of invoices) within 28 days of receipt. The Council will not pay a proportion of any invoice on which VAT is being charged. All payments will be via the BACS payment system and an acknowledgement will be sent either by email or fax.
- 4.2 Invoices shall include:-

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- Details of journeys or part journeys not operated and the reason.
- The total scheduled mileage not operated in the period covered by the invoice.
- Full details of the Contract Charges.
- Where relevant and agreed by the Council the costs of making alternative arrangements under 3.7 above.

NB. Where payments are made via the automatic payment system there is still a requirement for the Contractor to submit the above information on a monthly basis.

4.3 The Council reserves the right to withhold full payment of an invoice where the necessary information referred to in Clause 4.2 above is not provided.

4.4 The Council will only pay the Contract Charges for school transport journeys which were actually required and which did take place.

## 5.0 **INFLATION**

5.1 The Contract Charges will be reviewed by the Council upon the prior written request of the Contractor. Such a request can only be made within the three months before the annual anniversary of the start date and shall apply only to the Contract Charges for the next year of the term.

5.2 Any such review, if requested, will be effective on the annual anniversary of the start date or the date of application whichever is latest.

## 6.0 **SUB-CONTRACTING AND ASSIGNMENT**

6.1 The Contractor shall not assign this Agreement without the prior written consent of The Council.

6.2 The Contractor shall not sub-contract part of any Service for more than five consecutive days without the Contract Manager's prior written consent except in the case of genuine emergency. In all cases schools should be advised immediately of the name of the contractor who will provide the Service.

6.3 Wherever sub-contractors are used these must be included on a list supplied by the Council. The Contractor remains responsible for the provision of the Service in accordance with the Contract.

## 7.0 **VARIATION**

7.1 At any time(s) during the Term the Contract Manager may require the Contractor in writing to:-

- Omit any part of the Service.
- Provide additional transport Services.
- Vary the scope of the Service or any part of it (by, for example, introducing variations in timing, the number of passengers to be carried, the type of Vehicle used, the Route taken or any other matter associated with the Service).

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- 7.2 The valuation of any variation shall be made by the Contract Manager using the current “additional mileage calculation” and will be based on vehicle type and additional mileage required.
- 7.3 From time to time the Council may require the Contractor to make changes in timing pick-up points and routing at very short notice. The Council will use all reasonable endeavours to give a minimum of 24 hours notice of such changes.
- 7.4 The Council and the Contractor shall use reasonable endeavours to agree upon the basis of any variation and its valuation but if agreement is not reached within 28 days of the original requirement in 7.1 then either the Contractor or the Council may terminate the Contract with fourteen weeks written notice.
- 7.5 The Corporate Director may require the Contractor to include additional stopping points on any Route; except where the vehicle used for the Route is of insufficient capacity to accommodate the additional passengers collected (in which circumstances 7.1 – 7.3 will apply). This requirement will not involve any additional payment being made to the Contractor.
- 7.6 At any time(s) during the Term the Contractor may propose variations to the Corporate Director who will consider them on their merits and where agreed, the Contract will be varied accordingly. For the avoidance of doubt a variation proposed by the Contractor but not accepted by the Council will not entitle either party to terminate the Contract under 7.3 above.
- 8.0 **DEFAULT**
- 8.1 Where the Council receives a complaint about the standard of the Service then an Incident Report will be issued by the Council.
- 8.2 If the Contractor has defaulted in the provision of the Service (whether through failure to comply with the Contract Standards or otherwise) then the Council may, without prejudice to any other remedies available to it, serve a notice upon the Contractor (which will be termed a “default notice” in this clause).
- 8.3 Default notices shall specify the nature of the default and where appropriate shall specify how and when the Contractor is to remedy the default.
- 8.4 The Contractor shall comply with the default notice but may make representations to the Contract Manager on the matters referred to in it which the Contract Manager shall consider and, as necessary, discuss with the Contractor.
- 8.5 Unless a default notice is withdrawn by the Contract Manager as a consequence of the representations made by the Contractor under 8.4 the Contractor shall pay the Council an amount which represents 25% of the Contract Charges payable for the journey(s) in respect of which the default notice was served or the sum of £10 whichever shall be the greater. This sum may be deducted from the Contract Charges by the Contract Manager.

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8.6 The Contractor and the Council agree that the sums payable to the Council in respect of default notices represent a reasonable estimate of the cost incurred by the Council in investigating the default, serving the default notice and, where relevant, checking for compliance

8.7 In addition to the default notice provisions in Clause 8.1 – 8.6 the following provisions shall also apply to a default by the Contractor:-

- (a) The Council will not pay for any part of the Service which is not provided by the Contractor.
- (b) Without terminating the Contract as a whole the Council may arrange for the Service to be provided by a third party or by itself (in whole or in part) until such time as the Contractor has satisfied the Contract Manager that it is able to provide the Service (or the relevant part of it) to the Contract Standard; in such instances the Council shall charge the Contractor the costs reasonably incurred by it in making the alternative arrangements for the Service to be provided to the extent that such costs exceed the relevant Contract Charges.

8.8 Examples of circumstances which may cause a Default notice to be issued include the matters referred to in the schedule as “Defaults”. The list is not exhaustive as a default constitutes any failure of the Contractor to comply with the Contract Standards.

## 9.0 **SUSPENSION OF THE SERVICE**

9.1 If the Service is suspended, no Contract Charges are payable for the Service for the period of suspension, either during the suspension or at any other time.

## 10.0 **TERMINATION**

10.1 If the Contractor:-

- is in persistent and/or fundamental breach of the Contract; or
- has materially misrepresented any information in the Tender (upon which the Council has relied in appointing the Contractor); or
- becomes bankrupt; or
- has a receiver or liquidator appointed; or
- has a winding-up order made; or
- otherwise becomes insolvent; or
- has committed any offence under the Prevention of Corruption Acts 1889 to 1916; or has committed an offence under Section 117(2) of the Local Government Act 1972; or has offered any gift or consideration of any kind as an inducement or disincentive for doing anything in respect of this Contract or any other Contract with the Council; or
- is otherwise in breach of the collusive tendering certificate provided with the Tender; or



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- has insufficient resources to provide the Service because of a reduction in the number of vehicles authorised by the Traffic Commissioner to be operated by the Contractor;

then the Council may terminate the Contract immediately and will be entitled to recover all losses resulting from such termination.

10.2 If the Contract has been terminated under 10.1 the Council:-

- (a) ceases to be under any obligation to pay the Contract Charges until the costs arising out of the termination (including the costs of terminating the Contract and making alternative arrangements for the Service) have been calculated and show a sum due to the Contractor (in which case this sum will be paid to the Contractor as soon as possible); and
- (b) may immediately appoint a replacement Contractor.

10.3 If the Council is in persistent and/or fundamental breach of the Contract then the Contractor may terminate the Contract immediately but without prejudice to any other remedies which may be available to it in respect of any breach which occurred before the termination.

10.4 In the case of Home to School Transport service contracts the Council may terminate the Contract or (if practicable and considered appropriate in the Council's reasonable opinion) offer a suitable alternative contract where circumstances out of the control of the Council dictate that the Service is no longer required e.g. all of the pupils requiring transport move away from the area or a school closes.

10.5 The Contractor may apply to the Contract Manager for the Contract to be terminated where there are exceptional circumstances which could not have been foreseen. Individual circumstances will be considered and any break in the contract will be granted at the discretion of the Contract Manager.

## 11.0 **BREAK CLAUSE**

11.1 The Corporate Director may terminate the Contract by giving notice to the Contractor:-

Contracts which require registration with the traffic commissioner- Nine weeks

Contracts which do not require registration with the Traffic Commissioner- Six weeks

before the termination date proposed by the Corporate Director

11.2 The Contractor may terminate the Contract by giving notice to the Council at least fourteen weeks before the termination date proposed by the Contractor.

11.3 The notices in 11.1 and 11.2 may be given at any time during the Term; need not specify a reason for exercising the right to terminate and must be in writing.

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## **12.0 HEALTH AND SAFETY, DATA PROTECTION AND OTHER STATUTORY REQUIREMENTS**

### **12.1 Health and Safety**

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

12.1.2 The Contractor shall promptly notify Council of any health and safety hazards which may arise in connection with the performance of the Contract.

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

12.1.4 The Contractor shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to Health and Safety which may apply to staff in the performance of the Contract.

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

12.1.6 Where five or more people are employed by the Contractor's business the Contractor must have been assessed by, or working towards, an accredited health and safety scheme such as BS ISO 39001, the Contractor's health and safety scheme (CHAS) or equivalent. This standard must have been achieved within 6 months of the award of any contract.

12.1.7 Risk assessments will be carried out by the Contractor as required under current legislation (Management of Health and Safety at Work Regulations 1999) Risk assessments which relate to the operation of the Service and the safety of Council officers, which must include a driving and route assessment risk assessment will be made available for inspection by the Contractor on request.

12.1.8 In the event of an incident or accident relating to the vehicle, employee or passenger during the operation of the contract the Contractor must report the incident to the Authorised Officer immediately.

### **13.0 Other Legislation**

13.1 The Contractor shall comply with all relevant statutory and other provisions relating to the Service.

### **14.0 Equal Opportunities**

- 14.1 The Contractor and any sub-contractor employed by the Contractor shall adopt a policy to comply with the Equalities Act 2010 and any subsequent legislation in respect of equalities which may be enacted during the Term (“the Equalities Legislation”). Accordingly the Contractor and any employee or subcontractor shall not discriminate directly or indirectly against any person because of their age, sex, disability, religious beliefs, sexual orientation, gender reassignment, pregnancy, maternity or race.
- 14.2 The Contractor and any Sub-contractor employed by the Contractor shall observe as far as possible all statutory codes relating to the Equalities Legislation. These give practice guidance to employers and others on the elimination of racial discrimination and the promotion of equality of opportunity in employment, including monitoring of workforce matters and steps that can be taken to encourage people from minority groups to apply for jobs or take up training opportunities.
- 14.3 In the event of any finding of unlawful discrimination being made against the Contractor or any Sub-contractor employed by the Contractor during the term by any court or Employment Tribunal or in comparable proceedings in any other jurisdiction, or of an adverse finding in any formal investigation by the Equalities and Human Rights Commission and/or any comparable statutory body relating to the Equalities Legislation over the same period, the Contractor shall inform the Council of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 14.4 The Contractor shall, on request, provide the Council with details of any steps taken under Clause 14.3 above.
- 14.5 The Contractor shall comply with the Equalities Legislation and shall satisfy the Council that:-
- 14.5.1 its working practices do not involve the treatment of one group or individual less favourably than any others because of their age, sex, colour, race, nationality, ethnic origin, disability, religious beliefs or sexual orientation on any decision relating to their recruitment or employment with the Contractor and in relation to the delivery of the Service;
- 14.5.2 policies on discrimination are set out:-
- (i) in instructions to those concerned with recruitment, training and promotion;
  - (ii) in documents available to employees, recognised trade unions or other representative groups of employees;
  - (iii) in recruitment advertisements or other literature
  - (v) in instructions to those concerned with the delivery of the Services.

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14.6 The Contractor shall provide such information as the Council may reasonably request for the purpose of assessing the Contractor's compliance with this Clause 14.5.2 including, if requested, examples of any instructions or other documents, recruitment advertisements or other literature containing details of monitoring of recruitment and employees.

## 15.0 **CONFIDENTIALITY**

15.1 The Contractor shall keep confidential all information obtained from the Council or through its provision of the Service which is Confidential Information whether or not the Council designates or marks that Confidential Information as confidential.

15.2 Subject to Clause 2.9.4 the Council shall keep confidential all Confidential Information provided to it by the Contractor.

15.3 The provisions of Clauses 2.9.4.1 and 2.9.4.2 shall not apply to any information which:

- (a) is or becomes public knowledge (otherwise than by a breach of this clause); or
- (b) was in the possession of the party concerned without restriction as to its disclosure before receiving it from the other party; or
- (c) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.

15.4 Nothing in this clause shall prevent the Council or the Contractor from disclosing information under or in accordance with any legal requirement, or in accordance with any lawful requirements made by the Courts or by any regulatory body or inspectorate established by law.

15.5 The Contractor shall ensure that all employees engaged in the provision of the Service or otherwise with access to information relating to the Service will comply with this Clause 15

15.6 The Contractor shall ensure that the terms of any sub-contract fully reflect the provisions of this Clause 15

## 16.0 **AGENCY**

16.1 The Contractor shall not represent itself as being: -

- (a) the servant or agent of the Council (except as may be authorised under the Contract);
- (b) authorised to enter into any contract or other obligation on the Council's behalf except as may be authorised under the Contract

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## **17.0 DISPUTE RESOLUTION**

- 17.1 If a dispute arises between the Council and the Contractor in relation to the Contract both parties shall use all reasonable endeavours to resolve the dispute.
- 17.2 This clause will not operate to prejudice the right of either party to enforce any remedy available under the contract by litigation.
- 17.3 Where required by the Council the Contractor shall continue to provide the Service in accordance with the Contract pending any discussion or outcome of the dispute.

## **18.0 NOTICES, AMENDMENTS, TUPE, OMBUDSMAN AND GENERAL**

- 18.1 Any Notice to be served under the Contract must be in writing, sent by Recorded Delivery and addressed to the party concerned at the addresses referred to on Page 1 of the Contract. Notices to the Council must be addressed to the Contract Manager.
- 18.2 Any amendment to the Contract must be made in writing, signed by both parties and attached to the Contract.
- 18.3 If required by the Contract Manager the Contractor will provide such details as the Contract Manager considers necessary to disclose to potential tenderers for the future letting of this Contract relating to the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) or any equivalent provisions then in force. These details will relate primarily to the Contractors employees, terms and conditions of service, length of service, etc.
- 18.4 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
- 18.5 The overall remedies for late payment by either party referred to in the Contract are substantial remedies within the meaning of Part II of the Late Payment of Commercial Debts (Interest) Act 1998 and both parties acknowledge that the term was not imposed on either party to the detriment of the other and that the Contractor did not receive any inducement to agree to this term.
- 18.6 The Contractor shall comply with all relevant legislation relating to the provision of the Service and the Contractor will comply with the provisions of the Human Rights Act 1998 as if it were a public authority.
- 18.7 If a complaint is made to the Council about the Service, the Local Government Ombudsman may investigate the complaint and the Contractor will be required to co-operate in such investigations. If the Council is found guilty of maladministration or injustice by the Ombudsman relating to a matter caused by the act or default of the Contractor, the Council shall be indemnified by the Contractor in respect of all costs which arise from the maladministration or injustice.

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## **19.0 OPTION TO EXTEND**

- 19.1 At any time before the expiration of the contract the Council may review the contract term and may require the Contractor to continue to provide the service for a further period of up to two years in accordance with the Councils financial regulations.
- 19.2 Where the option in Clause 19.1 is exercised the Contractor shall continue to provide the Service on the terms of the Contract for the period(s) specified provided that the terms of this Clause 19 shall not apply after the exercise of the options in Clause 19.1

## **20.0 SUSTAINABILITY**

- 20.1 In providing the Service the Contractor shall meet such sustainability requirements as are set out in the Schedule.
- 20.2 The Contractor shall comply with the provisions of any environmental policy operated by the Contractor which has been approved by the Council and relates to the Service.
- 20.3 The Council shall monitor compliance with this clause and the provisions of Clause 20.4 shall apply.
- 20.4 Throughout the Term the Contractor shall make all reasonable endeavours to reduce any negative impact on the environment caused by the Service. If during the Term the Contractor wishes to change any of the materials, technologies or working practices used in connection with the Service, the Contractor shall notify the Council detailing the changes, any possible impact on the Contract Charges or the Contract Standards and must also include an evaluation of the environmental impact of the proposed changes. If the Council agrees to the variation the Contractor shall implement the changes in accordance with the provisions of Clause 7. Any such changes proposed by the Contractor must include an evaluation of the environmental impact of the proposed changes.

## **THE SCHEDULE**

### **1. TENDER DETAILS**

(including Contract Charges, Routes, Start Date, Term, Vehicle Details. This list is not exhaustive )

### **2. HIGHWAY AUTHORITY DETAILS**

### **3. INTRODUCTORY VISIT REQUIREMENTS**

### **4. FARES, CONDITIONS**

### **5. DEFAULTS**

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The following are examples of situations where the Contract Standards have not been met. (NB – This is not an exhaustive list). If they occur the Council can serve Default Notices under Clause 10 of the Contract.

- Defective Vehicle (including any breach of age requirement);
- Failure to operate;
- Assault by driver/escort of passenger;
- Abusive driver/escort;
- Service operating early or late;
- Seatbelts not fitted (where required);
- Smoking on vehicle;
- Unauthorised carriage of goods;
- Inoperative reversing horn;
- No child signs;
- Incorrect destination blind.

It is emphasised that Default Notices may be served for any breach of the Contract other than where the Corporate Director accepts a breach as being minor or trivial. However, the Corporate Director will use his discretion in deciding whether or not it is appropriate to serve a Default Notice and will take due account of all relevant circumstances.