

## CONDITIONS OF CONTRACT INTEGRATED PASSENGER TRANSPORT

### 1.0 DEFINITIONS AND INTERPRETATION

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

Authorised Officer	The Corporate Director of Business and Environmental Services and his authorised representatives
Best Practice Guide	The Council's guide to Best Practice in Transport Services 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 the 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
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 Guide and where no specific standard is stated in the Contract, the Contract Standard is to be to the Council's satisfaction
Contract Manager	The person appointed by the Contractor under Clause 2.2
Designated Person	The person appointed by the Contractor to act for it in connection with Disclosure & Barring Service checks.
Disclosure & Barring Service (DBS)	A government department established to help organisations make safer recruiting decisions
Driver	A person employed or otherwise provided by the Contractor to drive Vehicles used for the Service
Home to School or Health and Social Care Transport Service	The service provided for school pupils as part of the Council's obligations under Section 509 of the Education Act 1996 (as amended) and/or transport required for the purposes of Health and Social care.
Local Bus Service	A service provided for members of the public as part of the Council's obligations under Section 2 of 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
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 Specification
Service	The Passenger Transport Service(s) to be provided under this Agreement
Social 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 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; such period is subject to extension under Clause 18
Vehicle	The vehicle(s) used for the Service referred to in the Schedule

1.2 This Contract is governed by English Law and the Council and the Contractor irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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) the singular include the plural
- (e) clauses are to clauses in the Conditions
- (f) the Contractor's staff includes partners, directors, employees, agents subcontractors, self-employed persons 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, codes of practice and the Best Practice Guide relating to the Service.

### 2.2 Contractor's Representative and Designated Person

2.2.1 Before the Start Date the Contractor must nominate:-

- (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.

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

## 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 or Health & Social Care Transport Service is a suitable person to drive Vehicles carrying children/vulnerable adults or to act as a Passenger Assistant upon such Vehicles. Drivers and Passenger Assistants must be recruited using the minimum standards set out in the Best Practice Guide and have received any appropriate training. Contractors must be able to provide evidence of any training undertaken.

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.

2.4.4 Any person over the age of 65 who is used as a Driver must have an annual medical check and the Contractor shall retain written evidence of this for inspection by the Authorised Officer. Any person used as a Passenger

Assistant must be fully able to carry out all aspects of the role and any specific requirements pertaining to individual passengers.

- 2.4.5 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 or Passenger Assistants are to be used the Contractor must maintain personnel records including training records as if such Drivers and Passenger Assistants were employees and such records should be available for inspection on request.
- 2.4.7 The Contractor will ensure that payroll records are maintained for all employees
- 2.4.8 The Contractor must ensure that all Drivers and Passenger Assistants 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(s) 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 then all Drivers must have successfully completed a MIDAS assessment, and retain this by undertaking refresher training at the appropriate time.
- 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 Council's 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 and Passenger Assistants are fit to work whilst engaged on the Service and are not rendered unsuitable by reason of alcohol/substance/drug abuse or sleep deprivation, illness or any other cause.
- 2.4.16 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. The Contractor shall also undertake checks of individual Drivers' compliance with the relevant drivers' hours regulations and evidence of these checks shall be retained and be available for inspection.

2.4.18 The Contractor shall ensure that all Drivers and Passenger Assistants wear, and have visible, the NYCC DBS Badge when working on the Contract.

## **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 shall be for a minimum of £10million separately for each claim.

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 shall ensure that the employer's liability insurance covers any volunteers and anyone who works on a self-employed basis in the provision of the Service.

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 and voluntary Drivers and copies of these documents must be retained by the Contractor where such Drivers are undertaking work on their behalf.

2.5.6 If the Contractor fails to supply any documents requested to establish compliance with Clause 2.5 then the Council reserves the right to withhold payment until such time as the documents are made available. If the documents are not provided within 3 months of the date of expiry of the insurance then this would constitute a fundamental breach of the Contract under Clause 12.1.

## **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

- 2.6.2 Vehicles with fewer than nine passenger seats shall 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, including wheelchair seated passengers, 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 or Health & Social Care 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 or a transport assessment.
- 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 shall be done by means of an announcement or audiovisual 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.)
- 2.6.7 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.
- 2.6.8 A daily walk round (first use) check shall be undertaken by a responsible person acting on behalf of the Contractor before a Vehicle is first used. (See the Best Practice Guide for further information.)
- 2.6.9 A copy of the defect sheet recording the First Use check each day must be kept with the Vehicle and be available for inspection unless otherwise agreed by the Authorised Officer.
- 2.6.10 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.
- 2.6.11 The Contractor shall ensure that scheduled vehicle inspections are undertaken by a competent person. The Council recommends, as a minimum, that the relevant competent person 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 tests).

2.6.12 Maintenance, inspection and first use check records must be kept for a minimum of fifteen months for all Vehicles operating on the Service.

2.6.13 The Contractor shall ensure that all Vehicles shall be fitted with a serviceable foam or water fire extinguisher which complies with BS5423 or EN3 and has a minimum fire rating of at least 8A or 21B.

2.6.14 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.

2.6.15 All PCVs must be fitted with wheel nut indicators except where otherwise agreed by the Authorised Officer.

2.6.16 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.

2.6.17 The Contractor shall ensure that all Vehicles, including taxis, display the destination and/or service number and other information required by the Schedule.

2.6.18 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 Term of this Contract shall be:

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

2.6.19 Vehicles fitted with passenger wheelchair lifts, which must conform to LOLER 98 Regulations, require an annual LOLER weight test certificate and an inspection by a competent person every 6 months. Evidence of both must be retained by the Contractor and produced for inspection by the Authorised Officer on request.

2.6.20 Contractors shall ensure that they inform the appropriate licensing authorities, in writing, of any Vehicles which have been modified after original registration and that they have been re-tested by the DVSA, if required. Evidence of the notification of modification, response and re-test must be kept by the Contractor and produced for inspection by the Authorised Officer on request. The Council, subject to an inspection, reserve the right to deem a modified Vehicle as unsuitable for Contracted Services.

2.6.21 The Contractor shall consider The Advertising Practice Code prior to agreeing to enter in to any vehicle advertisement agreement. The code gives

specific guidance relating to advertising to children and is enforced by the Advertising Standards Authority.

## **2.7 Training and Introductory Visits**

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

2.7.2 Where the Service is provided to a primary or special needs 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 the majority of pupils entitled to free Home to School transport with a travel permit. The Contractor shall ensure that Drivers shall check such permits on a daily and no less frequently than a weekly basis and the Contractor shall provide the Authorised Officer with details of the name and school of any child travelling on Home to School or Health and Social Care Transport Service without such a permit. On a Local Bus Service, non-permit holders shall pay the appropriate fare to the Contractor. Pupils shall 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/passenger from a Vehicle before the desired stop except in circumstances where the actions of the pupil/passenger have constituted a genuine threat to the safety of the Driver or other passengers. If such action takes place, the 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. There shall be no standing passengers at all on Vehicles which do not have a permit to carry them. Where overloading occurs the Authorised Officer shall be informed immediately.

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

2.8.6 The Contractor shall ensure that, for registered Local Bus Services, their policies adhere to the CPT Guidelines for the transportation of Wheelchairs and Mobility scooters



## 2.9 Provision of Information and Freedom of Information

- 2.9.1 Whenever required by the Authorised Officer 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 Authorised Officer may take copies of such material.
- 2.9.2 The Contractor shall notify the Authorised Officer, in writing, 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 and “EIR” means the Environmental Information Regulations 2004; “exempt information” means information falling into the exemptions set out in the FOI or the exemptions in the EIR; “confidential information” means information to which confidentiality or commercial interests exemptions within FOI or EIR 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 the Environmental Information Regulations 2004 (EIR) 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 or EIR.
- 2.9.4.3 The Contractor shall make all reasonable efforts to assist the Council in meeting its obligations under the FOI or EIR. If the Council receives an access request under the FOI or EIR, 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 Authorised Officer, 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 or EIR. 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 or EIR.

- 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.
- 2.9.4.8 The Contractor will inform Drivers and Passenger Assistants that information, including their personal data, may be disclosed to relevant authorities (including Taxi Licensing Authorities and The Traffic Commissioners) by the Contractor or by the Council to fulfil their obligations to them
- 2.9.4.9 The Contractor shall agree to share ticket machine data with the Council in accordance with sections 16 and 17 of the North Yorkshire & York Concessionary Fares Scheme 1 June 2013, or as otherwise amended for Contract management purposes.'

## 2.10 **Surveys**

- 2.10.1 The Contractor shall complete or distribute survey forms relating to the Service as the Authorised Officer 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**

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

## 2.12 **Best Practice Guide**

2.12.1 The Contractor shall comply with the Best Practice Guide: the Council reserves the right from time to time to issue amendments to the Best Practice Guide and shall make available copies of the same to the 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 If the Service constitutes a "Local Bus Service" the Contractor shall register the Service with the relevant Traffic Area Office. The Contractor is responsible for the preparation and submission of registration documents and payment of fees to the Traffic Area Office except where otherwise agreed by the Authorised Officer.

3.3 The Contractor shall not vary any Route or the location of any stopping place without the prior approval of the Authorised Officer.

3.4 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.

3.5 Where appropriate the Contractor shall make use of any bus stations along a Route except where agreed otherwise by the Authorised Officer. The Contractor shall ensure that all recognised stopping places are observed along a Route unless specified otherwise in the Schedule.

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 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 or Health and Social Care Transport 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 unless approval has previously been given for payment to be made via the Council's automatic payment system. Invoices shall be submitted monthly (or four weekly as may be agreed) in arrears. The Council shall pay an undisputed

invoice (or the undisputed part of invoices) within 30 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 by email.

4.2 Invoices shall include:-

- Details of journeys or part journeys not operated and the reason.
- The total scheduled mileage not operated in the period covered by the invoice.
- In respect of local bus Contracts the number of fare paying passengers and concessionary pass holders carried and revenue accrued for each journey on each day in the fourth week of operation and each successive fourth week (the Authorised Officer may require information for other weeks as necessary in a format agreed by him).
- In respect of local bus Contracts, including registered Home to School Transport Services the total number of fare paying passengers and concessionary pass holders carried and revenue accrued by the Contractor for the period of the invoice.
- In respect of local bus Contracts a quarterly statement of payments received from all authorities in respect of concessionary fares.
- Full details of the Contract Charges.
- Where relevant and agreed by the Council the costs of making alternative arrangements.

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 transport journeys which were actually required and which did take place. Failure to notify the Authorised Officer of non-operation or changes to a Contract as a result of passengers moving address or leaving school will result in action being taken to re-cover any payment made that the Contractor is not entitled to.

5.0 **INFLATION**

5.1 The Contract Charges will be reviewed by the Council from 1 April each year and subject to Clause 5.2 the review shall be calculated using several different factors: The following is an example of the factors and how they are weighted.

<b>EXAMPLE</b>		<b>EXAMPLE</b>	
These factors are fixed from RPI		These will vary	
Factors Taken into account	% Relative weight	Inflation (Rounded %)	Weighted inflation (Actual %)
Maintenance of Motor Vehicles	25	1.05	26.28
Petrol / diesel and Oil	15	1.19	13.63
Licenses and Insurance	13	1.05	13.45
Wages	47	1.02	48.29
Total	100.00		1.165

5.2 The Council may at its sole discretion elect to review the Contract Charges by reference to criteria other than the matrix in Clause 5.1; primarily this will relate to the Council's budgetary position. Whilst the Council will not make a reduction in the Contract Charges it may elect either not to increase the Contract Charges at all or to increase them by an amount which is less than the amount which would have been payable under the example matrix in Clause 5.1.

5.3 Where a Contract has been in operation for fewer than six months prior to 1 April then no increase will be paid until the following April.

## 6.0 **PUBLICITY**

6.1 The Council has produced a Bus Information Strategy which sets out its requirements for the provision of information. Except where otherwise agreed by the Council the Contractor is responsible for providing and distributing publicity for the Service in compliance with the Minimum Enforceable Requirement in the Bus Information Strategy.

6.2 The Contractor shall supply copies of publicity material to the Authorised Officer at least seven days before commencement of the Service except where otherwise agreed by the Authorised Officer. This requirement includes any publicity applying to changes to an existing Service.

6.3 If the publicity material provided by the Contractor is inadequate the Authorised Officer may, (upon prior notice being given to the Contractor) produce the necessary publicity material on the Contractor's behalf and deduct the costs incurred from the Contract Charges.

6.4 The Contractor shall provide timetable information at appropriate points on the Route as agreed with the Authorised Officer.

6.5 On receipt of an undisputed invoice, the Contractor shall pay the Council the apportioned traveline costs, as decided by the Council, for the traveline costs associated with the Services operated by the Contractor on behalf of the Council. These costs will be paid annually.

## 7.0 **FARES**

7.1 If the Schedule includes a fare table or makes reference to fares conditions the Contractor shall comply with the Schedule's requirements in this respect. In all other circumstances the Contractor may determine fares subject to the following provisions of this Clause 7.

7.2 The Contractor shall provide the Authorised Officer with a comprehensive fare table for each Local Bus Service at least seven days before it is introduced except where otherwise agreed by the Authorised Officer.

7.3 The Contractor may apply to the Authorised Officer to revise fares on any Service; such application shall be in writing and be at least 28 days before the proposed introduction of such revisions. The Authorised Officer may approve, amend or refuse the proposed revision and shall give reasons for doing so.

7.4 The Contractor shall co-operate with the Council and any other authority which operates a concessionary fares scheme or system of multi-journey tickets. The Contractor shall ensure that any additional cost or revenue loss is borne by the

authority introducing the scheme and shall be responsible for all negotiations relating to such scheme or system.

7.5 Half fares should be accepted for all young people up to age 18 years. The Contractor must participate in any ID schemes that may be introduced during the life of the Contract and it may charge a reasonable administration fee approved by the Council to the passenger.

7.6 The Contractor shall collect and audit fares revenue and ensure that each fare paying passenger shall be issued with a ticket showing the date of issue and the value of the fare paid.

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

## 8.0 SUB-CONTRACTING AND ASSIGNMENT

8.1 The Contractor shall not assign this Contract without the prior written consent of the Council.

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

8.3 Wherever sub-contractors are used these must be included on a list supplied by the Council and those working on the Contract must hold a current NYCC Driver or Passenger Assistants badge. The Contractor remains responsible for the provision of the Service in accordance with the Contract.

8.4 Where any sub-contracting is permitted, the Contractor shall remain responsible for the acts and omissions of its sub-contractors as though they were its own.

## 9.0 VARIATION

9.1 At any time(s) during the Term the Authorised Officer 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).

9.2 The valuation of any variation shall be made by the Authorised Officer as follows:-

Additional mileage will be paid at the following rates (which are adjustable in accordance with clause 5)

Vehicle seating capacity	Variation Rate Per kilometre	
	Less than	Over 1.5km

	1.5km	
Up to eight passenger seats	18p	52p
9 – 26 passenger seats	24p	78p
Over 26 passenger seats	32p	1.06p
Index is current at 1 <sup>st</sup> September 2015		

9.3 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.

9.4 If a Contractor is unwilling to undertake the variation in Contract then this will constitute a fundamental breach of Contract as per clause 12.1.

#### 10.0 **DEFAULT**

10.1 Where the Council receives a complaint about the standard of the Service then an Incident Report may be issued by the Council.

10.2 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).

10.3 Default notices shall specify the nature of the default(s) and where appropriate shall specify how and when the Contractor is to remedy the default(s). Failure to return a default notice within the specified timescale will result in additional administrative costs being incurred by the Contractor.

10.4 The Contractor shall comply with the default notice but may make representations to the Authorised Officer on the matters referred to in it which the Authorised Officer shall consider and, as necessary, discuss with the Contractor.

10.5 Unless a default notice is waived or deferred by the Authorised Officer as a consequence of the representations made by the Contractor under 10.4 the Contractor shall pay the Council a default payment for each default which represents 25% of the daily Contract Charges payable or the sum of £20 whichever shall be the greater. This sum may be deducted from the Contract Charges by the Authorised Officer.

10.6 The Contractor and the Council agree that the default payment payable to the Council in respect of default notices represent a reasonable estimate of the cost incurred by the Council in investigating the default(s), serving the default notice and, where relevant, checking for compliance.

10.7 Where the Contractor is issued with a number of default notices on the same Contract in a relatively short space of time then this would constitute poor performance and may result in increased monitoring, the requirement to attend an issues resolution meeting or the withholding of payments. Where these actions do not result in an improvement in the Service, to the extent that no new default notices are issued during a specified monitoring period, then this would constitute a persistent breach of Contract under Clause 12.1.

10.8 In addition to the default notice provisions in Clause 10.1 – 10.7 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 Authorised Officer 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.

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

## 11.0 **SUSPENSION OF THE SERVICE**

11.1 If the Authorised Officer reasonably considers that a passenger transport Service has been registered commercially which meets the need of a Local Bus Service provided under this Contract the Authorised Officer may require the Service provided under the Contract to be suspended for the remainder of the Term or until the commercial passenger transport Service ceases to be operated, whichever is the sooner.

11.2 The Authorised Officer will give written notice of suspension to the Contractor at least 56 days before the suspension is to take effect but may give a shorter period of notice where appropriate.

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

## 12.0 **TERMINATION**

12.1 If:

(a) 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 Bribery Act 2010 or has committed an offence under Section 117(2) of the Local Government Act 1972; or has offered any gift or consideration of any kind as an inducement or disincentive for doing anything in respect of this Contract or any other Contract with the Council; or
- is otherwise in breach of the collusive tendering certificate provided with the Tender; or



- 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;
  - The Contractor no longer meets the standard required by the Councils quality threshold; or
  - ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
  - or any personnel the Contractor engages to provide the requirements of the Contract fail, or refuse, after written instruction to provide the Services reasonably and properly required; or
  - or any of the personnel it engages to provide the Contract requirements conduct itself/himself/herself in any manner which, in the Council's reasonable opinion brings or is likely to bring the Council into disrepute by association; or
  - at any time during the Term is convicted of any offence referred to in Regulation 57(1) of the Public Contracts Regulations 2015 or if an event occurs which would have entitled the Council to treat the Contractor as ineligible for selection under Regulation 57(3), 57(4) or 57(8).
- (b) The Council has within the last 14 days terminated another Contract with the Contractor for a service similar to the Service provided under this Contract and such termination had been effected on such serious grounds as to enable the Council reasonably to believe that:
- (i) the safety of passengers and/or the public at large may be endangered or otherwise adversely affected and or
  - (ii) the quality of the Service under this Contract can no longer be guaranteed by the Contractor or
- (c) The reputation of the Contractor has so seriously been jeopardised by an act or default of the Contractor, its servants or agents (including, but without limitation, a criminal act) that the Council reasonably believes that the Contractor is unable to guarantee adherence to the Contract Standards.

then the Council may terminate the Contract immediately and will be entitled to recover all losses resulting from such termination including any additional costs incurred for the outstanding period of the Contract.

12.2 If the Contract has been terminated under 12.1 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.

12.3 If the Council is in persistent and/or fundamental breach of the Contract then the Contractor may terminate the Contract by giving 30 days notice but without prejudice to any other remedies which may be available to it in respect of any breach which occurred before the termination.

- 12.4 In the case of Home to School or Health and Social Care Transport Service Contracts the Council may terminate the Contract by giving 30 days notice 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.
- 12.5 The Contractor may apply to the Authorised Officer 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 Authorised Officer.

### **13.0 HEALTH AND SAFETY AND OTHER STATUTORY REQUIREMENTS**

#### **13.1 Health and Safety**

- 13.1.1 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.
- 13.1.2 The Contractor shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of the Contract.
- 13.1.3 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.
- 13.1.4 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 directly employed, self-employed or volunteer staff in the performance of the Contract.
- 13.1.5 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.
- 13.1.6 Where five or more people are employed by the Contractor's business the Contractor must have been assessed to, or be working towards, an accredited health and safety scheme standard such as BS ISO 39001, the Contractor's health and safety scheme (CHAS) or equivalent.
- 13.1.7 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 risk assessment, will be made available for inspection by the Contractor on request.
- 13.1.8 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 and provide the written incident report(s) as soon as possible thereafter.

## 13.2 Other Legislation

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

## 13.3 Equal Opportunities

13.3.1 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.

13.3.2 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.

13.3.3 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.

13.3.4 The Contractor shall, on request, provide the Council with details of any steps taken under Clause 13.3.3 above.

13.3.5 The Contractor shall comply with the Equalities Legislation and shall satisfy the Council that:-

13.3.5.1 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;

13.3.5.2 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.

13.3.6 The Contractor shall provide such information as the Council may reasonably request for the purpose of assessing the Contractor's compliance with this Clause 13.3 including, if requested, examples of any instructions or other documents, recruitment advertisements or other literature containing details of monitoring of recruitment and employees.

#### 13.4 **Confidentiality and Protection of Personal Data**

13.4.1 In clause 13.4 "The Act" means the Data Protection Act 1998; "Personal data" means information as defined in the Act, and which is supplied to or processed by the Provider on behalf of the Council; "The Provider" means the Contractor which will be supplied the personal data; "the Council" means North Yorkshire County Council.

13.4.2 North Yorkshire County Council is the data controller of the personal data and the Contractor (provider) is a data processor under the terms of the Act. The Contractor will not process the personal data except for the purpose of or in accordance with this Contract.

13.4.3 The Contractor (provider) shall maintain appropriate technical and organisational security measures and in particular shall:

13.4.3.1 secure personal data against unauthorised disclosure or accidental loss or corruption by such technical and managerial controls as would be appropriate if the provider was the data controller.

13.4.3.2 hold the personal data for only as long as necessary for the completion of the Contract and then destroy it or return it to the Council in a secure manner.

13.4.3.3 not retain the personal data or any copy of it

13.4.4 The Contractor shall ensure the conformity of any of its staff or agents who have access to the personal data to the above requirements. The Contractor will ensure that such employees and agents receive appropriate data protection training and understand their responsibilities under the act in respect of personal data.

13.4.5 Should the Contractor receive a subject request for personal data it will be referred to the information governance officer of the Council as soon as practicable after receipt.

13.4.6 Should the Contractor sub-contract any part of the Services in accordance with the Contract then the Contractor shall ensure that any sub-contract or other arrangement with any such sub-contractor shall include a binding legal obligation upon the sub-contractor to comply with the obligations set out in this clause. For the avoidance of doubt any such sub-contracting shall not relieve the Contractor of its obligation to comply fully with this clause.

13.4.7 The Contractor shall be liable for and shall fully indemnify the Council against all claims, demands, actions, costs, proceedings and liabilities of any sort

that the Council incurs due to the provider's or any sub-contractor's breach of this clause.

13.4.8 The Contractor shall provide to the Council on request evidence to the Council's reasonable satisfaction that it can comply with this clause.

13.4.9 The obligations set out in this clause shall remain enforced notwithstanding termination of this agreement

#### **14.0 AGENCY**

14.1 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

#### **15.0 BEST VALUE**

15.1 In accordance with Part 1 of the Local Government Act 1999, and subsequent legislation in relation to Best Value, the Council may from time to time review the Service in pursuance of the Council's wide commitment to continuing Service improvement, having regard to a combination of economy, efficiency and effectiveness and the Contractor shall: -

- (a) Participate in, and fully co-operate with, such reviews; and
- (b) Provide such assistance and information including, but without limitation, accounting and other record books, business plans, quality assurance, service records and service plans as may be reasonably required by the Council in relation to the Service.

#### **16.0 DISPUTE RESOLUTION**

16.1 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.

16.2 This clause will not operate to prejudice the right of either party to enforce any remedy available under the Contract by litigation.

16.3 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.

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

17.1 Any Notice to be served under the Contract must be in writing, sent by Recorded Delivery, or delivered by hand, 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 Authorised Officer.

17.2 Any amendment to the Contract must be made in writing, signed by both parties and attached to the Contract.

- 17.3 If required by the Authorised Officer the Contractor will provide such details as the Authorised Officer considers necessary to disclose to potential tenderers for the future letting of this Contract relating to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (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.
- 17.4 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.
- 17.5 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.
- 17.6 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.
- 17.7 The Contractor must advise the Council in writing of any change in information or circumstances as provided for quality assessment during or after the Tender process.

## **18.0 OPTION TO EXTEND AND BREAK CLAUSE**

- 18.1 At any time before the expiration of two years of the Term the Council will review the Term and may require the Contractor to continue to provide the Service for a further period of two years.
- 18.2 Where the option in Clause 18.1 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 18 shall not apply after the exercise of the options in Clause 18.1.
- 18.3 If, for budgetary reasons or other relevant changes in Council policy relating directly or indirectly to the Service the Council no longer requires the Service then the Council may give written notice to the Contractor at any time that the Service will no longer be required with effect from a date at least three months after the date the notice was served.
- 18.4 The Council shall not be liable to the Contractor for any costs incurred by it as a consequence of the premature termination of the Contract under this Clause 18.3.

## **19.0 SUSTAINABILITY**

- 19.1 In providing the Service the Contractor shall meet such sustainability requirements as are set out in the Schedule.
- 19.2 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 9.

## **Appendix**

### **THE SCHEDULE/SERVICE SPECIFICATION**

The Schedule will be finalised prior to Contract award and will be appended to the Contract giving Contract/Service Designation, Routes, Start Date, Term, Vehicle Details, special requirements (this list is not exhaustive)

### **DEFAULTS**

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.

- Quality of Vehicle (including any breach of age requirement, immediate or delayed prohibitions, inoperative reversing horn, no wheel-nut indicators or failing to carry Contracted equipment);
- Failure to operate Service, operating early or late, or other timetable issues;
- Concerns raised or complaint against a Driver/Passenger Assistant including manner of driving;
- Seatbelt issues - not fitted (where required), faulty or Driver/Passenger Assistant not wearing;
- Smoking (including e-cigarettes) in Vehicle or Driver using mobile phone whilst driving;
- Illegal operation;
- Insufficient capacity, standing or unauthorised passengers;
- Drivers/Passenger Assistants not wearing, and having visible, DBS badges;
- Absence of Vehicle first use check or Driver not carrying CPC card;
- Failure to report an accident, near miss or breakdown;
- Non-approved Driver/Passenger Assistant operating Service Not using regular Driver or Passenger Assistant where required;
- The unauthorised merging or variation of Contracts;
- Incorrect, or no signage, including Route numbers, destination boards and school transport signs;
- Other;

It is emphasised that Default Notices may be served for any breach of the Contract other than where the Authorised Officer accepts a breach as being minor or trivial. However, the Authorised Officer 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.