

Cambridgeshire & Peterborough Combined Authority  
Pathfinder House  
St Marys Street, Huntingdon  
PE29 3TN

21st August 2024

[REDACTED]

Dear [REDACTED]

**Re: Freedom of Information request ref CA333**

Thank you for your request for information received on 29<sup>th</sup> July 2024. The response is given below:

**Request:**

"I'm currently researching the 31 bus service (Barley to Cambridge), which is subsidised by the Combined Authority. I would like to request the contractual agreement between A2B and the Combined Authority. If the whole contract is unable to be released, I'm specifically interested in information regarding what proportion of services are required to be on time/operational, to avoid a breach of contract. I'd also be interested in any obligation for A2B to provide online tracking of their services"

I believe you may hold this information. If you do, would you please let me know by return if you hold this information and are able to answer every question on the request

Would you please let me have a full response to the request by 16<sup>th</sup> August 2024.

- The FOI Act covers any recorded information that is held by a public authority; recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.
- Let me know if this request is clear or if you require clarification of the request.
- If you feel that all or some of the information should not be released under the FOI Act please could you provide your reasons so that we may compose the appropriate response and apply the relevant exemption under the act.

**Response:**

Please refer to the attachments on this email for the response in relation to the request.

1. De minimis 31A (Jun 24 - Aug 24)
2. CPCA Bus Contract - Schedule 1 (May 24)
3. CPCA Bus Contract 2024 (May 24)

Any personal identifiable information (names and signatures) is exempt under Section 40 of the Freedom of Information Act 2000 and has, therefore, been redacted.

Section 40 of the Freedom of Information Act 2000 ["the Act"] includes the following:

**Section 40 exemption**

Section 40 of the Act provides that:

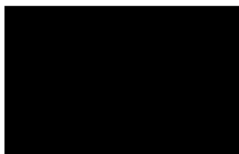
***40.— Personal information***

*(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.*

The guidance confirms that it covers data which can identify an individual.

The above exemption IS *absolute*. This means that there is no public interest test to consider when applying the exemption.

Yours sincerely



Sophie Purvis  
**Data Protection and Information Governance Assistant**



## De Minimis Contract Specification

CPCA Contract number	31A
Contract operator	A2B Travel Group Ltd
Service number	31
Route description	Barley – Fowlmere – Cambridge
Contract type	Minimum Cost
Timetable	See appended timetable
Days of operation	Monday to Saturday (except bank holidays)
Minimum vehicle capacity	24 seats
Vehicle specification	Higher specification vehicle complying with The Public Service Vehicles Accessibility Regulations 2000 (Euro 4 or 5 emission standards)
Ticket machine specification	Higher specification electronic ticket issuing and data capture equipment
Contract start date	3 <sup>rd</sup> June 2024
Contract Period:	Until 18 <sup>th</sup> August 2024
Cost per period:	£989.52 per day
Special Conditions	<ul style="list-style-type: none"><li>• The CPCA bus contract terms and conditions will apply to this contract.</li><li>• Valid tickets issued by other operators must be accepted.</li><li>• No separate BSOG payment can be claimed for this service.</li><li>• Stagecoach Dayrider Plus vouchers must be made available if requested by the Combined Authority.</li><li>• Buses laying over at Addenbrooke's Bus Station must not prevent other buses from using their allocated bays.</li></ul>

### Services to be operated on and around Bank Holidays

In accordance with schedule 1 of the conditions of contract, the service operated on and around bank holidays shall be as follows:

New Years Day	None	Late Summer Bank Holiday	None
Good Friday	None	Christmas Eve	No journeys after 20:00
Easter Monday	None	Christmas Day	None
May Day Bank Holiday	None	26 December	None
Late Spring Bank Holiday	None	New Years Eve	No journeys after 20:00

Signed on behalf of Contractor by:	
Print Name:	
Position in Company:	
Date:	21/05/2024

Signed on behalf of Cambridgeshire & Peterborough Combined Authority by:	 <a href="#">Andrew Highfield (May 21, 2024 08:51 GMT+1)</a>
Print Name:	Andrew Highfield
Officer Position:	Assistant Director, Public Transport
Date:	21/05/2024

# Barley - Fowlmere - Cambridge

Service 31

MONDAY TO SATURDAY

Notes :

<b>Barley, Picknag Road, High Street (SE-Bound)</b>	<b>06:58</b>	--	--	--
Great Chishill, Hall Lane, Plaistow Way	<b>07:01</b>	--	--	--
Chrishall, Crawley End Road, School	<b>07:08</b>	--	--	--
Heydon, Chrishall Road, opp Fowlmere Road	<b>07:12</b>	--	--	--
Fowlmere, Chrishall Road, opp 23 Chrishall Road	<b>07:27</b>	<b>09:37</b>	<b>11:47</b>	<b>13:57</b>
Thriplow, Fowlmere Road, opp Lower Street	<b>07:33</b>	<b>09:43</b>	<b>11:53</b>	<b>14:03</b>
Newton, Cambridge Road, opp War Memorial	<b>07:38</b>	<b>09:48</b>	<b>11:58</b>	<b>14:08</b>
Hauxton, Cambridge Road, opp Church Road	<b>07:43</b>	<b>09:53</b>	<b>12:03</b>	<b>14:13</b>
Little Shelford, Church Street, opp High Street	<b>07:45</b>	<b>09:54</b>	<b>12:04</b>	<b>14:14</b>
Great Shelford, London Road, opp Granta Terrace	<b>07:50</b>	<b>10:00</b>	<b>12:10</b>	<b>14:20</b>
Great Shelford, Hinton Way, Chaston Road	<b>07:56</b>	<b>10:06</b>	<b>12:16</b>	<b>14:26</b>
Addenbrooke's, Robinson Way, Hospital Bus Station (Bay B)	<b>08:11</b>	<b>10:11</b>	<b>12:21</b>	<b>14:31</b>
Cambridge, Hills Road, Botanic Gardens	<b>08:21</b>	--	--	--
<b>Cambridge, Drummer Street, Bus Station Bay 3</b>	<b>08:30</b>	--	--	--

## Notes:

**Sch**      **Runs Monday to Friday when schools are open**

**NSch**    **Runs Monday to Friday when schools are closed and Saturday**

**Cambridge - Fowlmere - Barley shown on next page**

Barley - Fowlmere - Cambridge shown on previous page

## Cambridge - Fowlmere - Barley

Service 31

MONDAY TO SATURDAY

Notes :

<b>Cambridge, Drummer Street, Bus Station Bay 3</b>	--	--	--	<b>16:30</b>
Cambridge, Hills Road, opp Botanic Gardens	--	--	--	<b>16:40</b>
Addenbrooke's, Robinson Way, Hospital Bus Station (Bay B)	<b>10:15</b>	<b>12:25</b>	<b>14:35</b>	<b>17:00</b>
Great Shelford, Mingle Lane, o/s The Limes	<b>10:20</b>	<b>12:30</b>	<b>14:40</b>	<b>17:05</b>
Great Shelford, London Road, Granta Terrace	<b>10:25</b>	<b>12:35</b>	<b>14:45</b>	<b>17:10</b>
Little Shelford, Church Street, High Street	<b>10:30</b>	<b>12:40</b>	<b>14:50</b>	<b>17:15</b>
Hauxton, Cambridge Road, Church Road	<b>10:32</b>	<b>12:42</b>	<b>14:52</b>	<b>17:17</b>
Newton, Cambridge Road, War Memorial	<b>10:37</b>	<b>12:47</b>	<b>14:57</b>	<b>17:22</b>
Thriplow, Fowlmere Road, Lower Street	<b>10:42</b>	<b>12:52</b>	<b>15:02</b>	<b>17:27</b>
Fowlmere, Chrishall Road, o/s 23 Chrishall Road	<b>10:48</b>	<b>12:58</b>	<b>15:08</b>	<b>17:34</b>
Heydon, Chrishall Road, Fowlmere Road	--	--	--	<b>R</b>
Chrishall, Crawley End Road, opp School	--	--	--	<b>R</b>
Great Chishill, Hall Lane, opp Plaistow Way	--	--	--	<b>R</b>
<b>Barley, Picknag Road, High Street (NW-Bound)</b>	--	--	--	<b>R</b>

### Notes:

**R** Please tell the driver when you board the bus if you wish to travel to this point





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Signed on behalf of Cambridgeshire & Peterborough Combined Authority by:	 <a href="#">Andrew Highfield (May 21, 2024 08:51 GMT+1)</a>
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<b>Barley, Picknag Road, High Street (NW-Bound)</b>	--	--	--	<b>R</b>

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## **SCHEDULE 1**

### **Specification**

Cambridgeshire & Peterborough Combined Authority's requirements for the delivery of local bus services are as set out below:

#### **1.1 Registration**

- 1.1.1 The Contractor shall register with the Traffic Commissioner all the necessary particulars of the Route Schedule and Timetable and any subsequent variations to these particulars permitted or agreed under this Contract as required by statute. The Contractor shall be liable for all payments in respect of the registration of the contract or any amendments.

#### **1.2 Operator Licence**

- 1.2.1 In respect of any Public Service Vehicle used in the performance of this Contract, the Contractor shall have and keep in force a Public Service Vehicle Operator's Licence of the relevant classification as required by section 12 of the Public Passenger Vehicles Act 1981 which permits the operation of the Services in the manner proposed and shall produce the licence at any time for inspection by an authorised officer of the Combined Authority. The Combined Authority's obligations under this Contract including liability to make payment for the Service shall cease and shall not be enforceable by the Contractor during any period that the Contractor does not have an Operator's licence or if any licence previously granted has been suspended or withdrawn for any reason or has had conditions attached to it which prohibit his operating the service the subject of the contract.

#### **1.3 Lost Property**

- 1.3.1 The Contractor shall make, implement and maintain arrangements to deal with lost property in accordance with the Public Service Vehicles (Lost Property) Regulations 1978 (as amended).

#### **1.4 Provision of Service**

- 1.4.1 The Contractor shall obtain the prior approval in writing of the Combined Authority's Contract Manager for every reversing manoeuvre to be undertaken by a vehicle used by the Contractor in the provision of the service.
- 1.4.2 Except in emergency the Contractor shall not make any change to the route, stopping places or timetable without the prior written approval of the Council, which shall not be unreasonably withheld if it is in the interest of existing and potential users of the service. Failure by the Contractor to operate in accordance with the Contract shall be subject to action in accordance with Appendix 4, Section 1 (c).

## **1.5 Vehicles**

1.5.1 The Contractor shall at all times during the Contract Period:

- (a) Provide sufficient vehicles as are required for the proper and efficient performance of the Service;
- (b) Provide sufficient capacity to convey the number of passengers normally wishing to use each individual journey of the service. The Contractor shall obtain approval from the Combined Authority if capacity is less than the recommended vehicle size shown on the Route Schedule;
- (c) At its own expense, keep and maintain all vehicles in proper repair and condition. If a specified vehicle is off the road for maintenance, the Contractor shall notify the Combined Authority and provide an estimated time that the vehicle will return given;
- (d) Ensure that all vehicles are clean and are maintained in such a condition that they present a professional image to the public
- (e) Ensure that all vehicles used to provide the Services comply with relevant statutory requirements, including without limitation the Motor Vehicles (Construction and Use) Regulations 1986, The Public Service Vehicles Accessibility Regulations 2000, and have either a current MOT Certificate, or the equivalent certificate for public service vehicles; ensure any vehicle designed to carry less than 9 passengers used in the delivery of this Contract are a hackney carriage or private hire car licensed by the appropriate District Council.
- (f) Ensure that any vehicle used on this Contract, designed to carry more than 8 passengers are licensed by the Traffic Commissioner as a public service vehicle.
- (g) Make available, on request, the vehicles for inspection by the Combined Authority officers to ensure that it meets Department of Transport requirements.
- (h) Not to hire any vehicle used on the Contract during any period it is in use in carrying out the Contract to any third party.
- (i) Ensure that all vehicles used in the provision of the Service are insured as public service vehicles.
- (j) Ensure that Branding (where provided by the Combined Authority) is properly applied in accordance with Appendix 5 both inside and outside each vehicle.

## **1.6 Timetable**

1.6.1 The Contractor shall ensure that passengers are picked up and set down at such places and times as specified in the Route Schedule and the timetable submitted by the Contractor, subject in any case to the approval (if required) of the appropriate licensing authority or registration (if required) with the appropriate registration authority.

1.6.2 The Contractor shall submit a timetable using the latest NaPTAN standard for bus stop names shall be used (Place name, Street, Landmark e.g. Cambridge, Castle Street, Shire Hall)

- 1.6.3 For the avoidance of doubt the parties agree that in the provision of the Service, the timetable to be operated by the Contractor shall be the timetable specified by the Combined Authority or submitted by the Contractor in his Tender or such subsequent amendment thereto as may have been agreed in writing by the Combined Authority acting by its Contract Manager subject to the provisions referred to in sub clause 1.6.1 above.

## **1.7 Public Holidays**

- 1.7.1 The Contractor shall provide the Services on Public Holidays and specified adjacent holidays in accordance with the requirements set out in the Route Schedule.
- 1.7.2 In the event of other days being declared a Public Holiday or Bank Holiday the service to be operated on that day shall be determined by the Council in line with the anticipated travel requirements of the public on that day, and the Contractor will be advised of the Combined Authority's decision in writing no less than 14 days prior to the relevant day.
- 1.7.3 A revised service between 26 December and New Year's Eve may only be operated if agreed to in writing by the Combined Authority's Contract Manager not less than 70 days in advance of the commencement of the variation.

## **1.8 Bus Stations & Access Equipment**

- 1.8.1 The Contractor shall be liable for payment of any fees due in respect of the use of bus stations or any other land used in connection with the Service. The Contractor shall observe the appropriate Conditions of Use and correct departure bay as allocated by the relevant authority.
- 1.8.2 The Contractor shall be liable for payment of any fees or dues in respect to necessary equipment to gain access to restricted areas of the route detailed in the Route Schedule. This shall include ways to access restricted areas of Cambridge city and other parts of the county. The Contractor shall obtain sufficient equipment to operate the Service from the relevant authority.

## **1.9 Performance & Monitoring**

- 1.9.1 The Contractor shall comply with all School Transport Obligations set out in Route Schedule and in accordance with the provisions of Schedule 3.
- 1.9.2 The Contractor shall comply with the Performance Standards set out in Schedule 4.

## **1.10 Service Publicity**

- 1.10.1 The Contractor may provide bus stop signs, timetable displays, and publicity for the Service at his own cost. The Combined Authority may produce, at its own expense, additional publicity material.

- 1.10.2 The Contractor shall make available to the public such publicity material as may be specified by the Combined Authority on request and display any such material in any vehicle provided under contract to the Combined Authority.
- 1.10.3 In Providing the Service the Contractor shall comply with any Cambridgeshire Bus Information Strategy. Where required, the Contractor shall fully participate in Traveline and in the case of a Minimum Subsidy Contract shall pay the costs attributed to it by Traveline in accordance with payment arrangements determined by Traveline. In the event that the Contractor fails to pay such costs in accordance with such payment arrangements the Combined Authority shall be entitled to deduct the amount of such costs together with an administration charge from monies due to the Contractor or to otherwise recover these amounts from the Contractor.
- 1.10.4 The contractor shall make their own arrangements to ensure that the requirements of The Bus Open Data Service (BODS) are met, and will be expected to meet any fees charged by a company or organisation for their services or software.
- 1.10.5 The contractor must provide as a minimum marketing requirement:
- Provide access to the service timetable information through his own electronic media (website, twitter etc.) where available.

## **1.11 Fares**

Potential Providers may choose whether they wish to tender for either a Minimum Cost contract or a Minimum Subsidy contract, unless stated otherwise, and should indicate which type they are bidding for when completing the Pricing Schedule.

### **1.11.1 If Minimum Cost contract**

- (a) The Contractor shall charge fares on the Service in accordance with Schedule 2, and full details of all revenue shall be notified to the Combined Authority in the form prescribed by the Combined Authority. The Combined Authority may revise the schedules of fares to be charged on the Service provided under this Contract at any time on written notice to the Contractor. The Contractor shall be responsible for any loss of revenue arising out of staff dishonesty or negligence.
- (b) The Contractor shall make available in each vehicle the current relevant fare-table detailing the fares charged for the Service operated.

### **1.11.2 If Minimum Subsidy contract**

- (a) The Contractor may establish his own specification of fares to be charged on his services. Fares charged shall be in accordance with the fare-table most recently submitted in writing to the Combined Authority's Contract Manager in accordance with Schedule 1. Fares for children shall not exceed the limits set out in Schedule 1B. A fare-table must be submitted with the tender showing adult, child and any other fares to be charged on the service. Fares are not attributable to the Contractor for the conveyance of scholars in possession of a Scholars Pass issued by the Combined Authority or Cambridgeshire County Council.

(b) The Contractor shall provide the Combined Authority with the initial fare-table and any amendments to the initial fare-table and make available in each vehicle a relevant fare-table detailing the fares charged for the Service operated.

1.11.3 The Contractor shall participate in the Cambridgeshire & Peterborough Concessionary Fare Scheme and any subsequent change to that scheme advertised either by the Combined Authority or by Central Government. The Contractor shall provide regular claims detailing the number of concessions carried and revenue foregone and any further details as specified by the scheme administrator.

1.11.4 The Contractor shall obtain, maintain and use such ticketing equipment as is necessary to meet the requirements of the Combined Authority.

## **1.12 Revenue Monitoring**

1.12.1 The Contractor shall ensure that every passenger on payment of a fare shall be issued with a ticket; this shall include passengers travelling free under the Concessionary Fare Scheme. At any reasonable time officers duly authorised by the Combined Authority shall have access to any documents that relate to the operation of the service(s) in question.

## **1.13 TUPE (Transfer of Undertakings Protection of Employment)**

1.13.1 TUPE (Transfer of Undertakings Protection of Employment) is covered in the Conditions of Contract (Schedule 6).

## **Appendix 1**

### **Minimum Subsidy Contracts**

#### Fares and ticketing requirements

The Contractor may establish his own charging structure for fares that he will charge provided they relate to relevant fares charged on local bus services along the line of route, as qualified by other sections of this schedule, for those services operating within Cambridgeshire or Peterborough.

On cross-boundary services running partly in Cambridgeshire or Peterborough, the above conditions will apply only for that section of route within Cambridgeshire or Peterborough, unless agreement is reached with the other county to apply the above conditions across the border.

#### (a) Adult Single Fares

- (1) The Contractor must provide a table showing all the adult single fares. Changes to that fare table must be notified in writing to the Combined Authority at least 14 days in advance of any change.
- (2) The Contractor may offer return fares, season tickets and any other fares, provided he gives at least 14 days prior written notice to the Combined Authority.

#### (b) Child Fares

- (1) Children of below compulsory school age at the time of travel will be carried without charge provided not more than two such children accompany a passenger holding a valid adult passenger's ticket. Additional children in this category may be required to pay child fares as specified below.
- (2) Children of compulsory school age (as established by Cambridgeshire County Council in accordance with the provisions of the relevant Education Act) shall be charged in accordance with the rates set out below.

(a) Two thirds of the adult cash fare (rounded up to nearest 5p).

#### (c) Concessionary Travel Scheme

The Contractor will carry holders of valid concessionary travel scheme passes for elderly, disabled, partially sighted, blind persons and other groups in accordance with the terms of the current scheme as shall be determined from time to time by the Concessionary fare scheme Administrator. Carriage of such passengers will entitle the contractor to claim payment from the Scheme Administrator in accordance with the terms of the scheme, which should provide for an operator by participating in the concessionary scheme.



(d) Ticketing Equipment

- (1) Route Schedules indicate a requirement for higher specification electronic ticket issuing and data capture equipment to be obtained and used to the Combined Authority's satisfaction. Data collected by these machines shall be provided to the Combined Authority at four weekly intervals and shall show the type of ticket purchased, cancelled or examined. The equipment will also record the fare stage at which each passenger boards, the fare paid (if any) and the time of boarding the bus, which will be provided to the Combined Authority on request. This information shall be recorded in such a way as to allow the date of travel, service number, direction of travel and time of journey to be identified and to permit this transfer to the Combined Authority's computer system. These machines should also have the ability to read and process information contained on smart cards, and provide a real time GPS feed to the Vix RTPI system or other appropriate location systems.
  - (2) A contractor who does not already have equipment to meet this requirement (where it applies) shall place orders for sufficient of such equipment to meet this requirement no more than 14 days after being awarded this contract and shall confirm this action to the Combined Authority's Contract Manager. Suitable ticket machines may be available on a rental basis for those operators who do not already have compliant ETMs. The equipment shall be brought into use at the earliest possible date during the term of the contract, prior to which date the Contractor shall use alternative methods of recording information necessary for the allocation of off-bus ticketing and concessionary travel revenues to the satisfaction of the Combined Authority.
- (e) For minimum subsidy contracts the revenue from the contract is retained by the bus operator. The revenue taken is not shown on the invoice when submitted by the Contractor for the four-weekly period. The Contractor only invoices the agreed cost for the contract.

## **Appendix 2**

### **Minimum Cost Contracts**

#### Fares and ticketing requirements

##### (a) Adult Single Fares

- (1) Adult single fares should be charged in accordance with the fare-table provided by the Combined Authority. The Combined Authority may revise the fares to be charged on the service at any time on written notice to the Contractor.
- (2) The Combined Authority may require the Contractor to offer return fares, season tickets or any other fares. Details of any such fares will be provided in writing not less than 14 days prior to their introduction.
- (3) Valid return tickets issued on other services may be accepted. The fare-table will indicate if this facility is available.
- (4) The Contractors own season tickets, or other promotional tickets, are not valid unless specifically agreed in writing by the Combined Authority's Contract Manager.

##### (b) Child Fares

- (1) Children of below compulsory school age at the time of travel will be carried without charge provided not more than two such children accompany a passenger holding a valid adult passenger's ticket. Additional children in this category may be required to pay child fares as specified below.
- (2) Children of compulsory school age (as established by Cambridgeshire County Council in accordance with the provisions of the relevant Education Act) shall be charged in accordance with the rates set out below.
  - (i) Two thirds of the adult cash fare (rounded up to nearest 5p).
- (3) The Contractors own season tickets, or other promotional tickets, are not valid unless specifically agreed in writing by the Combined Authority's Contract Manager.

##### (c) Concessionary Travel Scheme

The Contractor will carry holders of valid concessionary travel scheme passes for elderly, disabled, partially sighted, blind persons and other groups in accordance with the terms of the current scheme as shall be determined from time to time by the Concessionary fare scheme Administrator. Carriage of such passengers will entitle the contractor to claim payment from the Scheme Administrator in accordance with the terms of the scheme, which should provide for an operator by participating in the concessionary scheme.

(d) Ticketing Equipment

- (1) Route Schedules indicate a requirement for higher specification electronic ticket issuing and data capture equipment to be obtained and used to the Combined Authority's satisfaction. Data collected by these machines shall be provided to the Combined Authority at four weekly intervals and shall show the type of ticket purchased, cancelled or examined. The equipment will also record the fare stage at which each passenger boards, the fare paid (if any) and the time of boarding the bus, which will be provided to the Combined Authority on request. This information shall be recorded in such a way as to allow the date of travel, service number, direction of travel and time of journey to be identified and to permit this transfer to the Combined Authority's computer system. These machines should also have the ability to read and process information contained on smart cards, and provide a real time GPS feed to the Vix RTPI system or other appropriate location systems.
- (2) A contractor who does not already have equipment to meet this requirement (where it applies) shall place orders for sufficient of such equipment to meet this requirement no more than 14 days after being awarded this contract and shall confirm this action to the Combined Authority's Contract Manager. Suitable ticket machines may be available on a rental basis for those operators who do not already have compliant ETMs. The equipment shall be brought into use at the earliest possible date during the term of the contract, prior to which date the Contractor shall use alternative methods of recording information necessary for the allocation of off-bus ticketing and concessionary travel revenues to the satisfaction of the Combined Authority.
- (3) Combined Authority staff will be permitted to travel on services for the purposes of examining tickets and ticket machines in addition to survey carried out in accordance with **clause 42.6** of the Conditions of Contract.

(e) Loss of Revenue

- (1) The Contractor shall be responsible for any loss of revenue arising out of staff dishonesty or negligence.

(f) Minimum Cost Contracts

- (1) For minimum cost contracts the revenue from the contract is retained by the Combined Authority. The Contractor must include the revenue for the four-weekly period on their invoice. The Contractor must then deduct the revenue from the invoice amount to show the revised invoice amount.

### **Appendix 3**

#### **School Transport Obligations**

The provisions of this Schedule shall apply in respect of any School Transport Obligation which is included in the Service Route Schedule.

1. The Contractor will include and clearly indicate within the submitted timetable of this service a journey or journeys (at least on those days when the school to which the Obligation refers is open) which will provide for the movement of pupils at the times and between the places mentioned in the specified School Transport Obligation. These journeys shall be operated in such a way as to guarantee that sufficient seats are available, to carry the maximum number of pupils to whom passes may be issued by the Combined Authority or Cambridgeshire County Council, as specified in writing by the Combined Authority.
2. The pupils shall be picked up and set down only at such places and within the range of times as specified in the School Transport Obligation or as from time to time may be specified in writing by the Combined Authority, subject in any case to registration (if required) with the appropriate registration authority.
3. Every pupil authorised to be carried under a School Transport Obligation will be issued by the Combined Authority or Cambridgeshire County Council with a scholars pass indicating that pupil's entitlement to travel on the service and it shall be the duty of the contractor to ensure that such passes are examined and that the only pupils conveyed without charge on the service under the terms of the Obligation are those duly authorised by the Combined Authority or Cambridgeshire County Council. The tickets issued by either authority are subject to the following conditions:
  - (a) Valid on the specified service for one return journey only between the points shown on the ticket, provided that the journey to school starts before 1600 hours and the return journey starts before 2000 hours unless otherwise stated.
  - (b) Valid on the specified service for one return journey only between the points shown on the scholars pass
  - (c) Valid on Mondays to Fridays during school terms only, until the expiry date shown, unless otherwise stated.
  - (d) Valid only when used by the person to whom it is issued.
4. Unless otherwise stated the journeys shall be operated each morning the schools or colleges are open and children are to be returned at the end of the afternoon session or at such earlier times as may be notified to the contractor by the Combined Authority. Schools are generally open from Monday to Friday each week for approximately 190 school days during the year, though Technical Colleges are open for a shorter period. Full

particulars of all school closures will be notified to the Contractor by the Combined Authority.

5. In the event of a minor change in the Combined Authority's requirements for school transport the Authority will seek to agree with the Contractor a modified School Transport Obligation. The Combined Authority reserves the right to accept or reject terms offered by the Contractor for the modification of a School Transport Obligation.
6. In the event of the Contractor failing to operate a journey required to meet a School Transport Obligation the Contractor shall meet the Combined Authority's costs in making alternative arrangements for transporting the pupils. Journeys operated earlier or more than 15 minutes later than scheduled shall be considered to have failed to operate. If alternative arrangements were not made the Contractor shall forfeit deductions and/or incur penalty points in line with Appendix 4, Section 1 (c).
7. The Contractor shall advise the Combined Authority at the earliest opportunity in advance in the event of a foreseeable difficulty in providing any journey required to meet a School Transport Obligation.
8. The Contractor shall perform the Services which are underpinned by the current appropriate "Code of Conduct", issued from time to time by the Combined Authority or Cambridgeshire County Council. Failure to comply with the "Code of Conduct" will be regarded as a breach of this Contract. The Contractor must ensure that all drivers and escorts receive a copy of the "Code of Conduct". Copies are available from Cambridgeshire County Council's Passenger Transport Team.
9. Where a contract requires the transport of children as part of a school transport obligation the Contractor must take all reasonable steps to ensure that the Drivers employed on this contract are suitable to work with children. When the Contractor is recruiting new staff to work on the Contract they must seek references on the applicants' suitability to work with children and vulnerable adults.

The Contractor must undertake full identification checks, and supply to Cambridgeshire County Council's Passenger Transport Team a fully completed, verified, application form for enhanced DBS clearance. Enhanced DBS clearances are to be completed and verified to the Council's satisfaction before any Service Users are transported. An Identity Badge will only be issued after the enhanced DBS clearance has been obtained. The Contractor will bear the cost of initial and subsequent DBS clearances for his or her Drivers.

10. In the event of a service carrying children with Special Educational Needs this will be stated on the Route Schedule. The conditions for carriage of these children are subject to additional conditions available from the Authority's Contract Manager.

11. "School Bus" signs shall be displayed when specified on journeys provided under the School Transport Obligations.

#### **Appendix 4**

#### **Performance Standards**

##### **1. Failure to Provide Services**

- (a) The Contractor's duty shall be to perform this Contract without failures and to this end the Contractor shall be obliged to cover all foreseeable staff or vehicle deficiencies by subcontracting if necessary (as provided for in **clause 46.15** of the Conditions of Contract).
- (b) Every 4 weeks the Contractor shall report in writing to the Combined Authority indicating what journeys did not operate in accordance with the contract in the previous 4 weeks and the reasons for such failure. The report shall also advise the Combined Authority of all subcontracting arrangements entered into during that period to cover for foreseen deficiencies and shall indicate any circumstances in which the contractor was unable to obtain alternative resources under sub-contract. Failure to report shall render the contract liable to termination under **clause 50.6** of the Conditions of Contract.
- (c) A breach of the Special Conditions or Standard Terms and/or failure to observe legislation or quality of service factors as defined in the tabulation appended to this Schedule 4 will attract penalty points which will be accrued in any 3 rolling financial periods (e.g. 2, 3 and 4; then 3, 4 and 5 etc). Without prejudice to the Combined Authority's other rights under this Contract, when a specific number of penalty points have been accrued on the same contract, the following action may be taken:

Any points - verbal warning (to be confirmed in writing).

35 (or more) points - written warning.

75 (or more) points - final warning.

100 points - contract termination.

In all cases penalties may be waived or reduced if the Contractor can show good reason, to the Combined Authority's satisfaction, for the failure.

- (d) The Contractor shall make every reasonable effort to provide run the Service in adverse conditions of snow, ice, flood or any other extraordinary circumstances. When the Contractor decides not to provide the Service for reasons of bad weather beyond his control, the Combined Authority will pay only 75% of the appropriate contract price for minimum subsidy contracts and 50% of the appropriate contract price for minimum cost contracts. Details and reasons for any journeys not operated should accompany the invoice for the relevant period. Failure to submit these details will result in the invocation of penalties as set out in 4(c) above.



- (e) The Contractor shall ensure all staff operating a Combined Authority contract present a smart appearance and shall ensure that unauthorised persons are not travelling on the vehicle
- (f) The Contractor shall provide an initial response within 2 working days to any complaint notified by the Combined Authority, with a full response provided within 5 working days.

## **2. Timekeeping**

- (a) The Contractor undertakes to operate all journeys in accordance with the timetable submitted by him or in accordance with any subsequent amendments as may have been agreed in writing by the Combined Authority.
- (b) The Combined Authority will monitor timekeeping of services at published timing points and will advise the Contractor of any adverse observations, seeking the Contractor's explanation for the observed deficiencies.
- (c) Journeys will operate within the "window of tolerance" (up to 1 minute early and up to 5 minutes late). Those operated more than 5 minutes earlier or more than 15 minutes later than scheduled without satisfactory reason shall be considered to have failed to operate and will be subject to Schedule 4(c).

## **3. Vehicle Features**

- (a) Vehicles used in the performance of this Contract shall be suitable to meet the specification outlined in the Route Schedule. Route schedules indicate either a requirement for vehicles that comply with the Public Service Vehicles Accessibility Regulations 2000 (Euro III (3) engine emission standards, or below) or a requirement for vehicles that comply with the same regulations but meet Euro IV (4) or Euro V (5) engine emission standards.
- (b) Every vehicle used in the performance of this Contract shall have smoking prohibited throughout the vehicle and be signed accordingly.
- (c) The Contractor must ensure that the exterior of all vehicles used in the performance of this contract should be kept as clean as possible. The interiors should be kept clean and should be swept out daily.
- (d) Unless separate guidance states differently, a number in accordance with the Route Schedule and 6 inches high, together with the destination of the journey, shall be displayed, in yellow or white on a black background or black on a white or yellow background, at the front of each vehicle (when used in the performance of this contract) in such a way as to be clearly visible at least 50 metres in front of the vehicle and illuminated during the hours of darkness. Handwritten notices are not acceptable.

- (e) Notices shall not be displayed indicating being on contract to other local authorities when used on journeys entirely contracted by the Combined Authority.
- (f) Buses not operating a School Transport Obligation journey MUST NOT display "School Bus" signs.

The Special Conditions set out in the Route Schedule may stipulate additional vehicle features required.

#### **4. Deductions to Contract Payments**

- (a) The Combined Authority reserves the right to make deductions to the Contract Price in respect of:
  - (i) a failure to provide the required bus service (whether in whole or in part) in which case the equivalent payment due to the Contractor for providing such service shall be deducted.
  - (ii) any failure to provide the punctuality data specified in Section 1(b) is not provided within three (3) days of a request for such information by the Combined Authority in which case an amount of £nil shall be deducted for each such failure.
  - (iii) a failure to meet the punctuality standard of 95% of journeys on time (as defined by the Traffic Commissioner) which case an amount of £nil shall be deducted for every percentage point by which the punctuality is below the punctuality standard in the relevant period.
  - (iv) a failure to meet the reliability standard of 99% of scheduled miles operated (as defined by the Traffic Commissioner) which case an amount of £nil shall be deducted for every percentage point by which the punctuality is below the reliability standard in the relevant period.

## Contract Penalties

Read in conjunction with Appendix 4 "Performance Standards" Section 1c

	Category of Breach of Contract	Penalty Points
A	Incorrect or no destination displayed	10
B	Incorrect or no service number displayed	10
C	Destination and/or service number not illuminated or not confirming to requirements set out in Schedule 4.3(d)	10
D	Notices indicating the vehicle being on contract to other local authorities displayed on CPCA contracts	5
E	Vehicle not to specification standard	15
F	Operation of journey 5, or more, minutes earlier than advertised time	20
G	Operation of journey 15, or more, minutes later than advertised time	15
H	Failure to keep to registered route or observe recognised stops	25
I	Failure to observe correct bus station departure bay	5
J	Variation of registration without prior approval of the CPCA	75
K	Failure to operate a journey	30
L	Driver smoking on a vehicle	10
M	Failure to make advertised connections	15
N	Failure to notify the CPCA of lost mileage or other non-performance	30
O	Failure to respond to complaints within 5 working days	10
P	Failure to provide the CPCA with patronage data	10
Q	No operational ticket machine (min. cost contracts only)	35
R	Incorrect or no fare table (min. cost contracts only)	20
S	Charging of incorrect fares (min. cost contracts only)	20
T	Failure to notify the CPCA of fare changes (min. subsidy contracts only)	15
U	Failure to keep the vehicle in a reasonable state of cleanliness	5
V	Unauthorised person(s) travelling on the vehicle	5
W	Operating in contravention of current legislation appropriate to the service provided	100

X	Inappropriate display of “school bus” signs	5
Y	Failure to display “school bus” signs when required	10
Z	Failure to maintain CPCA Bus Branding to the required standards specified by the Combined Authority	10

**Appendix 5**  
**CPCA Bus Branding**

Not applicable

## **Contract Documents**

**(1) CAMBRIDGESHIRE & PETERBOROUGH COMBINED AUTHORITY**

**-and-**

**(2) (Contractor)**

## **AGREEMENT**

relating to the provision of Local Bus Services

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THIS AGREEMENT is made on

BETWEEN

(1) CAMBRIDGESHIRE & PETERBOROUGH COMBINED AUTHORITY of 2<sup>nd</sup> Floor, Pathfinder House, St Mary's Street, Huntingdon, PE29 3TN (the "Combined Authority"); and

(2) (NAME) (NUMBER) whose registered office is at (ADDRESS) (the "Contractor").

#### RECITALS:

- (a) The Combined Authority has invited tenders for the provision of local bus services and the Contractor has submitted a Tender in response.
- (b) The Combined Authority appoints the Contractor on the basis of a [Minimum Cost/Minimum Subsidy] Contract for Contract Number [insert] and the Contractor accepts the appointment to provide the Services from the Commencement Date in the manner and upon the terms hereinafter set out.

### A. General Provisions

#### 1 Definitions and Interpretation

1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

"1999 Act" means the Local Government Act 1999 as amended from time to time, including by the Local Government and Public Involvement in Health Act 2007.

"2017 Act" means the Criminal Finances Act 2017 as amended from time to time.

"Approval" means the written consent of the Combined Authority.

"Agreed Purposes" means the detection of fraud; the protection of vulnerable persons; the performance by each party of its obligations under this Contract; and any other purpose agreed between the parties in writing.

"Appendix" means an appendix to the Specification.

"Authorised Officer" means the person identified to the Contractor as the Combined Authority's authorised representative for the purposes of this Contract or such other person as he/she may designate.

"Best Value Duty" means the duty imposed on the Combined Authority by Part 1 of the Local Government Act 1999 as amended and under which the Combined Authority are under a statutory

duty to continuously improve the way their functions are exercised, having regard to the economy, efficiency and effectiveness and the guidance issued **from** time to time by the Secretary of State, the Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to or in connection with Part 1 of the 1999 Act.

**“Branding”** means the registered and unregistered trade marks, brands, liveries and other devices owned by the Combined Authority in connection with providing bus services.

**“Business Continuity Plan”** means a plan for ensuring, so far as reasonably practicable, that if an emergency occurs the Contractor is able to continue to perform the Services and its contents are in accordance with clause 57.2.

**“Business Continuity Planning Policy”** means a policy to implement the Business Continuity Plan.

**“Commencement Date”** means [ ] of [ ] 20[ ] being the date on which the provision of the service shall commence.

**“Commercially Sensitive Information”** means the information listed in Schedule 7 - comprised of information:

- (a) which is provided by the Contractor to the Combined Authority in confidence for the period set out in that Schedule; and/or
- (b) that constitutes a trade secret.

**“Confidential Information”** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of clause 29 (Confidential Information));
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

**“Consumer Price Index (CPI)”** means the index (excluding owner occupier's housing costs) for consumer price inflation published by the Office of National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree.

**“Contract”** means this written agreement between the Combined Authority and the Contractor consisting of these clauses and any attached Schedules and Appendices.

**“Contract Data”** means the data contained in Schedule 2

**“Contracting Authority”** means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.

**“Contract Manager”** means the person appointed from time to time by the Combined Authority as being authorised to administer the Contract on behalf of the Combined Authority and notified to the Contractor.

**“Contract Period”** means the period from the Commencement Date to .

- (a) the date of expiry set out in clause 2 (Initial Contract Period), or
- (b) following an extension pursuant to clause 43 (Extension of Initial Contract Period), the date of expiry of the extended period,

or such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

**“Contract Price”** means the price (exclusive of any applicable VAT), payable to the Contractor by the Combined Authority under the Contract, as specified in the Contract Data.

**“Contract Year”** means a period of 12 months, commencing on the Commencement Date.

**“Contractor Representative”** means the person authorised to act on behalf of the Contractor for the purposes of the Contract and notified to the Combined Authority.

**“The Contract Documents”** means these clauses and all attached Schedules and Appendices.

**“Combined Authority Property”** means the property, other than real property, issued or made available to the Contractor by the Combined Authority in connection with the Contract.

**“Data Discloser”** means a party that discloses Shared Personal Data to the other party.

**“Data Protection Legislation”** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

**“Data Loss Event”** means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and / or actual or potential loss and / or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

**“Data Subject Request”** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**“Default”** means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

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

**“The Executive Director, Place and Connectivity”** shall mean the Executive Director, Place and Connectivity of the Combined Authority or the duly authorised representative.

**“Equipment”** means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

**“Fares and Ticketing Requirements”** means the requirements set out at Appendix 2 and Appendix 3 of the Specification.

**“Fare Table”** means the fare table set out in Schedule 8 or such other fare table as may be agreed between the Parties in accordance with the provisions of this Contract and recorded in writing.

**“Fees Regulations”** means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

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

**“Force Majeure”** means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Contractor’s or any sub-contractor’s organisation; or
- (b) the failure by any sub-contractor to perform its obligations under any sub-contract.

**“Fraud”** means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Combined Authority.

**“Good Industry Practice”** means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

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

**“Initial Contract Period”** means the period from the Commencement Date to the date of expiry set out in clause 2 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

**“Intellectual Property Rights”** means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

**“Key Personnel”** means those persons named in the Specification as being key personnel.

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

**“Material Breach”** means a breach that is significant in the sense that its breach would have a significant effect on the benefit which the Combined Authority would otherwise derive from a substantial portion of this Contract over the term of this Contract.

**“Method Statements”** means the details of the manner in which the Contractor shall supply the Services as set out in the Tender and Tender Schedule.

**“Minimum Cost Contract”** is one in which the Contractor tenders a price for the operation of the Service and takes no account of the revenue, which is passed to the Combined Authority.

**“Minimum Subsidy Contract”** is one in which the Contractor tenders a price for the operation of the service allowing for revenue, which the Contractor retains.

**“Modern Slavery Hotline”** means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

**“Monitoring Schedule”** means Appendix 4 of the Specification containing details of the monitoring arrangements, including where appropriate Performance Standards.

**“Month”** means calendar month.

**“National Fare”** means a bus fare that is set nationally by the Department for Transport or another national body with responsibility for provision of bus services or is set by a regional body (including the Combined Authority) with responsibility for provision of bus services in that regional body's area which applies to all bus journeys of a similar type within the national or regional area (as the case may be).

**“Party”** means a party to the Contract.

**“Performance Standards”** means the performance standards set out in the Monitoring Schedule

**“Premises”** means the location where the Services are to be supplied, as set out in the Specification.

**“Pricing Schedule”** means the Schedule 2 containing details of the Contract Price.

**“Prohibited Act”** means the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under the Fraud Act 2006;
  - (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Authority;
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority; or
  - (v) section 117 of the Local Government Act 1972.

**“Proscribed Act”** means the following constitute Proscribed Acts:

- (a) if a person commits:
  - (i) an offence of cheating the public revenue; or
  - (ii) an offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax;
- (b) committing any offence:
  - (i) under the 2017 Act;
  - (ii) under the Taxes Management Act 1970;
  - (iii) under the Value Added Tax Act 1994;
  - (iv) under the Customs and Excise Management Act 1979;
  - (v) under any of the Finance Acts;

at common law concerning any form of fraudulent conduct which results in depriving the HMRC of money to which it is entitled



**“Public Holidays”** means those dates set out in Schedule 3 and any other day on which banks are closed for general business in the City of London .

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

**“Receipt”** means the physical or electronic arrival of the invoice at the address of the Combined Authority detailed at clause 5.3 or at any other address given by the Combined Authority to the Contractor for the submission of invoices.

**“Regulatory Bodies”** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Combined Authority and “Regulatory Body” shall be construed accordingly.

**“Replacement Contractor”** means any third party service provider appointed by the Combined Authority to supply any services which are substantially similar to any of the Services and which the Combined Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

**“Request for Information”** shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

**“Relevant Convictions”** means a conviction that is relevant to the nature of the Services or as listed by the Combined Authority and/or relevant to the business of the Combined Authority.

**“Returning Employees”** means those persons listed in a Schedule to be agreed between the Parties prior to the end of the Contract Period who it is agreed were employed by the Contractor (and/or any sub-contractor) wholly or mainly in the Services immediately before the end of the Contract Period

**“Route Schedule”** means the details of journeys to be provided under this Contract as specified by the Combined Authority (including any subsequent amendments, the Timetable, the Fare Table or National Fare (where relevant), and other information submitted by Contractor and agreed by the Combined Authority) and as set out in Schedule 3.

**“Schedule”** means a schedule attached to, and forming part of, the Contract.

**“School Transport Obligations”** means the obligations set out at Appendix 3 of the Specification.

**“Services”** means the services to be supplied as specified in the Specification.

**“Shared Personal Data”** means the personal data to be shared between the parties under clause 28 of this Contract.

**“Specification”** means the description of the Services to be supplied under the Contract as set out in the Schedule 1 including the Appendices thereto and where appropriate, the Key Personnel, the Premises and the Quality Standards.

**“Specification Schedule”** shall have the same meaning as Specification..

**“Staff”** means all persons employed or engaged by the Contractor (including volunteers) to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract.

**“Staff Vetting Procedure”** means the Combined Authority’s procedures for the vetting of personnel and as advised to the Contractor by the Combined Authority.

**“Sub-Processor”** means any third party appointed to process Personal Data on behalf of that Processor related to this Contract.

**“Tender”** means the document(s) submitted by the Contractor to the Combined Authority in response to the Combined Authority’s invitation to suppliers for formal offers to supply it with the Services.

**“Tender Schedule”** means the Schedule 5 containing details of the pricing and technical responses submitted by the Contractor as part of its Tender.

**“Timetable”** means the timetable included in Schedule 4 or such other timetable as may be agreed in writing by the Parties.

**“Transportation Index”** means the weighted average of CPI and transport specific indicators available over a stated period as determined by the Combined Authority index as set out in Schedule 9.

**“UK GDPR”** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**“Variation”** has the meaning given to it in clause 38.1 (Variation).

**“VAT”** means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

**“Working Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;

- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- (g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

## **2 Initial Contract Period**

The provisions of clauses [1 to 16 and 19 to 60] and Schedules [1 to 8] of this Contract shall take effect from the date of signing and the remaining provisions of this Contract shall take effect on the Commencement Date. Unless otherwise stated in the Contract, all provisions shall expire automatically on [ ] of [ ] 20[ ], unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause 43 (Extension of Initial Contract Period).

## **3 Contractor's Status**

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

## **4 Combined Authority's Obligations**

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

## **5 Notices**

5.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by electronic mail (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, or item of electronic mail

5.3 For the purposes of clause 5.2, the address of each Party shall be:

(a) For the Combined Authority: Name:

Andy Hunt

Address: Public Transport Team, 2<sup>nd</sup> Floor, Pathfinder House, St Mary's Street, Huntingdon, PE29 3TN

Email: [REDACTED].

(b) For the Contractor

Name:

Address:

Email:

5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

## 6 Mistakes in Information

The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Combined Authority by the Contractor in connection with the supply of the Services and shall pay the Combined Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

## 7 Conflicts of Interest

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

7.2 The Combined Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Combined Authority, there is or may be an actual conflict, or a potential conflict, between the

pecuniary or personal interests of the Contractor and the duties owed to the Combined Authority under the provisions of the Contract. The actions of the Combined Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Combined Authority.

## **B. SUPPLY OF SERVICES**

### **8 The Services**

- 8.1 The Contractor shall supply the Services during the Contract Period in accordance with the terms of this Contract which shall include the Combined Authority's requirements as set out in the Specification and in accordance with the Contract Data, Timetable, Fare Table and National Fare (where relevant) and the route and stopping places in the Route Schedule (or such modifications thereof as may have been agreed in writing by the Executive Director, Place and Connectivity and the Method Statements in such a way that the journeys are operated at the times stated in the submitted Timetable and the Performance Standards, and the provisions of the Contract in consideration of the payment of the Contract Price. The Combined Authority may inspect and examine the manner in which the Contractor supplies the Services during normal business hours on reasonable notice.
- 8.2 The Contractor acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Combined Authority before submitting its Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.
- 8.3 If the Combined Authority informs the Contractor in writing that the Combined Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Combined Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Combined Authority.
- 8.4 Subject to the Combined Authority providing written consent in accordance with clause 9.2 (Provision and Removal of Equipment), timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

### **8A National Fares and Inflation-related Increases to Fares**

- 8A.1 Notwithstanding the Fares and Ticketing Requirements and the Fare Table set out in Schedules 1 and 8 respectively of this Contract, the provisions of this of this clause 8A shall take precedence where a National Fare exists.
- 8A.2 The Combined Authority shall provide not less than thirty (30) days' notice to the Contractor that it will require a relevant National Fare to be charged or cease to be charged (as the case may be) by the Contractor in place of any other fare (including fares set out in the Fare Table) to any passengers

for any relevant journey specified in the Route Schedule.

8A.3 Where such notice is given by the Combined Authority under clause 8A.2 above, the provisions of this Contract relating to the application of the Fare Table shall cease to apply while the National Fare is in force and the relevant National Fare shall instead be applicable for all relevant services, such fares commencing from the date specified in the Combined Authority's notice of the fares change [and any relevant changes to the Contract Price shall be made as applicable].

8A.4 Where requested by the Combined Authority, the Contractor shall increase the amount of the fares set out in the Fare Table on [[1 April] of each year] [the anniversary] of the Contract by the most recently published annual increase in CPI available. Such notice to require an increase in the Fare Table shall be given by the Combined Authority not less than thirty (30) days prior to the relevant [1 April] [anniversary of the Contract].

[8A.5 Unless authorised by the Combined Authority in writing the Contractor shall not increase the amount of the fares set out in the Fare Table.]

## **9 Provision and Removal of Equipment**

9.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.

9.2 All Equipment used in the performance of the contract shall be at the Contractor's own risk and the Combined Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Combined Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

9.3 All Equipment used in the performance of the contract shall be at the Contractor's own risk and the Combined Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Combined Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment used in the performance of the Contract will remain the property of the Contractor.

9.4 The Contractor shall maintain all items of Equipment used in the performance of the Contract in a safe, serviceable and clean condition and as set out in the Specification.

9.5 The Contractor shall, at the Combined Authority's written request, at its own expense and as soon as reasonably practicable:

- (a) remove from the performance of the contract any Equipment which in the reasonable opinion of the Combined Authority is either hazardous, noxious or not in accordance with the Contract; and
- (b) replace such item with a suitable substitute item of Equipment.

## **10 Manner of Carrying Out the Services**

- 10.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the Performance Standards of the supply of the Services has not been specified in the Contract, the Contractor shall agree the relevant Performance Standards with the Combined Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 10.2 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 10.3 The Contractor shall maintain the route numbers for the relevant destinations specified by the Combined Authority and shall not change or attempt to change any route number during the term of this Contract, except where instructed to do so by the Combined Authority. The route number specified in this Contract for the relevant route shall be clearly displayed on the exterior of the bus in accordance with the Performance Standards whenever such bus is operating in passenger revenue earning service on that route.

## **11 Key Personnel**

- 11.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Combined Authority.
- 11.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Combined Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- 11.3 Any replacements to the Key Personnel shall be subject to the agreement of the Combined Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 11.4 The Combined Authority shall not unreasonably withhold its agreement under clauses 11.2 or 11.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

## **12 Contractor's Staff**

- 12.1 The Combined Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises:
- (a) any member of the Staff; or
  - (b) any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Combined Authority, be undesirable.

- 12.2 At the Combined Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Combined Authority may reasonably request.
- 12.3 The Contractor's Staff, when engaged or working within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be advised to the Contractor by the Combined Authority from time to time.
- 12.4 Prior to employing or engaging a person in the provision of any part of the Services (including a volunteer or an employee of any sub-contractor) the Contractor shall ensure that an application for enhanced Disclosure & Barring Service clearance is made in respect of that person pursuant to Part V of the Police Act 1997 including:
- (a) where the provision of the Services may involve contact with children a search of the list held pursuant to the Safeguarding Vulnerable Groups Act 2006 (**SVGA**) as amended from time to time; and
  - (b) where the provision of the Services may involve contact with vulnerable adults a search of the list held pursuant to SVGA,

and the Contractor shall ensure that no person who has a Relevant Conviction whether recorded on the SVGA children's barred list or the SVGA adults' barred list or has not received clearance from the Disclosure & Barring Service is employed or engaged in the provision of any part of the Services.

- 12.5 The Contractor shall ensure that the Combined Authority is kept advised at all times of any person employed or engaged in the provision of the Services (including an employees of any sub-contractor) who subsequent to his commencement of employment or engagement received a Relevant Conviction or whose previous Relevant Convictions become known to the Contractor.
- 12.6 The Contractor is obliged to comply with all requirements imposed on an employer by the Independent Safeguarding Authority (**ISA**) pursuant to the SVGA and any subsequent legislation or guidance, when issued. In addition the Contractor must advise the Combined Authority of any action taken by the ISA relating to any person engaged in the provision of the Services.
- 12.7 If the Contractor fails to comply with clause 12.2 within two (2) Months of the date of the request and in the reasonable opinion of the Combined Authority, such failure may be prejudicial to the interests of the Combined Authority, then the Combined Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Combined Authority.
- 12.8 The decision of the Combined Authority as to whether any person is to be refused access to the



Premises and as to whether the Contractor has failed to comply with clause 12.2 shall be final and conclusive.

## **13 TUPE**

The Parties agree that the provisions of Schedule 6 shall apply to any Relevant Transfer and or Subsequent Transfer of Staff under this Contract.

## **14 Inspection of Premises**

Save as the Combined Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

## **15 Licence to occupy Combined Authority Premises**

- 15.1 Any land or Premises made available from time to time to the Contractor by the Combined Authority in connection with the Contract, shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 15.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Combined Authority may reasonably request.
- 15.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Combined Authority at the Contractor's expense. The Combined Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Combined Authority.
- 15.4 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Combined Authority and advised to the Contractor, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 15.5 The Contractor shall ensure that its Staff, sub-contractors and agents shall at all times when present at the Premises comply with the Combined Authority's statutory duty pursuant to Section 11 of the Children Act 2004 to safeguard and promote the welfare of children, young people and vulnerable adults.
- 15.6 The Parties agree that there is no intention on the part of the Combined Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or

shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Combined Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

## **16 Combined Authority Property**

- 16.1 Where the Combined Authority issues Combined Authority Property free of charge to the Contractor such Combined Authority Property shall be and remain the property of the Combined Authority and the Contractor irrevocably licences the Combined Authority and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Combined Authority Property. The Contractor shall not in any circumstances have a lien or any other interest on the Combined Authority Property and the Contractor shall at all times possess the Combined Authority Property as fiduciary agent and bailee of the Combined Authority. The Contractor shall take all reasonable steps to ensure that the title of the Combined Authority to the Combined Authority Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Combined Authority's request, store the Combined Authority Property separately and ensure that it is clearly identifiable as belonging to the Combined Authority.
- 16.2 The Combined Authority Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Combined Authority otherwise within five (5) Working Days of receipt.
- 16.3 The Contractor shall maintain the Combined Authority Property in good order and condition (excluding fair wear and tear), and shall use the Combined Authority Property solely in connection with the Contract and for no other purpose without prior Approval.
- 16.4 The Contractor shall ensure the security of all the Combined Authority Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Combined Authority's reasonable security requirements as required from time to time.
- 16.5 The Contractor shall be liable for all loss of, or damage to, the Combined Authority Property (excluding fair wear and tear), unless such loss or damage was caused by the Combined Authority's Default. The Contractor shall inform the Combined Authority within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Combined Authority Property.

## **16A Combined Authority Branding**

- 16A.1 The Contractor shall ensure that all buses provided by the Contractor for the provision of the Services shall, at all times during the Contract Period and at the Contractor's cost, carry the Branding both inside and out as specified by the Combined Authority in Appendix 5 of Schedule 1. Such Branding shall be [provided by the Combined Authority not less than five (5) Working Days before the Commencement Date and] maintained in accordance with the relevant Performance Standards.
- 16A.2 During the term of this Contract the Combined Authority licenses the Contractor to use and display

the Branding as required under this Contract. The Contractor shall not in any circumstances have any other interest in the Branding.

## **C. Payment and Contract Price**

### **17 Contract Price**

17.1 In consideration of the Contractor's performance of its obligations under the Contract, the Combined Authority shall pay the Contract Price in accordance with clause 18 (Payment and VAT).

17.2 For the avoidance of doubt the Contract Price invoiced by the Contractor may be reduced by the Combined Authority in the event that the Contractor fails to:

- (a) provide a bus service (whether in whole or in part) which is required to be provided in accordance with the Specification; and/or
- (b) provide punctuality data within [five (5)] days of a request for such information by the Combined Authority; and/or
- (c) meet relevant reliability standards when comparing the Contractor's reliability against the Traffic Commissioner targets for reliability.

The amounts of such reductions are set out in the Performance Standards.

17.3 The Combined Authority shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

17.4 The Contract Price shall be fixed save where adjusted by the Combined Authority using the Transportation Index on the anniversary of the Commencement Date or such other date specified by the Contracting Authority, provided that the first review shall not take place any earlier than three (3) months after the Commencement Date.

## **18 Payment and VAT**

### **18.1 If a Minimum Cost Contract**

Payments to the Contractor in respect of this Contract will be made by the Combined Authority four weekly in arrears on receipt of an invoice from the Contractor quoting the Order number (supplied by the Combined Authority), the contract number, period covered by the invoice, the costs relevant to the period covered by the invoice, and full details of the revenue received in the period covered by the invoice.

18.2 The Contractor shall ensure that each invoice shall include the financial documents, set out in section (d) of Appendix 2 of the Specification, and a statement of any journeys not operated during the accounting period in accordance with the Specification and other Contract Documents and

details of any Concessionary Fare Scheme claims submitted.

18.3 The Combined Authority will assume that the Contractor's costs are spread evenly throughout the year and make payments accordingly. The amount payable to the Contractor by the Combined Authority shall be the difference between the Contract Price and the revenue received by the Contractor for the period covered by the claim.

18.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.

#### **18.5 If Minimum Subsidy Contract**

Payments to the Contractor in respect of this Contract will be made by the Combined Authority four weekly in arrears on receipt of an invoice from the Contractor quoting the order number (supplied by the Combined Authority), the contract number, period covered by the invoice and the amount claimed.

18.6 The Contractor shall ensure that each invoice shall include the financial documents, set out in section (d) of Appendix 1 of the Specification, and a statement of any journeys not operated during the accounting period in accordance with the Specification and other Contract Documents and details of any Concessionary Fare Scheme submitted. The Combined Authority will assume that the Contractor's costs are spread evenly throughout the year and make payments accordingly.

18.7 The Combined Authority may acting reasonably reduce any payment due in respect of the Services where the Contractor has failed to provide or has inadequately provided the Services, without prejudice to any other rights or remedies of the Combined Authority.

#### **19 Recovery of Sums Due**

19.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Combined Authority in respect of any breach of the Contract), the Combined Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Combined Authority.

19.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

19.3 The Contractor shall make all payments due to the Combined Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Combined Authority to the Contractor.

19.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

**20. Not Used**

**D Statutory Obligations and Regulations**

**21 Prevention of Bribery**

21.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Contractor's Personnel, have at any time prior to the Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

21.2 The Contractor shall not during the term of this Contract:

- (a) commit a Prohibited Act: and/or
- (b) do or suffer anything to be done which would cause the Combined Authority or any of the Combined Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

21.3 The Contractor shall:

- (a) if requested, provide the Combined Authority with any reasonable assistance, at the Combined Authority's reasonable cost, to enable the Combined Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- (b) within twenty-one (21) Working Days of the Commencement Date, and annually thereafter, certify to the Combined Authority in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 21 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Contractor shall provide such supporting evidence of compliance as the Combined Authority may reasonably request.

21.4 The Contractor shall during the term of this Contract:

- (a) establish, maintain and enforce, and require that its sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under clause 21.4(a) and make such records available to the Combined Authority on request.

- 21.5 The Contractor shall immediately notify the Combined Authority in writing if it suspects or becomes aware of any breach of clause 21.1 and/or clause 21.2, or has reason to believe that it has or any of the Contractor's Personnel have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act: and/or
  - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract had committed or attempted to commit a Prohibited Act.
- 21.6 If the Contractor makes a notification to the Combined Authority pursuant to clause 21.5, the Contractor must respond promptly to the Combined Authority's enquiries, co-operate with any investigation, and allow the Combined Authority to audit books, records and any other relevant documentation in accordance with clause 35. This obligation shall survive termination of this Contract.
- 21.7 If the Contractor is in Default under clause 21.1 and/or 21.2, the Combined Authority may by notice:
- (a) require the Contractor to remove from performance of this Contract any Contractor's Personnel whose acts or omissions have caused the Default: or
  - (b) terminate this Contract by written notice with immediate effect
- 21.8 Any notice served under clause 21.7 must specify:
- (a) the nature of the Prohibited Act;
  - (b) the identity of the party whom the Combined Authority believes has committed the Prohibited Act;
  - (c) the date on which this Contract will terminate; and
  - (d) the action that the Combined Authority has elected to take.
- 21.9 Notwithstanding clause 59 (Dispute resolution), any dispute relating to:
- (a) the interpretation of clause 21; or
  - (b) the amount or value of any gift, consideration or commission,

shall be determined by the Combined Authority and its decision shall be final and conclusive.

- 21.10 Any termination under clause 21.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Combined Authority.

## **22 Prevention of Evasion**

- 22.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Contractor's Personnel, have at any time prior to the Commencement Date:

- (a) committed a Proscribed Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Proscribed Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement or contracts on the grounds of a Proscribed Act.

- 22.2 The Contractor shall not during the Term of this Contract:

- (a) commit a Proscribed Act; and / or
- (b) do or suffer anything to be done which would cause the Combined Authority or any of the Combined Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the 2017 Act or otherwise incur any liability in relation to the 2017 Act.

- 22.3 The Contractor shall:

- (a) if requested, provide the Combined Authority with any reasonable assistance, at the Combined Authority's reasonable cost, to enable the Combined Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the 2017 Act; and
- (b) within twenty-one (21) Working Days of the Commencement Date, and annually thereafter, certify to the Combined Authority in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 33 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Contractor shall provide such supporting evidence of compliance as the Combined Authority may reasonably request.

- 22.4 The Contractor shall during the term of this Contract:

- (a) establish, maintain and enforce, and require that its sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the 2017 Act and prevent the occurrence of a Proscribed Act; and
- (b) keep appropriate records of its compliance with its obligations under clause 33.4(a) and make such records available to the Combined Authority on request.

- 22.5 The Contractor shall immediately notify the Combined Authority in writing if it suspects or becomes

aware of any breach of clause 22.1 and / or 22.2, or has reason to believe that it has or any of the Contractor's Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Proscribed Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Proscribed Act; and / or
- (c) been involved in any Proscribed Act or otherwise suspects that any person or Party directly or indirectly connected with this Contract had committed or attempted to commit a Proscribed Act.

22.6 If the Contractor makes a notification to the Combined Authority pursuant to clause 22.5, the Contractor must respond promptly to the Combined Authority's enquiries, co-operate with any investigation, and allow the Combined Authority to audit books, records and any other relevant documentation in accordance with clause 35 (Audit). This obligation shall survive termination of the Contract.

22.7 If the Contractor is in Default under clause 22.1 and / or 22.2, the Combined Authority may by notice:

- (a) require the Contractor to remove from performance of this Contract any Contractor's Personnel whose acts or omissions have caused the Default; or
- (b) terminate the Contract by written notice with immediate effect.

22.8 Any notice served under clause 22.7 must specify:

- (a) the nature of the Proscribed Act;
- (b) the identity of the party whom the Combined Authority believed has committed the Proscribed Act;
- (c) the date on which this Contract will terminate; and
- (d) the action that the Combined Authority has elected to take.

22.9 Notwithstanding clause 20 (Dispute Resolution), any dispute relating to the interpretation of clause 22 shall be determined by the Combined Authority and its decision shall be final and conclusive.

22.10 Any termination under 22.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Combined Authority.

## **23 Compliance**

23.1 The Contractor shall (and shall procure that the Contractor's Personnel shall):



- (a) perform its obligations under this Contract (including those in relation to the Services) in accordance with:
  - (i) The Equality Act 2010;
  - (ii) The Combined Authority's equality and diversity policy as provided to the Contractor from time to time; and
  - (iii) Any other requirements and instructions which the Combined Authority reasonably imposes in connection with any equality obligations imposed on the Combined Authority at any time under applicable equality law; and
- (b) take all necessary steps, and inform the Combined Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, of the Equality and Human Rights Commission or (any successor organisation).
- (c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract. The Contractor shall also undertake, or refrain from undertaking, such acts as the Combined Authority requests so as to enable the Combined Authority to comply with its obligations under the Human Rights Act 1998; and
- (d) not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

## **24 The Contracts (Rights of Third Parties) Act 1999**

Except where expressly provided otherwise in Schedule 6 (TUPE), paragraphs 3.14 and 4.2, a person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

## **25 Environmental Requirements**

- 25.1 The Contractor shall, when performing the Contract, perform its obligations under the Contract in accordance with the Combined Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 25.2 The Contractor shall provide if the Combined Authority so requests details of each vehicle used under the Contract, including vehicle make and model, engine capacity, fuel type and distance travelled each financial year to enable the Combined Authority to comply with government performance indicators relating to vehicle emissions arising from journeys undertaken on Combined Authority business. The information must be provided within one month of year end i.e. by 30<sup>th</sup> April of each year of the Contract Period.

## **26 Health and Safety**

- 26.1 The Contractor shall promptly notify the Combined Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.
- 26.2 While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Combined Authority in respect of Staff and other persons working there.
- 26.3 The Contractor shall notify the Combined Authority within twenty-four (24) hours of any incident involving loss of life, injury to any party or serious damage to property or vehicles during the performance of the Contract and will provide the Combined Authority with a full written report of any such incident within fourteen (14) days.
- 26.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working in the performance of its obligations under the Contract.
- 26.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Combined Authority on request.

## **27 Co-operation with Ombudsman and other Enquiries**

- 27.1 If requested to do so by the Combined Authority from time to time, the Contractor shall provide to the Combined Authority any relevant information (including documentation and statements from Staff) in connection with any Ombudsman investigation, external audit of the Combined Authority (including an audit of the Combined Authority's discharge of its duty of Best Value) and any inspection or investigation undertaken by any Governmental department, agency, inspectorate or other body in which the Combined Authority may become involved, or any relevant disciplinary hearing internal to the Combined Authority or meeting of a scrutiny or standards committees internal to the Combined Authority, arising out of the provision of the Services or the Contractor's presence on Combined Authority premises.
- 27.2 The Contractor shall, and shall ensure that its Staff shall, give evidence in such inquiries, investigations, hearings, meetings, audits and inspections and provide such other co-operation and assistance to the Combined Authority in relation thereto as the Combined Authority may reasonably require from time to time, provided always that the Contractor shall not be obliged to disclose to the Combined Authority any information relating directly or indirectly to any dispute, proceedings or litigation between the Contractor and the Combined Authority, or any other information enjoying client/lawyer privilege.

## **E. Protection of Information**

## **28 Data Protection**

- 28.1 For the purposes of this clause 28, Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Processing and appropriate technical and organisational measures shall have the meanings given to them in the Data Protection Legislation. All other capitalised terms shall have the meanings given to them in clause 1 of this Contract.
- 28.2 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 28 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.
- 28.3 The Parties agree and acknowledge that the factual arrangement between them dictates the classification of each Party in respect of the Data Protection Legislation. Notwithstanding this, where the Parties consider each Party shall act as Controller where it is Processing Personal Data in connection with performing its obligations under this Contract, both Parties shall comply in all respects with the Data Protection Legislation.
- 28.4 This clause sets out the framework for the sharing of personal data between the parties as Controllers. Each party acknowledges that one party (referred to in this clause as the Data Discloser) may disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes. In respect of Shared Personal Data each Party shall:
- (a) ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the other Party for the Agreed Purposes;
  - (b) give full information to any data subject whose Personal Data may be Processed under this Contract of the nature of such Processing;
  - (c) process the Shared Personal Data only for the Agreed Purposes;
  - (d) not disclose or allow access to Shared Personal Data provided to it by the other Party without the express written permission of the other Party or where required to do so by Law;
  - (e) ensure that where Shared Personal Data provided to it by the other Party is shared with a third party in accordance (d) above, such third party is subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Contract;
  - (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
  - (g) not transfer any Personal Data received from the Data Discloser outside the UK unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable

Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.

28.5 Each Party shall provide the other Party with full assistance in relation to that Party's obligations under Data Protection Legislation and any complaint, communication or request including by promptly providing:

- a) Such assistance as is reasonably requested by the other Party to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation
- b) Assistance requested following any Data Loss Event;
- c) Assistance requested when dealing with any complaints; and
- d) Assistance requested in responding to any communication with the Information Commissioner's Office (ICO).

28.6 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause.

28.7 The Parties agree to take account of any guidance issued by the ICO. The Combined Authority may on not less than thirty (30) Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the ICO or to reflect the current factual arrangement between the Parties and the corresponding classification and responsibilities of each Party under the Data Protection Legislation.

28.8 This clause 28 shall survive the termination or early expiry of this Contract.

## **29 Confidential Information**

29.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- (a) treat the other party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

29.2 Clause 29.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 30 (Freedom of Information);

- (b) it is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Contract;
- (c) such disclosure is made by the Combined Authority to any other department, office or agency of the Government;
- (d) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (e) such disclosure is made by the Combined Authority relating to this Contract and in respect of which the Contractor has given its prior written consent to disclosure;
- (f) such information was obtained from a third party without obligation of confidentiality;
- (g) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract;
- (h) it is independently developed without access to the other party's Confidential formation;  
or
- (i) it is a disclosure by the Combined Authority of any document to which it is a party and which the parties to this Contract have agreed contains no Commercial Sensitive Information.

29.3 The Contractor may only disclose the Combined Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

29.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Combined Authority's Confidential Information received otherwise than for the purposes of this Contract.

29.5 At the written request of the Combined Authority, the Contractor shall procure that those members of the Staff identified in the Combined Authority's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.

29.6 Nothing in this Contract shall prevent the Combined Authority from disclosing the Contractor's Confidential Information:

- (a) to any consultant, contractor or other person engaged by the Combined Authority or any government department or Regulatory Bodies;
- (b) for the purpose of the examination and certification of the Combined Authority's accounts;  
or
- (c) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Combined Authority has used its resources or

any examination pursuant to the Combined Authority's Best Value duties.

29.7 The Combined Authority shall use all reasonable endeavours to ensure that any government department, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 29.6 is made aware of the Combined Authority's obligations of confidentiality.

29.8 Nothing in this clause 29 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

### **30 Freedom of Information**

30.1 The Contractor acknowledges that the Combined Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Combined Authority to enable the Combined Authority to comply with its Information disclosure obligations.

30.2 The Contractor shall and shall procure that any sub-contractors shall transfer:

- (a) to the Combined Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- (b) provide the Combined Authority with a copy of all Information in its possession, or power in the form that the Combined Authority requires within five (5) Working Days (or such other period as the Combined Authority may specify) of the Combined Authority's request; and
- (c) provide all necessary assistance as reasonably requested by the Combined Authority to enable the Combined Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

30.3 The Combined Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and / or
- (b) is to be disclosed in response to a Request for Information.

30.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Combined Authority.

30.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 29 – Confidential Information) the Combined Authority may, acting in accordance with the Secretary of State for

Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:

- (a) without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account,

provided always that where 30.5(a) applies the Combined Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

30.6 The Contractor shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Combined Authority to inspect such records as requested from time to time.

30.7 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Combined Authority may be obliged to disclose it in accordance with this clause 30.5.

## **31 Publicity, Media and Official Enquiries**

31.1 The Contractor shall not make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the Combined Authority.

31.2 The Contractor shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause 31.1.

31.3 The Contractor shall partake in any marketing scheme adopted by the Combined Authority, on (fourteen) 14 days' notice in writing being given by the Combined Authority, in addition the Contractor may introduce any marketing arrangement the Contractor considers to be appropriate, at the Contractor's expense, provided that the written agreement of the Combined Authority is obtained in advance. The Contractor shall be reimbursed by the Combined Authority in respect of any marketing scheme initiated by the Combined Authority, in accordance with the standard conditions of any scheme in operation.

## **32 Security**

32.1 The Combined Authority shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Combined Authority while on the Premises and shall ensure that all Staff comply with such requirements.

32.2 The Combined Authority shall provide the Contractor upon request copies of its written security procedures and shall afford the Contractor upon request with an opportunity to inspect its physical

security arrangements.

### **33 Intellectual Property Rights**

33.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):

- (a) furnished to or made available to the Contractor by or on behalf of the Combined Authority shall remain the property of the Combined Authority; and
- (b) prepared by or for the Contractor on behalf of the Combined Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Combined Authority;

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

33.2 The Contractor hereby assigns to the Combined Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 33.1(b). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

33.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.

33.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Combined Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Combined Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non- exclusive, perpetual, royalty free and irrevocable and shall include the right for the Combined Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Combined Authority.

33.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Combined Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Combined Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

- (a) items or materials based upon designs supplied by the Combined Authority; or
- (b) the use of data supplied by the Combined Authority which is not required to be verified



by the Contractor under any provision of the Contract.

- 33.6 The Combined Authority shall notify the Contractor in writing of any claim or demand brought against the Combined Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- 33.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
- (a) shall consult the Combined Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
  - (b) shall take due and proper account of the interests of the Combined Authority; and
  - (c) shall not settle or compromise any claim without the Combined Authority's prior written consent (not to be unreasonably withheld or delayed).
- 33.8 The Combined Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Combined Authority or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Combined Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Combined Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 33.5(a) or (b).
- 33.9 The Combined Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Combined Authority or the Contractor in connection with the performance of its obligations under the Contract.
- 33.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Combined Authority and, at its own expense and subject to the consent of the Combined Authority (not to be unreasonably withheld or delayed), use its best endeavours to:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or
  - (b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Combined Authority,

and in the event that the Contractor is unable to comply with clauses 33.7(a) or (b) within twenty (20) Working Days of receipt of the Contractor's notification the Combined Authority may terminate the Contract with immediate effect by notice in writing.

- 33.11 The Contractor grants to the Combined Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Combined Authority reasonably requires in order to exercise its rights and take the benefit of this Contract including the Services provided.

#### **34. Information Security Policy**

- 34.1 The Contractor shall ensure that at all times it and its agents, employees or sub-contractors when utilising the Combined Authority's computer hardware, software, data or any elements of the Combined Authority's voice and data networks, fully comply with the **Combined Authority's Information Security Policy**. The Contractor shall indemnify the Combined Authority against all cost arising from any actions or losses arising from the failure by the Contractor its agents, employees or sub-contractors to comply with the said policy. A copy of the policy will be supplied upon request.

#### **35 Audit**

- 35.1 The Contractor shall keep and maintain until twelve (12) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Combined Authority, and all payments made by the Combined Authority. The Contractor shall on request afford the Combined Authority or the Combined Authority's representatives or representatives of the Audit Commission such access to those records as may be requested by the Combined Authority in connection with the Contract.
- 35.2 The Contractor and its agents shall permit the Combined Authority and their appointed auditors and auditors appointed by the Audit Commission access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) for the purposes of the financial audit of the Combined Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Combined Authority has used its resources.

#### **F. Control of the Contract**

##### **36 Transfer and Sub-Contracting**

- 36.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract. The Contractor may sub-contract in an emergency or on a temporary basis to overcome operating difficulties but such sub-contracting may not exceed 3 consecutive days or 10% of journeys operated as part of this Contract in any one four week period. In the event of sub-contracting of the Contract, the Contractor shall remain liable for all of its obligations under this Contract.

- 36.2 Where sub-contracting takes place, the Contractor shall procure that the sub-contractor displays a notice, visible to intending passengers, stating the destination and service number and that the vehicle is on hire to the Contractor.
- 36.3 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 36.4 Where the Combined Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Combined Authority, be sent by the Contractor to the Combined Authority as soon as reasonably practicable.
- 36.5 In the event that the Combined Authority approves an assignment of the Contract by the Contractor the Contractor shall ensure that the Assignee notifies the Combined Authority of the Assignee's contact information and bank account details to which the Combined Authority shall make payment.
- 36.6 The provisions of clause 18 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Combined Authority.
- 36.6 Subject to clause 36.9, the Combined Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to any a third party any Contracting Authority, any other body established under statute provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- 36.8 Any change in the legal status of the Combined Authority shall not, subject to clause 37.9, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Combined Authority.
- 36.9 The Combined Authority may disclose to anybody to which it assigns or novates their rights or obligations under this Contract any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Combined Authority shall authorise the assignee or novatee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the assignee or novatee gives a confidentiality undertaking in relation to such Confidential Information.
- 36.10 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

## **37 Waiver**

- 37.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by

the Contract.

37.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 5 (Notices).

37.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

### **38 Variation**

38.1 The Combined Authority reserves the right on giving written notice from time to time to require changes to the Services (whether by way of removal of Services, the addition of new Services or increasing or decreasing the Services or specifying the order in which the services are to be performed or the locations where the Services are to be provided) provided that such a variation does not amount to a material change to the Specification. Such a change is hereinafter called a "Variation".

38.2 In the event of a minor change in the Combined Authority's requirements for transport or of a request by the Contractor to make minor modifications to the Contract, the Combined Authority shall seek to agree with the Contractor a modified Route Schedule and/or Timetable. The Combined Authority reserves the right to reject terms offered by the Contractor for the modification of this Contract, if in the opinion of the Combined Authority, they are unreasonable. Any agreement reached under this sub-clause shall be in writing and signed by both parties.

38.3 The Combined Authority may request a Variation by notifying the Contractor in writing of the "Variation" and giving the Contractor sufficient information to assess the extent of the Variation and to consider whether any change to the Contract Price is required in order to implement the Variation. The Combined Authority shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation.

38.4 In the event that the Parties are unable to agree a change to the Contract Price, the Combined Authority may:

- (a) allow the Contractor to fulfil its obligations under the Contract without the variation to the Specification;
- (b) terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at Clause 60.

### **39 Severability**

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court

of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

#### **40 Remedies in the event of inadequate performance**

- 40.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Combined Authority shall notify the Contractor, and where considered appropriate by the Combined Authority, investigate the complaint. The Combined Authority may, in its sole discretion, uphold the complaint and take further action in accordance with clause 50 (Termination on Default) of the Contract.
- 40.2 In the event that the Combined Authority is of the reasonable opinion that there has been a Material Breach of the Contract by the Contractor, then the Combined Authority may, without prejudice to its rights under clause 50 (Termination on Default), do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Combined Authority that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
  - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
  - (c) terminate, in accordance with clause 50 (Termination on Default), the whole of the Contract.
- 40.3 Without prejudice to its right under clause 19 (Recovery of Sums Due), the Combined Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Combined Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Combined Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 40.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Combined Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Combined Authority may direct.
- 40.5 In the event that:
- (a) the Contractor fails to comply with clause 40.4 above and the failure is materially adverse to the interests of the Combined Authority or prevents the Combined Authority from discharging

a statutory duty; or

(b) the Contractor persistently fails to comply with clause 40.4 above,

the Combined Authority may terminate the Contract with immediate effect by notice in writing.

## **41 Remedies Cumulative**

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **42 Monitoring of Contract Performance**

42.1 The Contractor shall comply with the monitoring arrangements set out in the Monitoring Schedule including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

42.2 The Contractor shall, at no charge to the Combined Authority, co-operate with the Combined Authority in providing such information and access to the Contractor's staff as the Combined Authority may reasonably require which enables the Combined Authority to monitor the Contractor's performance of the Service, including without limitation attendance at meetings at a frequency to be determined by the Contract Manager. The Combined Authority shall prepare the minutes of these meetings.

42.3 The Contract Manager and the Contractor Representative shall meet quarterly throughout the Contract Period to review the Contractor's supply of the Services including without limitation:

- (a) That the Services are being provided on time, and in accordance with the Specification, Method Statements and other Contract Documents;
- (b) The quality of the Services and any problems arising in relation to them, particularly any action taken by the Combined Authority under clause 42.2
- (c) Any recommendations by the Contractor in relation to the provision of the Services.
- (d) The Contractor's performance measured against the Performance Standards

42.4 The Contractor shall implement and maintain a quality management system to measure the quality of the Services against the requirements of the Specification and to identify key areas of non or under performance.

42.5 The Contractor's Representative shall provide the Contract Manager with a written Management Information Report at least three (3) Working Days prior to each quarterly meeting which shall include, without limitation:

- (a) the Services carried out in the preceding quarterly period and the Services to be undertaken in the following quarterly period;
- (b) the number of complaints and compliments received;
- (c) the number of failures to meet the Specification and the percentage of such failures which were resolved within the agreed timescales;
- (d) any issues relating to Staff;
- (e) any proposals for improvements to the provision of the Services including costings;
- (f) a review of measures which it has taken to demonstrate continuous improvement in the performance of the contract; and
- (g) the Contractor's compliance with Performance Standards

42.6 The Contractor shall allow the Combined Authority to conduct ticket checks, performance monitoring checks and passenger interviews onboard vehicles provided under the Contract, and on any other journeys provided by the Contractor along the same route, at similar times of day. The Contractor shall allow persons holding a valid authority, provided by the Executive Director, Place and Connectivity, to travel free of charge on any journey provided under this Contract.

42.7 The Contractor shall implement and maintain a procedure for reporting, logging and monitoring all complaints which procedure shall permit the reporting of complaints in person, by telephone, in writing or by e-mail or fax or via the Contractor Representative.

42.8 The Contractor shall investigate all complaints and use all reasonable endeavours to resolve them to the satisfaction of the complainant and shall provide a full written response to the complaint.

42.9 The Contractor's Representative shall notify the Contract Manager in writing or by e-mail of as soon as reasonably practicable of each complaint received and of the action taken to resolve the complaint and of the response given to the complainant.

42.10 If requested, the Contractor shall give the Combined Authority such information and allow the Combined Authority to consult directly with any Staff of the Contractor as the Combined Authority may reasonably require in order to monitor performance of the Contract.

42.11 No additional charge shall be made by the Contractor for complying with the requirements of this clause.

42.12 The Contractor shall comply with the requirements of the Monitoring Schedule relating to the monitoring of performance.

#### **43 Extension of Initial Contract Period**

The Combined Authority may, by giving written notice to the Contractor not less than three (3)

Month(s) prior to the last day of the Initial Contract Period, extend the Contract for a further period of one year, on two occasions. The provisions of the Contract will apply (subject to any Variation) throughout any such extended period.

#### **44 Entire Agreement**

- 44.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.
- 44.2 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the clauses of the Contract;
  - (b) the Schedules; and
  - (c) any other document referred to in the clauses of the Contract.

#### **45 Counterparts**

This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

### **G LIABILITIES**

#### **46 Liability, Indemnity and Insurance**

- 46.1 Neither Party excludes or limits liability to the other Party for:
- (a) death or personal injury caused by its negligence; or
  - (b) Fraud; or
  - (c) fraudulent misrepresentation; or
  - (d) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- 46.2 Subject to clauses 46.3 and 46.5, the Contractor shall indemnify the Combined Authority and keep the Combined Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises including in respect of any death or personal injury, loss of or damage to property, financial loss



arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

- 46.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Combined Authority or by breach by the Combined Authority of its obligations under the Contract.
- 46.4 Subject always to clause 46.1, the Combined Authority's maximum aggregate liability in respect of all Defaults, claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract (other than a failure to pay any of the charges that are properly due and payable and for which the Combined Authority shall remain fully liable), shall in no event exceed one hundred percent (100%) of the Contract Price paid or payable by the Combined Authority to the Contractor in each Contract Year.
- 46.5 Subject always to clause 46.1, the Contractor's liability for Defaults shall be subject to the following financial limits:
- (a) the Contractor's aggregate liability for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed ten million pounds (£10,000,000); and
  - (b) the Contractor's annual aggregate liability under the Contract for all Defaults (other than a Default governed by clauses 33 (Intellectual Property Rights) or 46.5(a) shall in no event exceed one hundred per cent (100 %) of the Contract Price paid or payable by the Combined Authority to the Contractor in the year in which the liability arises. (Where the Required Insurances are available, the Supplier's liability shall be limited to the greatest level of insurance cover available).
- 46.6 Subject always to clause 46.1, in no event shall either Party be liable to the other for any:
- (a) loss of profits, business, revenue or goodwill; and/or
  - (b) loss of savings (whether anticipated or otherwise); and/or
  - (c) indirect or consequential loss or damage.
- 46.7 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- 46.8 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss or specified types of insurance and specified minimum sums for example, public liability insurance which insurance may be limited in respect of any one claim and in aggregate provided that any such limit (and any limit of liability under the Contract) shall be at least £5,000,000, employee's liability insurance which insurance may be limited in respect of any one claim and in aggregate provided that any such limit

(and any limit of liability under the Contract) shall be at least £10,000,000 (the **Required Insurances**).

- 46.9 Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of twelve (12) years following the expiration or earlier termination of the Contract.
- 46.10 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 46.11 The Contractor shall give the Combined Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 46.12 If, for whatever reason, the Contractor fails to give effect to and maintain the Required Insurances the Combined Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 46.13 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 46.8.
- 46.14 The Combined Authority shall be under no liability for damage to any vehicle used by the Contractor however caused, or for any death, injury or damage caused to or suffered by any passenger, employee of the Contractor, or third party or the property of any of the said persons arising out of the use of any such vehicle and the Contractor shall indemnify the Combined Authority against all claims made by any passenger, employee of the Contractor or third party in respect of any such death, injury or damage.
- 46.15 The Contractor shall be solely liable for and shall indemnify the Combined Authority in respect of and shall insure with insurers approved by the Combined Authority and maintain such insurance throughout the Contract Period against any liability loss damage claims or proceedings whatsoever arising under any statute or at common law in respect of damage to property or person or personal injury or for the death of any person whomsoever arising out of or in the course of or caused by the performance of this Contract. The Contractor shall provide such proof of insurance as the Combined Authority may from time to time require.
- 46.16 The Contractor shall take all reasonable steps to ensure the safety of passengers not only whilst they are aboard the vehicle but also at such times as they are entering or leaving or boarding or alighting.
- 46.17 The Contractor shall in the event of vehicle breakdown, staff shortage or other circumstances preventing the use of his vehicle, staff or other resources, make alternative arrangements at his own cost to ensure the transport of passengers in accordance with the Contract. In default of such

arrangements the Combined Authority shall have power, without prejudice to their power to determine the Contract, to make other arrangements for transporting passengers and recover the cost of expenses from the Contractor.

- 46.18 No liability shall attach to the Contractor in the event of his failure to perform any part of this Contract satisfactorily if the Contractor can demonstrate that such failures arose wholly as a result of the action of a third party over which the Contractor has no control.

## **47 Legislation**

The Contractor shall at its own expense at all times conform in all respects with the provisions of any Act of Parliament General or Local or any Statutory Rules or Orders affecting the whole or part of the subject matter of the contract or any work to be done in relation with it.

## **48. Warranties and Representations**

The Contractor warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- (b) in entering the Contract it has not committed any Fraud, any Prohibited Act or any Proscribed Act;
- (c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Combined Authority prior to execution of the Contract;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) in the three (3) years prior to the date of the Contract:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all

material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

- (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

## **H DEFAULT, DISRUPTION AND TERMINATION**

### **49 Termination on insolvency and change of control**

#### **Clause where Contractor is a Company**

**49.1** The Combined Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in 49.1(a)-(g) occurs under the law of any other jurisdiction.

#### **Alternative clause 49.1 where Contractor is an Individual**

**49.1** The Combined Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and without liability to pay compensation to the Contractor and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- (b) a petition is presented and not dismissed within fourteen (14) days or order made for the Contractor's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within fourteen (14) days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part 1 of the Mental Capacity Act 2005; or
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

**Alternative clause 49.1 Where Contractor is a Partnership**

**49.1** The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator, or
- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or

- (f) Any of the following occurs in relation to any of its partners:
- (i) an application for an interim order is made pursuant to Section 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors; or
  - (ii) a petition is presented for his bankruptcy; or
  - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets.

**Alternative clause 49.1 Where Contractor is a Limited Liability Partnership**

49.1 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is a Limited Liability Partnership and:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of its creditors; or
- (b) it is for any reason dissolved; or
- (c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Schedule B1 of the Insolvency Act 1986; or
- (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986; or
- (e) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986; or
- (f) a receiver, or similar officer is appointed over the whole of any part of its assets; or
- (g) it is or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
- (h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.

References to the Insolvency Act 1986 in clause 49.1 (a)-(h) shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

49.2 The Contractor shall notify the Combined Authority immediately if the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988

("change of control"). The Combined Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

- (a) being notified that a change of control has occurred; or
- (b) where no notification has been made, the date that the Combined Authority becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

## **50 Termination on Default**

50.1 The Combined Authority may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of the Combined Authority within twenty-five (25) Working Days, or such other period as may be specified by the Combined Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Combined Authority, capable of remedy; or
- (c) the Default is a Material Breach of the Contract.

50.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Combined Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

50.3 If the Combined Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Combined Authority in writing of such failure to pay. If the Combined Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Combined Authority exercising its rights under clause 19.1 (Recovery of Sums Due).

50.4 The Contract may be terminated before its expiry date either by mutual consent or by one party serving on the other written notice that they wish to terminate the contract on one of the grounds set out below in which event the Contract shall terminate Seventy (70) days after serving the notice:

- a) Changes are required which require a revision of the pattern of Service and which cannot be satisfactorily achieved without a revision of any one or more Services provided under this Contract or any other contract.
- b) The cost to the Contractor of providing the Service has significantly exceeded the

Contractor's estimated margin of loss.

- c) The revenue being generated by the provision of the Service is significantly less than had been anticipated.
- d) The finance available to the Combined Authority for revenue support is insufficient to maintain all existing Services.
- e) Where a third party named in the Route Schedule as responsible for meeting the whole or part of the cost of the Contract ceases to meet their responsibility.

50.5 The Combined Authority may terminate the Contract before its expiry date by giving the Contractor a minimum of twenty-eight (28) days' notice in writing, on the following grounds:

- a) An operator has registered a commercial service on a route or at timings that prejudice substantially the finances of the Service or Services or which prejudice the Combined Authority's obligation not to support Services in competition with commercial registration.

50.6 The Combined Authority may terminate the Contract with immediate effect by giving written notice if:

- a) The Contractor has failed to perform the Contract satisfactorily and has failed to take appropriate action to remedy the default after receiving a verbal warning and a formal notice of default in writing from the Combined Authority.
- b) The Contractor is found to be operating within the County of Cambridgeshire any local service that is not licensed or registered as required by Statute.

## **51 Break**

The Combined Authority shall have the right to terminate the Contract at any time by giving three (3) Months' written notice to the Contractor.

## **52 Consequences of Expiry or Termination**

52.1 Where the Combined Authority terminates the Contract under clause 50 (Termination on Default) and then makes other arrangements for the supply of Services, the Combined Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Combined Authority throughout the remainder of the Contract Period. The Combined Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 50 (Termination on Default), no further payments shall be payable by the Combined Authority to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Combined Authority), until the Combined Authority has established the final cost of making the other arrangements envisaged under this clause.

52.2 Subject to clause 46, where the Combined Authority terminates the Contract under clause 51



(Break), the Combined Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Combined Authority shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Combined Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 51 (Break).

52.3 The Combined Authority shall not be liable under clause 52.2 to pay any sum which:

- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- (b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or
- (c) is a claim by the Contractor for loss of profit, due to early termination of the Contract.

52.4 Where the Contractor terminates the Contract under clause 50.4 (Termination on Default) the Contractor agrees that it shall not, and shall procure that none of its subsidiary or parent undertakings shall, bid for any other contract to provide bus services to the Combined Authority during the period from the date of serving the notice of termination until the termination of the Contract occurs and for a further period of ninety (90) days after such date of termination.

52.5 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Combined Authority or the Contractor under clauses 18 (Payment and VAT), 19 (Recovery of Sums Due), 21 (Prevention of Bribery), 22 (Prevention of Evasion), 28 (Data Protection), 29 (Confidential Information), 30 (Freedom of Information), 33 (Intellectual Property Rights), 35 (Audit), 41 (Cumulative Remedies), 46 (Liability, Indemnity and Insurance), 52 (Consequences of Expiry or Termination), 53 (Compliance with Anti-slavery and Human Trafficking law), 55 (Recovery upon Expiry or Termination) and 59 (Governing Law and Jurisdiction).

## **53 Compliance with Anti-slavery and Human Trafficking Laws**

53.1 In performing its obligations under the Contract, the Contractor shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
- (b) have and maintain throughout the term of this Contract its own policies and procedures to ensure its compliance;
- (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1,2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
- (d) include in contracts with its direct sub-contractors and suppliers provisions which are at least as onerous as those set out in this clause 53;
- (e) not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;
- (f) shall not require any Contractor Staff or sub-contractor Staff to lodge deposits or identity papers with the employer and shall be free to leave their employer after reasonable notice;
- (g) not use or allow child or slave labour to be used by its sub-contractors;
- (h) notify the Combined Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract;
- (i) maintain a complete set of records to trace the supply chain of all Services provided to the Combined Authority in connection with this Contract; and permit the Combined Authority and its third party representatives to inspect the Contractor's premises, records, and to meet the Contractor's Personnel to audit the Contractor's compliance with its obligations under this clause 53.

53.2 The Contractor represents and warrants that at the date of this Contract:

- (a) neither the Contractor nor any of its officers, employees or other persons associated with it:
  - (i) has been convicted of any offence involving slavery or human trafficking; and
  - (ii) having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

53.3 The Contractor shall implement due diligence procedures for its sub-contractors, and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

53.4 The Contractor shall prepare and deliver to the Combined Authority, an annual slavery and human

trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with clause 53.

- 53.5 The Contractor shall indemnify the Combined Authority against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Combined Authority as a result of any breach of the Contractor's anti-slavery policy.
- 53.6 The Contractor represents, warrants and undertakes that it conducts its business in a manner that is consistent with the Contractor anti-slavery policy.
- 53.7 The Contractor shall report the discovery or suspicion of any slavery or trafficking by it or its sub-contractor to the Combined Authority and the Modern Slavery Helpline.
- 53.8 The Contractor shall comply with the Combined Authority's whistleblowing policy and shall encourage its Staff to report any incidents, or suspicions, of slavery or human trafficking. The Contractor shall support and protect Staff who whistle-blow in accordance with this Contract.
- 53.9 The Contractor shall within ten (10) Working Days of the Commencement Date, and annually thereafter, certify to the Combined Authority in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 53 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Contractor shall provide such supporting evidence of compliance as the Combined Authority may reasonably request.
- 53.10 The Combined Authority may terminate the Contract with immediate effect by giving written notice to the Contractor if the Contractor commits a breach of this clause 53.

## **54 Disruption**

- 54.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Combined Authority, its employees or any other contractor employed by the Combined Authority.
- 54.2 The Contractor shall immediately inform the Combined Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 54.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- 54.4 If the Contractor's proposals referred to in clause 54.3 are considered insufficient or unacceptable by the Combined Authority acting reasonably, then the Contract may be terminated with immediate effect by the Combined Authority by notice in writing.
- 54.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Combined Authority, the Contractor may request a reasonable allowance

of time and in addition, the Combined Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

## **55 Recovery upon Termination**

55.1 On the termination of the Contract for any reason, the Contractor shall:

- (a) immediately return to the Combined Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;
- (b) immediately deliver to the Combined Authority all Property (including materials, documents, information and access keys) provided to the Contractor under clause 16. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Combined Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress.
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Combined Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Combined Authority or the Replacement Contractor to conduct due diligence.
- (e) as soon as reasonably practicable and in any event within seven (7) days of the end of the Contract remove all Branding provided by the Combined Authority from the Contractor's buses and dispose of it in accordance with good industry practice.

55.2 If the Contractor fails to comply with clause 55.1 (a) and (b), the Combined Authority may recover possession thereof and the Contractor grants a licence to the Combined Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

55.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause 55.1 (c) and (d) free of charge. Otherwise, the Combined Authority shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

## **56 Force Majeure**

56.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all

reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

56.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

56.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 56.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

## **57 Business Continuity Planning**

57.1 The Contractor acknowledges that the Combined Authority has a statutory obligation under the Civil Contingencies Act 2004 to maintain plans to ensure that it can continue to exercise all its functions in the event of an emergency so far as is reasonably practicable.

57.2 The Contractor shall implement and maintain a Business Continuity Planning Policy with tested contingency arrangements and shall provide a copy of the said policy to the Combined Authority upon request. The Business Continuity Plan shall address (without limitation) the following matters:

- (a) Provide a regular review and updating of the Business Continuity Plan documentation at least every three (3) years;
- (b) Provide for regular testing of the Business Continuity Plan (at least yearly);
- (c) Provide details of the locations at which copies of the Business Continuity Plan documentation are held;
- (d) Provide details of the locations at which copies of any other important procedures and documents which form part of the Business Continuity Plan documentation are held;
- (e) Provide for IT systems recovery/backup arrangements and provision to ensure that these are carried out regularly and details of the locations at which these are held;
- (f) Provide for minimum contingency resources (for example access to reserve employees, IT hardware and systems, telephones) and details of any contingency site or location;
- (g) Provide contingency details relating to the loss of any key suppliers;
- (h) Provide contingency details relating to the loss or absence of any Employees;
- (i) Provide a Business Continuity Plan activation checklist;

- (j) Provide for communication processes and associated contact information covering key employees and suppliers/contractors and confirmation that the Combined Authority is included in the Contractor's priority customer list.

57.3 The Combined Authority reserves the right to require the Contractor's attendance at any contingency exercise or to conduct an audit of the Contractor's contingency arrangements.

## **I BEST VALUE**

### **58 Combined Authority's Best Value Duty**

58.1 The Contractor acknowledges that:

- (a) the Combined Authority is subject to the Best Value Duty; and
- (b) the provisions of this clause 58 are intended to assist the Combined Authority in discharging its Best Value Duty in relation to the Services.

58.2 The Contractor shall, throughout the Contract Period, but only to the extent of its obligations in the Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

58.3 The Contractor shall undertake or refrain from undertaking such actions as the Combined Authority shall reasonably request to enable the Combined Authority to comply with Part 1 of the 1999 Act, including:

- (a) assisting the Combined Authority at the Combined Authority's request to in taking steps to secure the representation of local persons in the exercise of any of the Combined Authority's functions in so far as they relate to the Services;
- (b) complying with requests for information, data or other assistance made by the Combined Authority in pursuance of its Best Value Duty including:
  - (i) facilitating any inspection undertaken by any Best Value Inspector in connection with the Best Value Duty in respect of the Services, including any inspection undertaken with a view to verifying the Combined Authority's compliance with its Best Value Duty pursuant to Sections 10 and 11 of the 1999 Act;
  - (ii) assisting the Combined Authority in relation to any action taken by the Secretary of State under Section 15 of the 1999 Act;
  - (iii) enabling the Combined Authority to comply with any Government Departmental Direction;
  - (iv) enabling the Combined Authority to comply with the Publication of Information Direction 2000 (England and Wales);

- (c) complying with all requests by the Combined Authority to procure the attendance of specific officers or employees of the Contractor or any sub-contractor (or any of its or their sub-contractors) at any meetings of the Combined Authority at which the Services are to be discussed (but not, otherwise in exceptional circumstances, more than twice in any one year);
- (d) permitting any Regulatory Body, in connection with the exercise of his statutory powers and duties, at all reasonable times and upon reasonable notice, access to:
  - (i) the Premises;
  - (ii) any document or data relating to the Services; and
  - (iii) any sub-contractor, agent or employee of the Contractor.

## **J DISPUTES AND LAW**

### **59 Governing Law and Jurisdiction**

Subject to the provisions of clause 60, the Combined Authority and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non- contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

### **60 Dispute Resolution**

- 60.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
- 60.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 60.3 If the dispute cannot be resolved by the Parties pursuant to clause 60.1 the Parties shall refer it to the arbitration of a single arbitrator in accordance with the provisions of the Arbitration Act 1996 or any statutory modifications or re-enactment for the time being in force.
- 60.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to arbitration and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- 60.4A Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

60.5 Subject to clause 60.2, the Parties shall not institute court proceedings until the procedures set out in clauses 60.1 and 60.3 have been completed save that:

- (a) if the Contractor intends to commence court proceedings, it shall serve written notice on the Combined Authority of its intentions and the Combined Authority shall have twenty-one (21) days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 60.6.
- (b) if the Contractor intends to commence court proceedings, it shall serve written notice on the Combined Authority of its intentions and the Combined Authority shall have twenty-one (21) days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 60.6.
- (c) the Contractor may request by notice in writing to the Combined Authority that any dispute be referred and resolved by arbitration in accordance with clause 60.6, to which the Combined Authority may consent as it sees fit.

60.6 In the event that any arbitration proceedings are commenced pursuant to clause 60.5:

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- (b) the Combined Authority shall give a written notice of arbitration to the Contractor (the "Arbitration Notice") stating:
  - (i) that the dispute is referred to arbitration; and
  - (ii) providing details of the issues to be resolved;
- (c) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 60.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (e) if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Combined Authority under clause 60.4 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.



**IN WITNESS** of which the parties have executed this document on the day and month first before  
written

Signed for and behalf of

CAMBRIDGESHIRE AND PETERBOROUGH  
COMBINED AUTHORITY

.....

Authorised Signatory

Signed for and on behalf of

**CONTRACTOR NAME**

.....

Director

**[SCHEDULES 1 – 5 TO BE INSERTED]**

**SCHEDULE 1**  
**Specification**

Appendix 1 – Minimum Subsidy Contracts

Appendix 2 – Minimum Cost Contracts

Appendix 3 – School Transport Obligations

Appendix 4 – Performance Standard

Appendix 5 – CPCA Bus Branding

**SCHEDULE 2**  
**Contract Data**

**SCHEDULE 3**  
**Route Schedule**

**SCHEDULE 4**  
**Timetable**

**SCHEDULE 5**  
**Contractor Pricing and Technical Responses**

**Schedule 6**  
**TUPE – Subsequent Transfer**

**1. Definitions**

The definitions and rules of interpretation in this paragraph apply in this Contract:

**"Employment Liabilities"** means all claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

**"Relevant Employees"** means those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Contractor by virtue of the application of TUPE.

**"Relevant Transfer"** means a relevant transfer for the purposes of TUPE.

**"Service Transfer Date"** means the date on which the Services (or any part of the Services), transfer from the Contractor or Sub-contractor to the Authority or any Replacement Contractor.

**"Staffing Information"** means in relation to all persons detailed on the Contractor's Provisional Staff List, in any anonymised format, such information as the Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

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

**"Contractor's Final Staff List"** means the list of all the Contractor's and Sub-contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

**2. Subsequent Transfer: Employment Exit Provisions**

- 2.1. This Contract envisages that subsequent to its commencement, the identity of the Contractor of the Services (or any part of the Services) may change (whether as a result of termination of this Contract, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Authority or Replacement Contractor will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

- 2.2. The Contractor shall and shall procure that any Sub-contractor shall on receiving notice of termination of this Contract or otherwise on request from the Authority (to be provided within ten (10) Working Days of such request) and / or at such times as required by TUPE, provide in respect of any person engaged or employed by the Contractor or any Sub-contractor in the provision of the Services, the Contractor's Provisional Staff List and the Staffing Information together with any additional information required by the Authority, including information as to the application of TUPE to the employees. The Contractor shall notify the Authority of any material changes to this information as and when they occur.
- 2.3. Within twenty (20) Working Days of being so requested by the Authority, the Contractor shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recordings, documentation, planning and drawings held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format to operate on a proprietary software package identical to that used by the Authority
- 2.4. At least 28 days prior to the Service Transfer Date, the Contractor shall and shall procure that any Sub-contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Contractor, the Contractor's Final Staff List, which shall be complete and accurate in all material respects. The Contractor's Final Staff List shall identify which of the Contractor's and Sub-contractor's personnel named are Relevant Employees.
- 2.5. The Authority shall be permitted to use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Contractor for any services that are substantially the same type of services as (or any part of the Services).
- 2.6. The Contractor warrants to the Authority and any Replacement Contractor that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Contractor's Final Staff List.
- 2.7. The Contractor shall and shall procure that any Sub-contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 2.8. The Authority regards compliance with this schedule as fundamental to the Contract. In particular, failure to comply with paragraph 2.2 and paragraph 2.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Authority to withhold payment of the invoices submitted in accordance with clause 11 until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph 2.7 shall not exceed an amount equivalent to the Contract Price pro rata that would be payable in the three Month period following the Contractor's failure to comply with paragraph 2.2 or paragraph 2.3, as the case may be.
- 2.9. Any change to the TUPE Information which would increase the total employment costs of the staff, make any material changes in the number of employees to be transferred under the TUPE Regulations or any material changes to other terms and conditions of employment in the six Months prior to termination or expiry of this Contract shall not (so far as reasonably practicable) take place without the Authority's prior written consent, unless such changes are required by Law. The Contractor shall and shall procure that any Sub-contractor shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to

consider them.

2.10. Not later than 12 Months prior to the end of the Term or after the Authority has given notice to terminate this Contract and within twenty (20) calendar days of being so requested to do so, the Contractor shall, in an anonymised format, and fully and accurately disclose to the Authority all information that the Authority may reasonably request in relation to the Contractor's Staff including the following:

- a) a list in electronic format of each employee employed by the Contractor in the provision of the Service including each employee's start date;
- b) a list of agency workers, agents and independent service providers engaged by the Contractor in the provision of the Service;
- c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of each employee included in the list to be provided under clause 2.9(a);
- d) the total number of Contractor's Staff whose employment/engagement shall terminate at the end of the Term, save for any operation of law; and
- e) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlements of the Staff referred to in clause 2.9(a); and
- f) the terms and conditions of employment/engagement of the Contractor's Staff referred to in clause 2.9(a), their job titles and qualifications, and the information that must be included in the employee's written statement of employment particulars under Section 1 of the Employment Rights Act 1996; and
- g) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened within the previous two (2) years in relation to which the ACAS code of practice on disciplinary and grievance procedures applies; and
- h) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

2.11. In the twelve Months prior to the expiry date or where notice to terminate this Contract for whatever reason has been given, the Contractor shall not and shall procure that any Sub- contractor shall not without the prior written consent of the Authority unless bona fide in the ordinary course of business:

- a) vary or purport or promise to vary the terms and condition of employment of any employee employed in connection with the Service;
- b) materially increase or decrease the number of employees employed in connection with the Service;
- c) increase the remuneration of employees
- d) assign or re-deploy any employee in connection with the Service to other duties unconnected with the Service;

- e) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period; or
- f) otherwise improve terms and condition of employment of any of its employees without economic justification towards the expiry date with a view to discouraging other potential bidders.

2.12. The Contractor shall indemnify and keep indemnified in full the Authority and at the Authority's request each and every Replacement Contractor against all Employment Liabilities relating to:

- (a) any person who is or has been employed or engaged by the Contractor or any Sub-contractor in connection with the provision of any of the Services; or
- (b) any trade union or staff association or employee representative,

arising from or connected with any failure by the Contractor and/or any Sub-contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

2.13. The Contractor shall advise the Authority immediately of any changes to the Staffing Information between the date on which it is provided and the expiry of this Contract and shall ensure that the information disclosed is accurate and up to date and that all known existing liabilities relating to the Employees have been discharged.

2.14. The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

2.15. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraphs 2.2 to 2.11, to the extent necessary to ensure that any Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Contractor by the Contractor or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

2.16. Despite paragraph 2.13 it is expressly agreed that the parties may by Contract rescind or vary any terms of this Contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

2.17. The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of the liability incurred by the Authority arising from any deficiency or inaccuracy in information, which the Contractor is required to provide under paragraph 2.2 and paragraph 2.3.

2.18. The Contractor shall, if required by the Authority, provide an undertaking and warranty to any person to whom the Contractor's Employees may transfer pursuant to the TUPE Regulations to the effect the Contractor has discharged all its obligations as employer in relation to the Employees.

2.19. The Contractor shall co-operate fully with the Authority during the handover arising from the

completion or earlier termination of this Contract. This co-operation, during the setting up of operations period of the new Contractor, shall extend to consultation with the Employees allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements.

**[SCHEDULES 7 & 8 TO BE INSERTED]**

**SCHEDULE 7**

**Commercially Sensitive Information Schedule**

**SCHEDULE 8**

**[Fare Table]**



## SCHEDULE 9

### Transportation Index

For the purposes of calculating an adjustment to the Contract Price, the following Transportation Index shall be used.

Transportation Index:

$$TI = (A \times W_1) + (C \times W_2) + (F \times W_3)$$

where :

A = The increase in the Average Weekly Earnings index – Transport and Storage (Not Seasonally Adjusted Average Weekly Earnings Index Figures, Excluding Bonuses, Including Arrears) published by the Office of National Statistics for the 12 month period up to the date that is four months prior to the date on which the recalculation takes place.

C = The increase in CPI for the 12 month period up to the date that is four months prior to the date on which the recalculation takes place

F = The increase in the average retail price of [fuel][electricity][hydrogen] used by the Contractor's buses as set out in the [Monthly Tables for Average Retail prices of [ ] published by the Office of National Statistics] for the 12 month period up to the date that is four months prior to the date on which the recalculation takes place

$W_1$  = 0.46 representing the proportion of the Contract Price that is to be adjusted by movement in labour rates

$W_2$  = 0.34 representing the proportion of the Contract Price that is to be adjusted by movement in CPI

$W_3$  = 0.20 representing the proportion of the Contract Price that is to be adjusted by movement in fuel/power prices