

DATED _____ 2016

OXFORDSHIRE COUNTY COUNCIL

- and -

[NAME OF SERVICE PROVIDER]

CONTRACT
FOR THE PROVISION OF
HOME TO SCHOOL/COLLEGE TRANSPORT AND RELATED SERVICES
FOR []

Note – Items in square brackets to be completed prior to contract signature

N Graham
Chief Legal Officer and Monitoring Officer
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND
LS Solicitor Ref: RH/43018

CONTRACT FORM

THIS CONTRACT is made the _____ day of _____ 2015

BETWEEN:

- (1) **Oxfordshire County Council** of County Hall, New Road, Oxford OX1 1ND (the “**Council**”); and
- (2) **[INSERT]** (company number [*number*]) whose registered office is at [*address*](the “**Service Provider**”)

WHEREAS:

- (A) Under sections 508B and 508C of the Education Act 1996 the Council has duties and powers to make such travel arrangements as may be necessary for the purpose of facilitating the attendance of persons receiving education at schools and other institutions.
- (B) The Service Provider has agreed to provide transport from home to school/college as more particularly described in this Contract.

IT IS AGREED that this Contract comprises this Contract Form and the following documents attached to it:

The Particulars

The Conditions of Contract

Schedules (*indicate if not used/additional schedules*)

Schedule 1 Specification

Schedule 2 Finance Schedule

Schedule 3 Monitoring/Review Schedule

Schedule 4 DBS Process

Schedule 5 [Deed of Novation] [*Note – This Schedule shall only be included for Lot 2 contracts*]

In the event and to the extent of any conflict or inconsistency between the Particulars, the Conditions of Contract, the Schedules and any annexes, the following order of priority between them shall apply to the extent that it is necessary to resolve the conflict or inconsistency:

- the Particulars incorporating any special terms shall prevail over the Conditions of Contract, the Schedules and the annexes;

- the Conditions of Contract shall prevail over the Schedules and the annexes; and
- the Schedules shall prevail over the annexes.

AS WITNESS the hands of the parties have been set the day and year first before written. **[NOTE: TO BE AMENDED TO A DEED IF TOTAL VALUE OVER £500,000]**

For and on behalf of the Council:

For and on behalf of the Council:

SIGNED by

SIGNED by

Position

Position

For and on behalf of the Service Provider:

EXECUTION CLAUSE FOR A LIMITED COMPANY

Signed by *[name of person]*

Signature

Position

(Duly authorised signatory)

EXECUTION CLAUSE FOR A SOLE TRADER/INDIVIDUAL

Signed by *[name of person]*

Signature

EXECUTION CLAUSE FOR A PARTNERSHIP

(Provided evidence of authorisation to bind all partners of partnership)

Signed by *[name of person]*

For and on behalf of *[name of partnership]*

Signature

EXECUTION CLAUSE FOR AN INCORPORATED CHARITY WHICH IS NOT A LIMITED COMPANY

Signed by *[name of trustees - majority or duly authorised]* for and on behalf of *[name of charity]*

Signature

Signature

EXECUTION CLAUSE FOR AN UNINCORPORATED CHARITY

Signed by *[name of trustees – all or duly authorised]* [on behalf of all the] or [as] charity trustees

Signature

Signature

PARTICULARS

1. Commencement Date is 1 September 2016
2. Contract Period is the period from and including the Commencement Date up to and including [see ITT for details of end dates for each lot].
3. Contract Price is the price set out in the Finance Schedule.
4. [The Council's option to extend in Condition 7 does not apply/applies and the Contract Period may be extended on more than one occasion and for any period of time at each extension provided that in all cases the Contract Period may not be extended such that it expires after [date]. [see ITT for details of whether an option to extend will be included for each lot and the extension period]]
5. Council's Contact is the relevant person identified in Schedule 3 (Monitoring/Review Schedule).
6. Service Provider's Representative is [INSERT]
7. Insurance Requirements include the following:

| Type of Insurance | Required (Yes/No) | Level (£) (minimum) |
|--|-------------------|---------------------|
| Trustee Liability (Condition 23.1.3) <i>(unincorporated charities only)</i> | No | |
| Fidelity Guarantee (Condition 23.1.4) <i>(required where a charity is being paid in advance)</i> | No | |
| Professional Indemnity (Condition 23.1.5) | No | |

8. The Council's email address for notices is Philip.Earnshaw@Oxfordshire.gov.uk
9. The Service Provider's email address for notices is [insert email address].
10. The Council's postal address for notices shall be as set out at Condition 27.
11. Break Clause (Condition 29) does apply and the notice period is 42 school days' notice where the number of seats specified at paragraph

14 below is 16 or above or 10 school days' notice where the number of seats specified at paragraph 14 below is 15 or below.

- 12. The period in Condition 31.6 (Force Majeure) shall be one month.
- 13. The names and/or job titles of persons to whom disputes should be referred under Condition 33.1 to are:

For the Council: Director for Environment & Economy

For the Service Provider: **[INSERT]**

- 14. The following Routes are to be operated by the Service Provider:

| Route | Description of routes | Minimum number of seats required by the Council |
|-------|-----------------------|---|
| | | |

- 15. Special Conditions –The following special conditions apply.

SC1 Definitions

The following additional definitions apply to the Contract:

“Route” means the route or routes to be operated by the Service Provider including the pick-up/drop off points and arrival and departure times at the school or college;

“Route Description” means the timetable, location of pick-up/drop offs points (if not already specified as part of the Route) and the route to be taken for the Route;

“Vehicle” means a vehicle, whether a car, minibus, bus or coach, used in the operation of any of the Services and **“Vehicles”** shall be construed accordingly.

SC2. Criminal Record Checks

- SC2.1. The Service Provider shall:

- SC2.1.1. ensure that Staff whose work falls within the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and, where the Services involve a

Regulated Activity, all Staff carrying out a Regulated Activity are subject to a valid criminal record check undertaken through the DBS at an enhanced level where permissible and including a check against the adults' barred list and/or the children's barred list where permissible, all such checks to be carried out following the DBS Process at Schedule 4 (DBS Process);

SC2.1.2. where:

- a) Staff whose work falls within the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975; and/or
- b) Staff carrying out a Regulated Activity, where the Services involve a Regulated Activity,

have lived and/or worked abroad for a continuous period of three months or more in the preceding five years, obtain a criminal records check, or 'Certificate of Good Character', from their country of origin and those countries in which they have lived and /or worked. Where such checks or certificates and other documentation are provided in a foreign language they must be translated and that translation supported by a "Certificate of Authenticity of Translation";

SC2.1.3. monitor its procedures to ensure that the appropriate checks are carried out for all Staff;

SC2.1.4. ensure that all Disclosures pursuant to Condition SC2.1.1 are renewed as required by any relevant Enactments and, in respect of any Staff working in domiciliary care and/or working with children, not less than every three (3) years and that the Service Provider checks Disclosures upon renewal;

SC2.1.5 not use any Staff in the provision of the Services unless:

- a) an OCC identification badge has been issued for that member of Staff in accordance with the DBS Process; and
- b) the member of Staff has completed generalist child protection face to face training through Oxfordshire Safeguarding Children's Board;

- SC2.1.6 not use any Staff in the provision of the Services whose OCC identification badge has been removed by the Council either temporarily or permanently.
- SC2.2. Pending the receipt of the relevant Disclosure no member of Staff requiring a Disclosure under Conditions SC2.1.1 and SC2.1.2 shall be used in the provision of the Services unless the Council's consent has been obtained and an OCC identification badge has been issued pursuant to the DBS Process.
- SC2.3. The Service Provider shall obtain the written consent of the Staff referred to in Conditions SC2.1.1 and SC2.1.2 to pass the Disclosures to the Council where those Disclosures reveal a conviction or other relevant information which indicates such Staff may pose a risk to the Council, Council staff or users of Council services.
- SC2.4. Where a Disclosure reveals a conviction or other relevant information (as defined in Condition SC2.3 above) the Service Provider shall assist the Council in carrying out a risk assessment pursuant to the DBS Process and in accordance with the Council's instructions.
- SC2.5. The Service Provider shall ensure that where a conviction or other relevant information (as defined in Condition SC2.3 above) is revealed by a Disclosure or otherwise no such Staff referred to in Conditions SC2.1.1 and SC2.1.2 shall be used in the provision of the Services unless the Council's consent has been obtained and an OCC identification badge has been issued pursuant to the DBS Process.
- SC2.6. For the purposes of this Condition SC2:
- “**DBS**” means the Disclosure and Barring Service or any successor body;
- “**DBS Process**” means the Council's DBS Process for dealing with driver/escort approvals, refusals and appeals at Schedule 4 (DBS Process), as amended from time to time;
- “**Disclosure(s)**” means the check(s) referred to in Conditions SC2.1.1 and SC2.1.2;
- “**Regulated Activity**” has the meaning given to it in the SVGA; and
- “**SVGA**” means the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012.

SC3. Regulated Activities

Where the Services involve a Regulated Activity:

SC3.1. The parties acknowledge that the Service Provider is, for the purposes of the SVGA, a Regulated Activity Provider, with ultimate responsibility for the management and control of the Regulated Activity provided pursuant to the Contract.

SC3.2. The Service Provider warrants that at all times for the purposes of the Contract it has no reason to believe that any Staff are barred from the provision of the Services under the SVGA.

SC3.3. The Service Provider shall refer information about Staff to the LADO and the Council's Contact and to the DBS where it removes permission for such Staff to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the users of the Services.

SC3.4. The Service Provider shall not employ or use the services of any Staff who are barred from, or whose previous conduct or records indicate that they would not be suitable to carry out, any Regulated Activity or who may otherwise present a risk to users of the Services.

SC3.5. For the purposes of this Condition SC3:

“**LADO**” means the local authority designated officer as set out in the statutory guidance document entitled ‘Working Together to Safeguard Children’;

“**Regulated Activity Provider**” has the meaning given to it in the SVGA; and

the definitions given in Condition SC2.6 apply.

SC4 Safeguarding Policies and Procedures

SC4.1. The Service Provider shall comply with the Oxfordshire Safeguarding Adults Board's policies and procedures as amended from time to time.

SC4.2. The Service Provider shall ensure that it has in place systems, policies and procedures to ensure the protection of children and young people consistent with the Oxfordshire Safeguarding Children Board's (“OSCB's”) Procedures Manual (<http://oxfordshirescb.proceduresonline.com/>), as amended from time to time, and section 11 of the

Children Act 2004 and shall ensure compliance with such systems, policies and procedures.

SC4.3 Unless completed and returned prior to the Commencement Date as part of the Contract procurement process the Service Provider shall complete and return to the Council within one month of the Commencement Date an OSCB "Section 11- Self Assessment" using the toolkit provided by the Council's designated quality and contracts officer. Throughout the Contract Period, upon the anniversary of the Commencement Date and at other times upon the reasonable request of the Council, the Service Provider shall update the 'Section 11- Self Assessment' and return it to such officer. The Service Provider shall promptly address any shortcomings identified.

SC 5 Road Traffic Act Insurance

The Service Provider shall ensure that whenever a Vehicle is in use under the Contract there is in force such a policy of insurance in respect of third party risks as complies with Part VI of the Road Traffic Act 1988. Such insurance shall be effected only with a person or persons for the time being authorised by the Secretary of State to carry on a motor insurance business. The Service Provider shall notify the Council immediately of any alterations or cancellation or change of cover to the Service Provider's insurance.

SC6 Provision of Information

- 6.1 The Service Provider shall supply to the Council on demand the name of the driver and/or the registration number of any Vehicle used for providing the Services.
- 6.2 The Service Provider shall supply to the Council, on demand, a list of all Vehicles which must show the registration number and features of each Vehicle so that the Council can verify that each Vehicle meets the requirements of the Specification.

SC7 Changes to Licences

The Service Provider shall forthwith upon the occurrence of any of the following events notify the Council's Contact of the details thereof:

- 7.1 any revocation or suspension of any licence required by the Service Provider to provide the Services or any of them; and
- 7.2 the imposition of any condition upon any licence or permit which prevents the Service Provider from providing the Services or any of them in accordance with the Contract.

SC8 Service of Notices

The Service Provider shall copy notices given under Condition 27.1 to the Transport Hub Manager, Oxfordshire County Council, Unipart House, Oxford, OX4 2GQ.

SC9 Mutual Trust and Co-operation

The Service Provider and the Council shall act in a spirit of mutual trust and co-operation.

[SC10 Transfer of the Contract to a school

SC10.1 The Service Provider acknowledges that, during the Contract Period, the Council, the Service Provider and school or college may agree to transfer both benefit and burden of this Contract to the school or college (the "New Customer") in which event the Council, the Service Provider and the New Customer shall enter into a deed of novation substantially in the form at Schedule 4.

SC10.2 If the Contract covers more than one Route and more than one school or college then, where it has been agreed between the Council, the Service Provider and a New Customer that the benefit and burden of the Contract shall be transferred to the New Customer, the Contract shall be split so that the Route relating to the New Customer's school and college shall be covered in a separate contract which may be transferred to the New Customer and the Routes which will not be transferred to the New Customer are covered in a further contract. The split contracts shall contain the same terms as this Contract save for such minor variations as may be necessary to take into account the division of the Contract and the Services.

SC10.3 If the Contract covers more than one Route and there is more than one school or college which wishes to take over the Contract as far as concerns the Route serving their school or college then the Contract may be split pursuant to Special Condition SC10.2 as many times as is necessary in order to create separate contracts which may be transferred to the respective schools or colleges.]

[Note – This special condition shall only apply for Lot 2 contracts]

SC11 Amendment

Condition 8.14 shall be amended to read as follows:

8.14 Staff involved in the delivery of the Services shall be supplied with a form of Council identification by the Service Provider and the Service Provider shall ensure that Staff wear their identification at all times. The Service Provider shall ensure that

such identification is returned to the Service Provider on the last day of employment of such member of Staff and retained as part of the Service Provider's Staff records.

SC12 Amendment

Condition 10.2 (Change Control) shall be amended to read as follows:

10.2 In the event of such a change being requested, the Contract Price may also be varied. Subject to Condition 10.5, such variation to the Contract Price shall be calculated by the Council and agreed with the Service Provider and shall be such amount as properly and fairly reflects the nature and extent of the change to the Services in all the circumstances.

New Condition 10.5 shall be included:

10.5 In the event of a change being requested which would increase or decrease the route distance by no more than 10% the Contract Price shall not be varied.

SC13 Amendment

New Condition 28.8 shall be included:

28.8 The rights of the Council under this Condition 28 to terminate the Contract shall, where the Service Provider is operating more than one Route under this Contract, include the right at the Council's discretion to terminate the Contract in whole or to terminate one or more Routes and references in this Condition 28 to termination in part shall be construed accordingly.

SC14 Amendment

Condition 29 shall be amended to read as follows:

29 Break

The Council shall have the right to terminate the Contract at any time by giving not less than [42 school days/10 school days'] written notice to the Service Provider unless otherwise specified in the Particulars. Where the Service Provider is operating more than one Route under this Contract, the Council shall have the discretion to terminate the Contract in whole or to terminate one or more Routes pursuant to this Condition 29. For the avoidance of doubt no compensation by way of damages or otherwise (howsoever arising) shall be payable to the Service Provider in such circumstances.

[Note – notice period to be 42 school days where the number of seats specified at paragraph 14 of the Particulars is 16 or above or 10 school

days' notice where the number of seats specified at paragraph 14 of the Particulars is 15 or below].

SC15 Termination under the Public Contract Regulations 2015

SC15.1 If the Service Provider was, at the time of contract award, in one of the situations referred to in Regulation 57(1) (including as a result of the application of Regulation 57(2)) of the Public Contracts Regulations 2015, the Council may, without prejudice to any other rights or remedies of the Council, terminate the Contract by notice in writing, such notice to have effect from the date specified in it.

SC15.2. Termination pursuant to Condition SC15.1 shall be deemed to be termination under Condition 28.2 for the purposes of Conditions 28.3 and 30.3.

SC15.3. If the circumstances allowing the Council to terminate the Contract pursuant to Condition SC15.1 arise the Service Provider must promptly notify and provide all related information reasonably required by the Council to the Council.

SC15.4. In the event that:

SC15.4.1. the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contract Regulations 2015; or

SC15.4.2. the Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaty on the Functioning of the European Union or the Treaty on the European Union and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of Treaty on the Functioning of the European Union,

the Council may, without prejudice to any other rights or remedies of the Council, terminate the Contract by giving reasonable notice to the Service Provider.

SC16 Policies

Without prejudice to any other provision of this Contract, including but not limited to Condition 5.1, the Council may from time to time issue policies and/or minimum standards for policies in respect of:

- - Safeguarding
- Health and safety
- Data protection
- Vehicles, maintenance and contingency planning
- Training and route familiarisation

- Communications

and the Service Provider shall operate the Services in compliance with such policies or standards (as applicable), either by adopting such policies or applying its own policies which provide for at least the same minimum standards as the Council's policies or standards (as applicable).

CONDITIONS OF CONTRACT

INDEX

Condition Heading

PART ONE – FORMALITIES

- | | |
|---|--|
| 1 | Definitions and Construction |
| 2 | Formation of Contract and Sufficiency of Information |
| 3 | Applicable Law and Jurisdiction |

PART TWO - SERVICE PROVISION AND OBLIGATIONS OF THE SERVICE PROVIDER

- | | |
|----|---|
| 4 | Contract Period and Provision of the Services |
| 5 | Service Standard |
| 6 | Contract Price |
| 7 | Extension of the Contract |
| 8 | Staff |
| 9 | Monitoring/Review |
| 10 | Change Control |
| 11 | Statutory Obligations |
| 12 | Information Governance |
| 13 | Equal Opportunities |
| 14 | Health and Safety |
| 15 | Intellectual Property Rights |
| 16 | TUPE |
| 17 | Not used |
| 18 | Not used |

Condition Heading

PART THREE – GENERAL

| | |
|----|--|
| 19 | Complaints |
| 20 | Gratuities and charges |
| 21 | Confidentiality |
| 22 | Indemnity |
| 23 | Insurance |
| 24 | Publicity and Advertising |
| 25 | Assignment and Sub-Contracting |
| 26 | No Agency/Employment/Partnership |
| 27 | Service of Notices |
| 28 | Termination – Bribery, Insolvency, Change of Control, False Information, Suspension, Reduction of Funding |
| 29 | Break |
| 30 | Recovery and Handover on End of Contract |
| 31 | Business Continuity and Force Majeure |
| 32 | Severance |
| 33 | Disputes and Mediation |
| 34 | Waiver |
| 35 | No Fetter |
| 36 | Variations to the Contract |
| 37 | The Contracts (Rights of Third Parties) Act 1999 |

CONDITIONS OF CONTRACT

PART ONE – FORMALITIES

1 Definitions and Construction

1.1 In this Contract, except where the context otherwise requires, the following expressions shall have the following meanings:

“Associated Company” means any holding company from time to time of the Service Provider and any subsidiary from time to time of the Service Provider, or any subsidiary of any such holding company (“holding company” and “subsidiary company” having the same meanings as in section 1159 of the Companies Act 2006);

“Conditions” means these conditions;

“Contract” means this contract incorporating the Contract Form, the Particulars, the Conditions and the Schedules and annexes to them (if any);

“Council Data” means:

- a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:
 - (i) are supplied to the Service Provider by or on behalf of the Council; or
 - (ii) the Service Provider is required to generate, process, store or transmit pursuant to this Contract; or
- b) any Personal Data for which the Council is the Data Controller (as defined in the Data Protection Act 1998);

“Council Premises” means any premises owned, occupied or used by the Council;

“Council’s Contact” means the person specified in the Particulars and any such other person as may be appointed by the Council and notified in writing to the Service Provider to act generally or for specified purposes or periods;

“Data Controller” shall have the same meaning as set out in the DPA;

“Data Subject” shall have the same meaning as set out in the DPA;

“Default” means any breach of the obligations of the Service Provider under the Contract or any default, act, omission or negligence of the Service Provider or Staff in connection with or in relation to the subject matter of the Contract;

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under such 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;

“EIRs” means the Environmental Information Regulations 2004;

“Enactments” means directives, statutes, regulations, orders, judgments of relevant courts of law, instruments, national and governmental codes of practice and best practice guidelines or other similar instruments as the same may be amended, replaced or re-enacted by any subsequent directive, statute, regulation, order, judgement, instrument, code or guidelines and references to any statute shall also include any secondary legislation made under it and references in the Contract to a specific Enactment shall be construed on this basis;

“Finance Schedule” means the finance schedule set out in Schedule 2;

“FOIA” means the Freedom of Information Act 2000;

“Force Majeure Event” means any act of God, natural flood, fire (save where such fire is due to the negligence or fault of the Service Provider), lightning or earthquake, war, military operations, act of terrorism or riot;

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

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

“Invitation to Tender” means the invitation for providers to bid for the provision of the Services;

“Monitoring/Review Schedule” means the monitoring and review schedule set out in Schedule 3;

“Personal Data” shall have the same meaning as set out in the DPA;

“Process” and **“Processing”** shall have the same meanings as set out in the DPA but for the purposes of this Contract shall include both manual and automatic processing);

“Prohibited Act” means the following acts:

(a) offering (directly or indirectly), promising or giving any person working for or engaged by the Council 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) requesting (directly or indirectly), agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity;

(c) committing any offence: (i) under the Bribery Act 2010; (ii) under any Enactment creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or

(d) defrauding, attempting to defraud or conspiring to defraud the Council;

“RIDDER” means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013;

“Service Provider’s Representative” means the person specified in the Particulars and any such other person as may be appointed by the Service Provider and notified in writing to the Council to act generally or for specified purposes or periods;

“Services” means the services to be provided as specified in the specification set out in Schedule 1;

“Staff” means all persons, whether paid or unpaid, engaged by the Service Provider to perform the Contract or used in the performance of the Contract including the Service Provider’s employees, agents and sub-contractors;

“Tender” means the Service Provider’s response to the Invitation to Tender; and

“Working Day” means Monday to Friday inclusive other than bank holidays and any other public holidays.

- 1.2 The definitions given in the Particulars apply.
- 1.3 Words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction.
- 1.4 The headings and titles in the Contract are for ease of reference only and shall not be taken into account in its construction or interpretation.

- 1.5 The expression “person” used in the Contract shall include any individual, partnership, local authority or incorporated or unincorporated body.
- 1.6 The expression “including” means including without limitation or prejudice to the generality of any preceding description, defining term, phrase or word(s) and “include” shall be construed accordingly;
- 1.7 The Contract constitutes the entire understanding between the Service Provider and the Council in relation to the subject matter of the Contract and supersedes all prior contracts, undertakings, representations and negotiations whether oral or written except that nothing in this condition shall exclude or restrict liability for fraudulent or fundamental misrepresentations.
- 1.8 This Contract may be executed in any number of counterparts and this shall have the same effect as if the signatures and, where applicable, seals on the counterparts were on a single copy of this Contract.

2 Formation of Contract and Sufficiency of Information

2.1 Inspection of Premises and other investigations

2.1.1 The Service Provider shall be deemed to have inspected the premises (including any equipment) where the Services are to be performed before tendering and otherwise to have understood the nature and extent of the services to be provided and be satisfied in relation to all matters connected with the performance of the Contract.

2.1.2 Information relating to such premises may have been provided to assist in the preparation of tenders but these details cannot be guaranteed and it shall be deemed that the Service Provider has satisfied itself as to their correctness.

2.2 Sufficiency of Information

The Service Provider shall be deemed to have satisfied itself before submitting the Tender as to the accuracy and sufficiency of the rates and prices stated by the Service Provider in the Tender which shall (except in so far as is otherwise expressly provided in the Contract) cover all the Service Provider’s obligations under the Contract and the Service Provider shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Tender.

2.3 The Service Provider warrants and represents that all written statements and representations in any written submissions made by the Service Provider as part of the procurement process, including without limitation its response to the pre-qualification questionnaire (if applicable), its Tender and any other documents submitted remain true and accurate except to the extent that such statements and

representations have been superseded or varied by this Contract or to the extent that the Service Provider has otherwise disclosed to the Council in writing prior to the date of this Contract.

- 2.4 The Service Provider warrants and represents that it has full capacity and authority and all necessary consent (including where its procedures require the consent of its parent company) to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Service Provider.

3 Applicable Law and Jurisdiction

The Contract and any claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with English law and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

PART TWO - SERVICE PROVISION AND OBLIGATIONS OF THE SERVICE PROVIDER

4 Contract Period and Provision of the Services

- 4.1. This Contract shall commence on the Commencement Date and shall continue in force for the Contract Period unless terminated in accordance with the Conditions.
- 4.2. The Service Provider will provide the Services for the Contract Period and will otherwise perform its obligations under the Contract in accordance with the terms of this Contract.

5 Service Standard

- 5.1 The Service Provider will provide the Services, and perform its obligations under the Contract, with all due skill, care and diligence in accordance with Good Industry Practice, any further standards specified in the Schedules and any policies and guidance provided by the Council to the Service Provider from time to time.
- 5.2 Without prejudice to Condition 5.1, the Service Provider will provide an adequate number of Staff who are appropriately experienced, qualified and trained to perform the Services and ensure that Staff comply with the Service Provider's obligations under the Contract.
- 5.3 The Service Provider is responsible for the accuracy of all information supplied to the Council in connection with the provision of the Services and will pay the Council any and all costs occasioned by any discrepancies, errors or omissions in such information.

- 5.4 Without prejudice to its other obligations under the Contract, the Service Provider must promptly notify the Council if it becomes aware of any circumstances which may affect its ability to perform the Contract in accordance with its terms.
- 5.5. The Service Provider shall have an on-going obligation throughout the Contract Period to identify new or potential improvements to the Services and shall report to the Council annually on any such improvements.

6 Contract Price

- 6.1 In consideration of the performance of the Service Provider's obligations under the Contract, the Council shall pay the Contract Price as set out in the Finance Schedule.
- 6.2 The Contract Price shall be the full and exclusive remuneration of the Service Provider in respect of the supply of the Services. Unless otherwise specified in the Finance Schedule, the Contract Price shall be deemed to include every cost and expense of the Service Provider directly or indirectly incurred in connection with the performance of the Services.
- 6.3 Unless otherwise set out in the Particulars or the Finance Schedule the Contract Price is exclusive of value added tax ("VAT") where VAT is applicable. The Council shall pay to the Service Provider any VAT chargeable on the Contract Price subject to the provision to the Council of a proper VAT invoice.
- 6.4 Where the Service Provider submits an invoice to the Council in accordance with this Condition 6 and the Finance Schedule, the Council will consider and verify that invoice in a timely fashion.
- 6.5 Unless a shorter period is agreed in the Finance Schedule, the Council shall pay the Service Provider any sums due under such an invoice (or part thereof) no later than a period of 28 days from the date on which the Council has determined that the invoice (or part thereof) is valid and undisputed.
- 6.6 Where the Council fails to comply with Condition 6.4 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Condition 6.5 after a reasonable time has passed.
- 6.7 Unless otherwise agreed in the Finance Schedule, invoices shall be submitted monthly in arrears for Services provided.
- 6.8 Where an invoice is disputed, the parties shall seek to resolve the dispute promptly and, if necessary, the matter shall be dealt with in accordance with Condition 33. The Council shall be under no obligation to pay the disputed charge until the dispute has been

resolved. For the avoidance of doubt, where an invoice is disputed in part, the Council shall pay such part of the invoice which is not in dispute in accordance with Condition 6.5.

6.9 Each invoice shall:

- a) be submitted to the address of the Council specified in the Finance Schedule (or if none is specified to the address set out in the Contract Form);
- b) contain a detailed breakdown of Services supplied;
- c) be supported by any information required by the Council to substantiate such invoice; and
- d) comply with any other provisions in the Finance Schedule in respect of invoices.

6.10 Without prejudice to any other right or remedy of the Council, the Council may, acting reasonably, reduce payment in respect of any Services which the Service Provider has failed to provide or has provided inadequately.

6.11 Without prejudice to any other right or remedy of the Council, where any sum of money is recoverable from or payable by the Service Provider or any Associated Company under the Contract or any other contract between the Service Provider or an Associated Company and the Council (including in all instances any sum which the Service Provider or an Associated Company is liable to pay in respect of any breach of contract), the Council may deduct that sum from monies payable by the Council to the Service Provider under the Contract.

6.12 In the event of termination or expiry of this Contract, the Service Provider shall repay to the Council any part of the Contract Price which it has been paid in respect of Services not provided by the Service Provider at the date of termination or expiry.

7 Extension of the Contract

Unless otherwise specified in the Particulars, the Council may extend the Contract Period on the same terms (including, for the avoidance of doubt, at the same Contract Price) upon written notice to the Service Provider provided always that unless otherwise agreed with the Service Provider or specified in the Particulars, no less than three (3) months' prior notice will be given on each occasion. The maximum period for which the Contract may be extended is specified in the Particulars.

8 Staff

8.1 When requested by the Council on reasonable grounds the Service Provider shall, following reasonable notice, make available to the Council records of all Staff involved in the provision of the Services.

- 8.2 The Service Provider's employment systems shall accord with the Council's policy on checking criminal records and the Service Provider shall on request supply to the Council such information as it may reasonably require to ensure that its employment systems do so accord.
- 8.3 The Service Provider shall provide details of its policies and procedures for recruitment, training, development, supervision and other Staff-related policies when requested to do so.
- 8.4 The Service Provider will ensure that it has in place an effective whistleblowing procedure whereby Staff may raise in confidence concerns about possible malpractice without fear of victimisation, subsequent discrimination or disadvantage.
- 8.5 Staff involved in the delivery of the Services shall be supplied with a form of identification by the Service Provider. The Service Provider shall ensure that such identification is returned to the Service Provider on the last day of employment of such member of Staff and retained as part of the Service Provider's Staff records.
- 8.6 When requested by the Council on reasonable grounds, the Service Provider will cease to use any member of Staff specified by the Council for the provision of the Services.
- 8.7 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Council upon request) to prevent the Service Provider and its Staff from committing a Prohibited Act and shall enforce it where appropriate.

9 Monitoring/Review

- 9.1 All Council Data shall be stored in a useable format to ensure that the Service Provider can comply with Condition 30.2.1.
- 9.2 Subject to Condition 9.3 below the Service Provider shall maintain comprehensive and accurate records of work carried out in the provision of the Services and shall retain such records and Council Data for a minimum of six (6) years from the date of termination or expiry of the Contract or such longer period as may be required under any Enactment or such other period as specified by the Council.
- 9.3 If and when required by the Council any Personal Data held under or in connection with the Contract must be securely destroyed and/or permanently deleted.
- 9.4 The Service Provider shall retain Staff records for six (6) years following the last day Staff are engaged in providing the Services or such longer period as may be required under any Enactment.
- 9.5 The Service Provider shall provide the Council with access to all Council Data and records relating to the Services upon request.

- 9.6 The Service Provider shall provide and supply to the Council at no cost to the Council such other information or access to such information (including the Service Provider's policies and procedures) as the Council may reasonably request as to the provision of the Services and the performance of the Service Provider's obligations under the Contract and render the Council all reasonable assistance in connection with their monitoring and review.
- 9.7 The Service Provider shall permit the Council, or its nominated auditor, to access the Service Provider's premises and records on reasonable notice in order to audit the Service Provider's performance of the Contract.
- 9.8 The Council is required to monitor and report to the Department for Energy and Climate Change ("DECC") on its service providers' CO₂ emissions on an annual basis. The Service Provider undertakes to provide the Council with such information relating to its CO₂ emissions as the Council may require from time to time in order to fulfil its obligations to DECC.
- 9.9 The Service Provider's Representative shall liaise with the Council's Contact on all day-to-day matters relating to the Contract.
- 9.10 Reviews shall be carried out in accordance with the provisions of the Monitoring/Review Schedule.

10 Change Control

- 10.1 Without prejudice to Conditions 28.6 and 29, insofar as is lawful, the Council may give reasonable written notice from time to time requesting changes to the Services (whether by way of discontinuance of any Services, the addition of new Services or increasing or decreasing the quantity of the Services, or changes to the locations where or the manner in which the Services are to be provided) for any reason whatsoever.
- 10.2 In the event of such a change being requested, the Contract Price may also be varied. Such variation to the Contract Price shall be calculated by the Council and agreed with the Service Provider and shall be such amount as properly and fairly reflects the nature and extent of the change to the Services in all the circumstances.
- 10.3 The Service Provider shall provide such information as may be reasonably required to establish the feasibility of the change to the Services and to enable a variation to the Contract Price to be calculated.
- 10.4 No change to the Services or the Contract Price shall have effect unless agreed between the parties and recorded in writing and signed on behalf of the Council and the Service Provider.

11 Statutory Obligations

- 11.1 The Service Provider shall, in the provision of the Services and the performance of its obligations under the Contract, comply with all Enactments.
- 11.2 The Service Provider shall act in respect of any person who receives Services under the Contract as if it were a public authority for the purposes of the Human Rights Act 1998. This Condition 11.2 shall be enforceable by persons who receive Services under the Contract.

12 Information Governance

- 12.1 The Service Provider shall in connection with the provision of the Services and the performance of its obligations under the Contract comply with the DPA.
- 12.2 Where Processing Personal Data received under or in connection with the Contract, the Service Provider shall act only on the Council's instructions where the Data Controller is the Council and shall take all appropriate technical and organisational security measures to protect against any unauthorised or unlawful Processing or accidental loss or destruction of or damage to the Personal Data and the Service Provider shall provide to the Council such information as the Council may reasonably require to satisfy itself that the Service Provider is complying with the obligations referred to in this Condition 12.2.
- 12.3 The Service Provider must exercise its best endeavours to ensure the accuracy of any Personal Data Processed in carrying out its obligations under the Contract and that where necessary such Personal Data is kept up to date.
- 12.4 The Service Provider shall take such steps as may be necessary to afford the Council at no cost to the Council access to Personal Data which is reasonably required by the Council for any purpose connected with the Contract including obtaining any necessary consents and issuing any necessary notifications to Data Subjects to ensure data can be transferred to the Council and, where necessary to continue to provide the Services, to a replacement service provider.
- 12.5 The Service Provider shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area unless the country concerned is deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC. It shall be the responsibility of the Service Provider to produce satisfactory evidence of compliance with this Condition to the Council prior to the Commencement Date and during the Contract Period.
- 12.6 The Service Provider shall comply with all relevant Council policies where the Service Provider has access (remote or otherwise) to any systems or equipment of the Council.

- 12.7 Where the Service Provider accesses the Public Services Network in connection with the Services, the Service Provider shall comply with the standards set out in the Public Services Network Code of Connection and shall provide to the Council such information as the Council may reasonably require to satisfy itself that the Service Provider is complying with the obligations referred to in this Condition 12.7.
- 12.8 The Service Provider shall permit the Council, or its nominated agent, to access the Service Provider's premises to test its data security measures and its compliance with this Condition 12.
- 12.9 The Service Provider shall co-operate with the Council and supply to it all information properly required in connection with any request received by the Council under the FOIA or the EIRs and shall supply all such information and documentation at no cost to the Council within 7 days of a request from the Council.
- 12.10 The Service Provider acknowledges that the Council may be required under the FOIA and the EIRs to disclose information without consulting or obtaining consent from the Service Provider. The Council shall take reasonable steps to notify the Service Provider of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Council shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA or the EIRs.
- 12.11 The Council may publish this Contract in its entirety to the general public (but with any information which is exempt from disclosure under the FOIA and/or the EIRs redacted).

13 Equal Opportunities

- 13.1 The Service Provider shall not, in relation to the employment of persons for the purposes of providing the Services or in relation to the provision of the Services to any person, unlawfully discriminate within the meaning of any Enactment relating to discrimination or equality whether in relation to race, gender, religion or belief, disability, age, sexual orientation or otherwise and shall where reasonably requested by the Council assess and monitor its policies and practices as to their impact on the promotion of equality and report on this to the Council.
- 13.2 The Service Provider shall, in relation to the employment of persons for the purposes of providing the Services or in relation to the provision of the Services, comply with the duties imposed by the Equality Act 2010 and will assist the Council in meeting its duties under the Equality Act 2010.

13.3 This Condition 13 shall be enforceable by persons who receive Services under the Contract.

14 Health and Safety

14.1 The Service Provider shall at all times comply with the requirements of the Health and Safety at Work etc Act 1974 and of all other Enactments pertaining to health and safety which may apply in the performance of the Contract.

14.2 Without prejudice to the generality of Condition 14.1, the Service Provider shall maintain its own health and safety policy in accordance with the Health and Safety at Work etc Act 1974. The Service Provider shall provide a copy of such policy to the Council upon request and shall notify the Council of any revision to it.

14.3 The Service Provider will promptly notify the Council of any health and safety hazards which may arise in connection with the performance of the Contract including, without limitation, all RIDDOR incidents.

14.4 Whilst on Council Premises, the Service Provider shall ensure that Staff comply with the Council's safety policies (and any amendments to them notified to the Service Provider) and with the proper requirements of the Council's safety officers.

14.5 The Council may suspend the supply of the Services in the event of non-compliance by the Service Provider on health and safety matters and the Service Provider shall not resume provision of Services unless the Council is satisfied that the non-compliance has been rectified.

15 Intellectual Property Rights

15.1 The Service Provider warrants and represents that neither the performance of the Contract nor the provision or use of the Services will in any way constitute an infringement or other violation of any Intellectual Property Rights of any third party.

15.2 Before utilising any material in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights, the Service Provider shall procure the necessary licences to enable the Council to use such material at all times for the Council's purposes at no cost to the Council.

15.3 All Intellectual Property Rights in any specifications, instructions, plans, drawings, patents, patterns, models, designs, reports or other material:

15.3.1 furnished to or made available to the Service Provider by the Council shall remain the property of the Council;

15.3.2 prepared by or for the Service Provider for use, or intended for use, in relation to the performance of the Contract shall belong to the Council and the Service Provider shall not, and shall

procure that Staff shall not (except when necessary for the implementation of the Contract) without prior approval of the Council, use or disclose any such Intellectual Property Rights. The Service Provider shall, at its cost and expense, do all such further acts and things and execute or procure the execution of all such documents as the Council may reasonably require, for the purpose of transferring any such Intellectual Property Rights to the Council.

16 TUPE

- 16.1 The Service Provider will following a request from the Council fully and accurately disclose all information relating to Staff engaged in providing the Services including the total number of Staff whose employment with the Service Provider or a sub-contractor is liable to be terminated at the expiry of the Contract (but for operation of law) (the “**Relevant Staff**”), their age and gender, the terms and conditions of their employment (including salary, bonus payments, allowances, pay settlements, redundancy entitlement, relevant collective agreements, pension entitlement and working arrangements), their job titles and the qualifications required for each position.
- 16.2 The Service Provider shall comply with any such requests as soon as reasonably practicable and in any event, within 21 days of being so requested, and at no cost to the Council. The Service Provider agrees with the Council that the information provided shall be complete, accurate and up to date and that it shall notify the Council promptly of any changes occurring between the date of submission of the information and the end of the Contract.
- 16.3 The Service Provider shall permit the Council to use the information for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 and related Enactments and for the purposes of re-tendering.
- 16.4 The Service Provider shall enable and assist the Council and any such persons as the Council may determine to communicate with and meet Staff and relevant Staff representatives and the Service Provider shall co-operate with any new provider to ensure a smooth transition.
- 16.5 The Service Provider shall within the period of 12 months immediately preceding the end of the Contract Period or, if earlier, following the making of a request pursuant to Condition 16.1 be precluded from:
- 16.5.1 making any material increase or decrease in the numbers of Relevant Staff other than in the ordinary course of business and with the Council's prior written consent (such consent not to be unreasonably withheld or delayed);
- 16.5.2 making any increase in the remuneration or other change in the terms and conditions of the Relevant Staff other than in the ordinary course of business and with the Council's prior written

consent (such consent not to be unreasonably withheld or delayed); and

16.5.3 transferring any of the Relevant Staff to another part of its business or moving other employees from elsewhere in its business who have not previously been employed or engaged in providing the Services to provide the Services save with the Council's prior written consent (such consent not be unreasonably withheld or delayed).

16.6 The Service Provider shall indemnify the Council and any replacement provider engaged by the Council to perform any of the Services or any service equivalent or similar to any of the Services and keep them both fully indemnified in respect of any claims, losses, costs, expenses, demands and liabilities:

16.6.1 arising from the provision of information or the failure to provide information under this Condition 16; or

16.6.2 which relate to any claim which is or may be brought by any employee or person claiming to be an employee on any date upon which the Contract is terminated and/or transferred to any third party arising out of their employment with the Service Provider or a sub-contractor or its termination; or

16.6.3 arising from any breach of the requirements of Condition 16.5.

17 Not used

18 Not used

PART THREE – GENERAL

19 Complaints

19.1 If any complaint or significant concern is made or raised (whether orally or in writing) concerning the Services, the Service Provider shall immediately investigate it in a courteous and efficient manner and take such corrective action as is appropriate. The Service Provider shall record details of all complaints and concerns and how they were resolved in a written register. The register will be freely available to the Council.

19.2 The Service Provider shall provide any information requested by the Council in connection with any complaint or significant concern relating to the Services (whether made to the Council or the Service Provider and whether made orally or in writing) and co-operate fully and promptly in every way required by the Council or by any person or body conducting any investigation regarding a complaint or significant concern including attending meetings, and permitting Staff to attend

meetings and allowing access to and investigation of documents and data.

20 Gratuities and charges

The Service Provider shall ensure that no Staff solicit any gratuity or tip or any other form of money taking or reward, collection or charge for any of the Services save for charges explicitly provided for in this Contract.

21 Confidentiality

21.1 The Service Provider shall not, and shall ensure that Staff shall not use or disclose any confidential material provided by the Council pursuant to the Contract or by any user of the Services otherwise than for the performance of the Contract save as may be agreed by the Council or required by law.

For the avoidance of doubt, confidential information shall not include (a) any information obtained from a third party who is free to divulge such information; (b) any information which is already in the public domain otherwise than as a breach of this Contract; or (c) any information which was rightfully in the possession of a party prior to the disclosure by the other party and lawfully acquired from sources other than the other party.

21.2 The Service Provider shall take all necessary precautions to ensure that confidential information is only made available to Staff on a “need to know” basis and shall ensure that such Staff are aware of and comply with the confidentiality obligations under the Contract.

22 Indemnity

The Service Provider shall indemnify and keep indemnified the Council from and against any and all claims, demands, proceedings, actions, damages, costs, expenses, loss and liability arising from a Default, save to the extent that it arises from any default or negligence of the Council or its employees provided always, for the avoidance of doubt, that this does not extend to any loss of profits suffered by the Council.

23 Insurance

23.1 Without prejudice to Condition 22, the Service Provider shall at all times maintain insurance cover with a reputable company, as follows:

23.1.1 public liability insurance (minimum of £5,000,000 (five million) for each and every claim);

23.1.2 employers liability insurance (minimum of £10,000,000 (ten million) for each and every claim);

23.1.3 trustee liability insurance in the sum specified in the Particulars;

23.1.4 fidelity guarantee in the sum specified in the Particulars;

23.1.5 professional indemnity insurance in the sum specified in the Particulars which insurance shall be maintained for no less than 12 years where the Contract is executed as a deed and otherwise for no less than 6 years after the end of the Contract Period.

23.2 The Service Provider shall supply to the Council annually and at any other time within 14 days of request a copy of all insurance policies, cover notes, premium receipts or such other documents as may satisfy the Council that such insurance is in place.

23.3 The Service Provider shall give immediate notice to the Council in the event of any incident in connection with the Services which causes any personal injury or damage to property and which may be the subject of a claim under the Council's insurance and shall give all information and assistance that the Council's insurers may require and shall not make any admission without the written consent of the Council's insurers. The Service Provider shall permit the Council's insurers to take proceedings in the name of the Service Provider to recover compensation in respect of any matter covered by the Council's insurers. This Condition 23.3 is without prejudice to Condition 22.

23.4 The Service Provider shall immediately notify the Council if any claim or demand is made or action brought against the Service Provider for infringement or alleged infringement of any Intellectual Property Rights in connection with the performance of the Contract.

24 Publicity and Advertising

24.1 The Service Provider shall not without prior consultation with the Council seek any publicity or, without prior notification, make any announcement to the press or respond to press enquiries relating to the Services and shall, where reasonably practicable, agree joint press releases with the Council.

24.2 Where the Services are provided to service users on behalf of the Council the Service Provider shall use all reasonable endeavours to ensure that the public is aware that the Services are delivered on behalf of the Council, and this should include the use of the Oxfordshire County Council logo on publicity material, followed by the words "SUPPORTED BY OXFORDSHIRE COUNTY COUNCIL".

25 Assignment and Sub-Contracting

25.1 The Service Provider shall not assign the benefit or advantage of the Contract in whole or in part.

- 25.2 The Service Provider shall not sub-contract the provision of the Services to any person to whom any of the mandatory exclusion criteria set out at Regulation 57 of the Public Contracts Regulations 2015 apply.
- 25.3 Without prejudice to Condition 25.2, the Service Provider shall not sub-contract the provision of the Services to any person without the written consent of the Council and should such consent be given it shall not relieve the Service Provider from any liability or obligation under the Contract and the Service Provider shall be responsible for the acts, omissions, defaults or neglect of any sub-contractor and its agents or employees in all respects as if they were the acts, omissions, defaults or neglect of the Service Provider.
- 25.4 Where the Council gives consent to the Service Provider sub-contracting the Services (or any part of the Services) under Condition 25.2, such consent shall be limited to the matters within the scope of that permission and the Service Provider shall not proceed unless it has satisfied any matters required by the Council as a condition of grant of its consent.
- 25.5 Where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:
- 25.5.1. provisions having the same effect as Conditions 6.4 to 6.6 of this Contract; and
 - 25.5.2. a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as Conditions 6.4 to 6.6 and this Condition 25.5 of this Contract.
- 25.6. Without prejudice to Condition 25.5, where the Service Provider enters into a Sub-Contract such Sub-Contract must impose obligations on the proposed sub-contractor in the same terms as those imposed on it pursuant to this Contract to the extent practicable and the Service Provider shall procure that the sub-contractor complies with such terms.
- 25.7. In Conditions 25.5 and 25.6 “Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

26 No Agency/Employment/Partnership

Nothing in this Contract shall be construed as creating a legal partnership or contract of employment or a relationship of principal and agent between the Council and the Service Provider and the Service Provider shall not at any time or in any circumstances take any action so as to bind (or purport to bind) the Council and nor shall the Service Provider hold itself out as having

authority to bind the Council and shall ensure that Staff do not hold themselves out likewise.

27 Service of Notices

27.1 Any demand or notice required to be given under the Contract shall be sufficiently served if:

27.1.1 served personally on the addressee;

27.1.2 sent by prepaid first class recorded delivery post to the registered office or last known address of the Service Provider where notice is required to the Service Provider and, unless otherwise set out in the Particulars or notified by the Council in accordance with this Condition 27.1, to the name of the Council's Contact, County Hall, Oxford OX1 1ND where notice is required to the Council; or

27.1.3 subject to Condition 27.2, emailed to the address of the relevant party set out in the Particulars or such other address as the party may from time to time notify to the other party in accordance with this Condition 27.1.

27.2 Demands or notices served by email shall only be valid if the demand or notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in Condition 27.1.1 or 27.1.2 within two Working Days.

27.3 Any demand or notice served in accordance with:

27.3.1 Condition 27.1.1 shall be deemed to have been served on the date of delivery if it is delivered before 4pm on a Working Day and otherwise on the next Working Day;

27.3.2 Condition 27.1.2 shall be deemed to have been served two Working Days from the date of posting;

27.3.3 Condition 27.1.3 shall be deemed to have been served on the date of delivery if it is sent before 4pm on a Working Day and otherwise on the next Working Day unless in either case an error message is received.

28 Termination – Bribery, Insolvency, Change of Control, False Information, Suspension, Reduction of Funding

28.1 The Council may terminate the Contract by notice in writing, such notice to have effect from the date specified in it, and recover from the Service Provider the amount of any loss resulting from such termination if the Service Provider or any of its Staff (in all cases whether or not acting with the Service Provider's knowledge):

28.1.1 commit a Prohibited Act, or

28.1.2 give any financial or other advantage to any person working for or engaged by the Council.

28.2 If the Service Provider:

28.2.1 commits a material Default and the Service Provider has not remedied the Default to the satisfaction of the Council within 20 days or such other shorter or longer period which may be specified by the Council after issue of a written notice specifying the Default and requesting it to be remedied; or

28.2.2 commits a material Default which is not capable of remedy; or

28.2.3 commits a Default on a persistent or repeated basis, whether in respect of the same or different obligations of the Service Provider under the Contract and whether or not rectified; or

28.2.4 is an individual or a firm and a petition is presented for the Service Provider's bankruptcy or a criminal bankruptcy order is made against the Service Provider or any partner in the firm, or the Service Provider or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or an administrator is appointed to manage the Service Provider's affairs; or

28.2.5 is incorporated, and passes a resolution for its winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation the Service Provider or any person gives or files notice of intention to appoint an administrator or such an administrator is appointed, or the court makes a winding-up order, or the Service Provider makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

28.2.6 is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

28.2.7 ceases to carry on its business or disposes of all its assets or ceases to carry on a substantial part of its business or disposes of a substantial part of its assets which in the reasonable opinion of the Council would materially affect the delivery of the Services; or

28.2.8 undergoes a change of control and for this purpose where the Service Provider is a company, there is a change of control if the

majority of shares carrying a right to vote in the Service Provider or its holding company are acquired by a person who is not at the date of the Contract a major shareholder (“holding company” having the same meaning as in section 1159 of the Companies Act 2006) save that if there is a change of control which is only a change from one subsidiary company to another (“subsidiary company” having the same meaning as in section 1159 of the Companies Act 2006) then that shall be deemed not to be a change of control for the purposes of this Condition 28.2.8; or

28.2.9 is subject to any event or proceedings in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Conditions 28.2.4 to 28.2.8; or

27.2.10 is convicted (or any member of Staff is convicted) of a serious criminal offence related to the business or professional conduct; or

27.2.11 commits (or any member of Staff commits) an act of grave misconduct in the course of the business; or

27.2.12 is in breach of the warranty at Condition 2.3;

28.2.13 has provided any information as part of its Tender including that given in the questionnaire or given information to the Council at any time prior to the Council entering into a binding contract with the Service Provider which proves to be materially untrue or incorrect, or

28.2.14 has a contract for services which are similar to the Services terminated by the Council due to the Service Provider’s default.

then in any such circumstances the Council may, without prejudice to any other rights or remedies of the Council, terminate the Contract in whole or in part (whereupon a corresponding reduction in the Contract Price shall be made) by notice in writing, such notice to have effect from the date specified in it.

28.3 Where the Contract is terminated in whole or in part by the Council under this Condition 28:

28.3.1 the Council shall be entitled to recover from the Service Provider the amount of any loss resulting from the termination including, but not limited to, the cost of arranging alternative provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period in excess of that which would have been paid to the Service Provider (such additional expenditure calculated on the basis that there had been no early termination of the Contract); and

28.3.2 the Council shall cease to be under any obligation to make any payment relating to the terminated services until the costs, loss

and/or damage resulting from or arising out of the termination of the Contract shall have been calculated and the Council shall then be entitled to deduct from any sum or sums due from the Council to the Service Provider under the Contract the amount of such costs, loss and/or damage.

28.4 The Council shall be entitled to suspend the provision of the Services and carry out itself, or engage a third party to carry out, the Services or any of them on a temporary basis (without terminating the Contract) where the Service Provider is in Default and the Service Provider shall be liable for any costs incurred by the Council in this regard.

28.5 If the Council commits a material breach of the Contract which:

28.5.1 the Council has not remedied to the satisfaction of the Service Provider within 20 days or such longer period which may be specified by the Service Provider after issue of a written notice specifying the material breach and requesting it to be remedied;
or

28.5.2 is not capable of remedy,

then in any such circumstances the Service Provider may, without prejudice to any other rights or remedies of the Service Provider terminate the Contract by notice in writing, such notice to have effect from the date specified in it.

28.6 The Council shall be entitled to terminate the Contract or reduce the Services on written notice to the Service Provider where the Council's funding is reduced (including, for the avoidance of doubt, totally withdrawn). For the avoidance of doubt, no compensation by way of damages or otherwise (howsoever arising) shall be payable to the Service Provider in such circumstances.

28.7 If any of the circumstances allowing the Council to terminate the Contract pursuant to Conditions 28.2.4 to 28.2.14 inclusive arise the Service Provider must promptly notify and provide all related information reasonably required by the Council to the Council.

29 Break

The Council shall have the right to terminate the Contract in whole or in part at any time by giving not less than 6 months' written notice to the Service Provider unless otherwise specified in the Particulars. For the avoidance of doubt no compensation by way of damages or otherwise (howsoever arising) shall be payable to the Service Provider in such circumstances.

30 Recovery and Handover on End of Contract

30.1 The expiry or termination of this Contract for whatever reason shall not affect any provisions of the Conditions capable of surviving or operating in the event of termination of the Contract (including without

limitation Conditions 8.1, 9.2 – 9.6, 16.4, 16.6, 23.1.5, 23.4, 28.3, 28.6 and 30) and termination of this Contract shall be without prejudice to the rights and remedies of one party against the other party.

30.2 On expiry or termination of the Contract howsoever arising, the Service Provider shall, unless the Council requests the destruction of the Council Data, make arrangements with the Council to forthwith deliver to the Council at no additional cost:

30.2.1 all Council Data. Where the Council Data is delivered to the Council, it shall be delivered in such usable format as the Council may reasonably specify, or in the case of IT data, in Common Data Interchange Format (CIF) unless otherwise specified by the Council;

30.2.2 all the property issued or made available to the Service Provider by the Council (including, but not limited to, materials, clothing, equipment, vehicles, documents, information, access keys) in its possession or under its control or in the possession or under the control of any Staff.

Where the Council requests destruction of the materials, the Service Provider shall securely destroy and permanently delete the materials forthwith and shall provide a certificate signed by an authorised signatory confirming that such materials have been destroyed.

30.3 When this Contract expires or terminates (for whatever reason), the Council may, for a period of six (6) months thereafter, require the Service Provider to use all reasonable endeavours to assist the Council in the transfer of the provision of the Services to either the Council or a third party nominated by the Council and give the Council and/or such third party nominated by the Council such help as may be reasonably necessary to enable such transfer to take place smoothly. This shall be at the Service Provider's cost where the Contract is terminated under Condition 28.1 or 28.2 above and otherwise at the Service Provider's then current rates, unless otherwise agreed.

31 Business Continuity and Force Majeure

31.1 Without prejudice to Condition 4.2, the Service Provider shall ensure it has appropriate business continuity arrangements in place to deliver the Services without disruption and shall implement such arrangements in the event of any Force Majeure Event, emergency, disaster or other circumstance which affects the ability of the Service Provider to provide the Services.

31.2 If either party is affected by a Force Majeure Event it shall immediately notify the other party in writing of the matters constituting the Force Majeure Event and shall keep that party fully informed of any relevant change of circumstances whilst such Force Majeure Event continues.

- 31.3 The party affected by the Force Majeure Event shall take all reasonable steps available to it to minimise the effects of the Force Majeure Event on the performance of its obligations under the Contract.
- 31.4 Save as provided in Conditions 31.6 and 31.7, a Force Majeure Event shall not entitle either party to terminate the Contract and neither party shall be in breach of the Contract, or otherwise liable to the other, by reason of any delay in performance, or non-performance of any of its obligations due to a Force Majeure Event.
- 31.5 If the party affected by a Force Majeure Event fails to comply with any of its obligations under Condition 31.1, 31.2 or 31.3 above then no relief for the Force Majeure Event, including the provisions of Condition 31.4 above, shall be available to it and the obligations of each party shall continue in force.
- 31.5 If a Force Majeure Event results in the suspension of the provision of the Services, the Council shall not be obliged to pay the Contract Price until such time as such suspension has ceased. If the provision of the Services is partly suspended, the Council shall pay a pro rata amount for those Services it has received.
- 31.6 If in the Council's reasonable opinion a Force Majeure Event results in disruption to more than 50% of the Services provided and such disruption continues for a continuous period of a month or longer (unless otherwise specified in the Particulars), the Council shall be entitled to terminate the Contract on giving one week's notice to the Service Provider with termination taking effect upon the expiry of such notice.

32 Severance

If any of these Conditions become or are declared by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way impair or affect any other provisions all of which shall remain in full force and effect and the parties shall negotiate in good faith to amend such provision so that, as amended, it is valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

33 Disputes and Mediation

- 33.1 A dispute relating to the provision of the Services, the Contract Price, or payments which cannot be resolved in the first instance between the Service Provider's Representative and the Council's Contact within a month shall be referred to the persons specified in the Particulars.
- 33.2 Nothing in this Condition 33 shall prejudice the right of either party to apply to the court for interim relief to prevent the violation by the other party of any proprietary interest or any breach of that party's obligations.

- 33.3 Services to be provided under the Contract shall not cease or be delayed by this dispute resolution procedure.
- 33.4 If any dispute cannot be resolved between the Service Provider and the Council within a month of referral as set out in Condition 33.1, then the Service Provider or the Council may refer the matter to mediation in accordance with the Centre for Effective Dispute Resolution's ("CEDR") Model Mediation Procedure.
- 33.5 To initiate the mediation, either party may give notice in writing to the other requesting mediation in accordance with this Condition 33. The initiating party shall send a copy of such request to CEDR.
- 33.6 If there is any issue on the conduct of the mediation (including as to the nomination of the mediator) upon which the parties cannot agree within a reasonable time, CEDR will, at the request of either party, decide the issue.
- 33.7 If the dispute is not resolved within 90 days of the initiation of the mediation, or if either party will not participate in the mediation either party may commence proceedings.
- 33.8 For the avoidance of doubt, the use of the disputes procedure will not delay, or take precedence over, any use of the default or termination procedures.

34 Waiver

- 34.1 The failure of the Council or the Service Provider to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 34.2 No waiver shall be effective unless it is communicated to the Council or the Service Provider in writing and expressly stated to be a waiver.
- 34.3 A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.
- 34.4 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude and are without prejudice to any rights or remedies provided by law, in equity or otherwise.

35 No Fetter

Nothing in the Contract shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its statutory functions.

36 Variations to the Contract

No variation to the Contract shall have any effect unless it is made in writing and signed on behalf of the Council and the Service Provider.

37 The Contracts (Rights of Third Parties) Act 1999

- 37.1 Other than as set out in Conditions 11.2, 13.3 and 16, the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract, but this does not affect any rights which are available apart from this Act.
- 37.2 Any amendment to this Contract may be made, including altering or extinguishing any third party rights, without the consent of any third party.

Schedule 1 – Service Specification

1 OPERATION OF ROUTES

- 1.1 The Service Provider shall provide Vehicles with the required number of seats specified in the Particulars, together with a driver, to carry out the Contract in accordance with the Route and Route Description specified by the Council, on each school/college day of the year.
- 1.2 The Service Provider shall transport the pupils named by the Council from time to time. Where the number of pupils for a Route is above 16, the Council may issue such pupils with a pass to evidence that they are entitled to travel.
- 1.3 The Service Provider shall at all times comply with the timetable and Route Description agreed with the Council subject to any amendment agreed.
- 1.4 The Service Provider must provide a working telephone number contact on which it can be contacted from fifteen (15) minutes before the first pick up time in the morning to 5pm on each school/college day of the year. At all times the Service Provider must be able to contact driving Staff either by use of a mobile telephone or two way radio.
- 1.5 Before the first run, the Service Provider must arrange to meet with the school to confirm:
 - 1.5.1 the pick-up\drop off arrangements,
 - 1.5.2 lines of communication including the exchange of phone numbers and email addresses,
 - 1.5.3 an assessment of risks which should include the handover arrangements from the care of the Service Provider to the care of the school.
 - 1.5.4 Arrangements made should be communicated to the Council within seven days of the first run and straightaway if changes are made thereafter.
- 1.6 On award of Contract, the Service Provider will work with the Council's Contact to agree the most effective Route Description.
- 1.7 Prior to the first run, the Service Provider shall drive the Route and identify how to deal with any hazards.
- 1.8 When operating a Route, the Vehicle shall be used exclusively for the purposes of this Contract and no other passengers shall be transported.

- 1.9 In the event that the Vehicle's capacity is greater than the minimum number of seats specified in the Particulars, the Council shall be entitled name further pupils to travel on the Route and the Service Provider shall transport such pupils in accordance with this Contract with no further charge to the Council.]
- 1.10 In the event that any pupil(s) named by the Council is unable to travel on a Vehicle due to inadequate capacity being available at any time, without prejudice to the Council's rights in respect of such Default, the Service Provider shall immediately contact the Council's Contact and the relevant school and shall not depart from the location from which such pupil(s) intended to travel unless and until authorised to do so by the Council's Contact or the relevant school.
- 1.11 Apart from exceptional circumstances, and agreed beforehand, no journey to school should exceed 45 minutes to a primary school, or 75 minutes to a secondary school.

2 VEHICLES

- 2.1 All Vehicles used in the provision of the Services shall:
- 2.1.1 Be licensed (either Passenger Carrying Vehicle and/or Hackney Carriage/Private Hire in accordance with all relevant Enactments), maintained, equipped and operated as required by current legislation and must display a valid Passenger Carrying Vehicle Operator's license disc and a valid excise disc or a District Council Hackney Carriage/Private Hire License Plate (unless specifically exempt).
 - 2.1.2 Be kept clean and tidy inside and outside, with litter being removed and damage, including graffiti, repaired promptly. The Vehicle must be thoroughly cleaned at least once every fourteen days.
 - 2.1.3 Afford passengers with adequate protection from the weather.
 - 2.1.4 Be driven safely and with consideration to passengers' and other road users' needs.
- 2.2 The name of the Service Provider must be clearly indicated on the Vehicle by fleet name or livery.
- 2.3 All Vehicles shall display details of the contract number appropriate to the Route being operated in such a way as to be easily read by intending passengers and school/college staff as the Vehicle approaches stops.
- 2.4 All Routes shall be operated by Vehicles which provide sufficient seating capacity for the numbers of seats required under this Contract. The

Service Provider may use more than one Vehicle for a Route in order to provide the required number of seats with the agreement of the Council and, for the avoidance of doubt, all references in this Contract to "Vehicle" shall be treated as references to each Vehicle which the Service Provider is using. The Vehicle must not be used to carry more passengers than permitted under current legislation affecting the Vehicle.

- 2.6 If applicable, Vehicles shall display a school bus sign both at the front and at the rear in accordance with the Road Vehicles Lighting (Amendment) Regulations 1994.
- 2.7 All Vehicles must have seat belts fitted where required by any Enactment. In addition, all Routes operating Home to School Transport to a primary school must afford a seat belted Vehicle at all times. Drivers shall ensure that the passengers required to be transported under this Contract are wearing their seat belts at the start of all journeys and, so far as reasonably practicable, throughout all journeys. Where any passengers required to be transported under this Contract fail to wear their seatbelts on a persistent basis, the Service Provider will inform the Council. The Service Provider shall also ensure that booster seats are used by passengers required to be transported under this Contract where required by any Enactment.
- 2.8 All minibuses and larger Vehicles used on the Route must have an automatic audible reverse warning device fitted which must work automatically when the reverse gear of the Vehicle is engaged.

3 DRIVERS

- 3.1 Staff are the main point of contact between the passenger, the Service Provider and indirectly, the Council. It is therefore essential that all operating and supervisory Staff are:
 - 3.1.1 Courteous and helpful to passengers
 - 3.1.2 Properly instructed as to the Route Description
 - 3.1.3 Fully aware of the Service Provider's procedures in the event of breakdown, accident or emergency
 - 3.1.4 Of a smart and tidy appearance
 - 3.1.5 In possession of, wearing a Council identification badge
- 3.2 Drivers must not use a mobile phone at any time whilst the Vehicle is in motion. Any driver of a Vehicle must hold the requisite and valid driving licenses and identification badges for the Vehicle as required as given in section 10 (Certifications and documentation) of this Service

Specification (e.g. Passenger Carrying Vehicle and/or Hackney Carriage/Private Hire License, DBS Badge).

- 3.3 The Service Provider will be required to distribute to their Staff any literature produced by the Council and to require Staff to participate in any training programmes that are reasonably required by the Council, at no additional cost.
- 3.4 No driver with nine or more points on their licence shall be used in the provision of the Services without the Council's prior written consent. In the event that the Service Provider requests such consent, the Service Provider shall provide any information which the Council requests in order to consider the position.
- 3.5 To assist in the maintenance of punctual operation, the Service Provider shall ensure that every driver has available at all times during the provision of the Services a reliable and accurate method of telling the time.

4 SAFEGUARDING POLICIES AND PROCEDURES

- 4.1 For any safeguarding concerns, phone one of the numbers given below.
- 4.2 The Service Provider is referred to Special Conditions SC2 – SC4.
- 4.3 The Service Provider shall have in place an enhanced Disclosure and Barring Service check prior to any employee of the Service Provider being allowed to work with children or vulnerable adults and where relevant, before the completion of a risk assessment process which has been undertaken and approved by OCC. Please note DBS checks should be renewed every three (3) years.
- 4.4 The Service Provider shall keep a record of compliance with SC2.1.5(b) and the Council reserves the right to request evidence of this at any point.
- 4.5 Any allegation relating to the welfare of a child must be referred by the service provider to gmcc@oxfordshire.co.uk within twenty four (24) hours of the concern being raised and before taking any action.
- 4.6 The Service Providers shall ensure that all drivers and escorts are issued with and have read, understood any guideline issued by the Council and have completed the face to face safeguarding training at the point at which they applied for a new OCC badge.

Useful numbers

| | |
|--|---|
| To report specific concerns about the abuse or neglect of an adult , call Social and Health Care | 0845 050 7666 |
| If you are worried that your manager or any other professional (e.g teacher) may be abusing a child, call the Local Authority Designated Officer for Child Protection (LADO) | 01865 810603 |
| If you are concerned that a child may be being abused by someone other than your manager or another professional (e.g parent). Please contact the Multi-Agency Safeguarding Hub (MASH) | 0845 0507666 |
| To discuss general safeguarding concerns for the particular attention of the Transport hub call Or: Transport Quality Monitoring Team | 01865 323500 gmcc@oxfordshire.gov.uk |
| If there is an urgent risk call | 999 |

5 ACCIDENTS, EMERGENCIES AND BREAKDOWNS

- 5.1 Should it become necessary for a Service Provider to arrange for someone else to undertake its work in an emergency, the Service Provider may sub-contract to any person on the Council's list of approved sub-contractors as updated from time to time and notice must be given to the Council's Contact as soon as possible and no later than one (1) Working Day. Such sub-contracting shall not relieve the Service Provider from any liability or obligation under the Contract and the Service Provider shall use its best endeavours to rectify the problem necessitating the emergency sub-contracting within two (2) Working Days. For the avoidance of doubt, any sub-contracting not during an emergency or in an emergency and beyond two (2) Working Days shall require the written consent of the Council pursuant to Condition 25 (Assignment and Sub-Contracting) of the Conditions of Contract.
- 5.2 The Service Provider must have a contingency plan for dealing with Vehicle failures, Staff unavailability and similar emergencies.
- 5.3 In the event of a Vehicle breakdown or similar emergency:
- 5.3.1 Passengers required to be transported under this Contract already on the Vehicle shall be told promptly what has happened and what arrangements are being made to enable them to resume their journey
 - 5.3.2 A back up service shall be provided or other arrangements made to cover the rest of the journey and any subsequent journeys. This shall be provided at the Service Provider's expense
 - 5.3.3 Where children are likely to be delayed on their journey by more than ten (10) minutes the Service Provider shall inform the school immediately
 - 5.3.4 The Council's Contact is to be advised of all breakdowns as a matter of priority and in any event by 10.00 am on the same day in the case of morning journeys and by 9.00 am on the following working day in the case of afternoon journeys.
 - 5.3.5 In the event of a Vehicle being involved in an accident, the Council's Contact shall be informed as a matter of priority and in any event by 10.00 am on the same day in the case of morning journeys or by 9.00 am on the following working day in the case of accidents which occur on afternoon journeys. A written report of the accident must be submitted within five (5) Working Days.

6 CONDUCT OF PASSENGERS

- 6.1 All instances of misbehaviour must be reported promptly to the relevant Headteacher and to the Council's Contact. In the event of serious misbehaviour the driver must not require a passenger to leave the Vehicle (other than at the passenger's normal alighting point).
- 6.2 Discipline must be achieved through verbal instructions and not physical force, using language that is not offensive.
- 6.3 In the event of a passenger being involved regularly in incidents of serious misbehaviour, the Service Provider must discuss the problem with the relevant Headteacher with a view to the child being disciplined. Only in the event of such an approach failing to achieve the desired result may the Service Provider decline to carry a persistent offender. Any such arrangements must be made through the school.
- 6.4 Passengers must not be allowed to smoke whilst being conveyed to and from their appropriate destination.
- 6.5 Acts of vandalism (e.g. ripped seats) must be reported to the relevant Headteacher and the Council's Contact, but the Council will not accept responsibility nor will it meet any claims for compensation in the event of Vehicles being damaged through vandalism.

7 CARRIAGE OF WHEELCHAIRS

The Service Provider shall ensure that wheelchair passenger carrying Vehicles conform to the Department of Transport's Code of Practice "The Safety of Passengers in Wheelchairs on Buses" VSE 87/1 May 1987. Drivers must be given proper training in clamping wheelchairs to the floor of the Vehicle and must be fully aware of the various means of fitting and releasing passenger restraints.

8 NOTICE OF CANCELLATION

The Council may give notice to the Service Provider to cancel a Route on particular days as set out in Schedule 2 (Finance). The consequences of a cancellation shall be as set out in Schedule 2 (Finance).

9 ENQUIRIES AND COMPLAINTS

9.1 The Service Provider must ensure that:

9.1.1 All enquiries, comments and complaints received from the Council, members of the public, schools and any other interested parties are dealt with in an accurate, polite, courteous and sympathetic manner.

9.1.2 Staff are available at the Service Provider base to deal with enquiries about the Routes covered by the Contract, during normal office hours.

9.1.3 All complaints are handled and recorded in the manner prescribed in Condition 19 (Complaints) of the Conditions of Contract.

10 CERTIFICATIONS AND DOCUMENTATIONS – DRIVER CHECKS

10.1 Taxi drivers shall have their taxi licensing documents with them and available for inspection at any time. This will include the following:

- DBS badge (photo ID)
- Taxi private hire or Hackney badge (photo ID)
- Valid MOT and Insurance Documentation

10.2 When checking a larger Vehicle which has fewer than eight (8) seats, the Vehicle must be licensed as a taxi (PHV) and must have all the relevant documents as a taxi plus livery.

10.3 Bus/coach drivers shall have their licensing documents with them and available for inspection at any time. This will include the following:

- DBS Badge
- Driver's License – check for expiry date and License must indicate they have a PSV which is code D. Code D1 is for driving only up to a sixteen (16) seater and any driver with D70 can only drive an automatic vehicle.
- Drivers must now carry a CPC license.

10.4 The Council can request to check the Operator license issued by the Driver and Vehicle Standards Agency (DVSA). This will indicate the number of vehicles the company have registered and the number of licenses issued. The license (disc) can be transferred between vehicles. Checking how many licenses they have against number of contracts held locally or in neighbouring counties will indicate if the Operator is fraudulently duplicating licenses to obtain more work.

10.5 The Council's QM officer can request the following documents for inspection:

- Operators licence in the contract entity's name
- List of vehicles registered to the operators licence
- Sufficient operators discs for the number of vehicles operated
- Valid safety inspection report form per vehicle in accordance DVSA guidelines (MOT)
- Valid Motor insurance per vehicle
- Public Liability Insurance documents
- Employer Liability documents
- Number of drivers
- Driver licence documentation- expiry dates, points etc
- List of OCC badged drivers
- CPC Documentation per driver
- List of recent foreign drivers employed .

Schedule 2 - Finance

1 CONTRACT PRICE

1.1 The Contract Price is set at a daily rate as follows (this excludes VAT),

| Route ID | | | Start Date | Start Date |
|-----------------|------------------------|-------------------------------|-------------------|-------------------|
| | /Seats required | Contract Price per Day | | |
| | | | | |
| | | | | |

1.2 The Contract Price will apply for the Contract Period, subject to section 3 (Inflation) of this Schedule 2 - Finance.

2 PAYMENTS ON A DAILY RATE BASIS

2.1 As detailed in condition 6.5 in the Contract Conditions, invoices must contain the following information:

- Name of Service Provider
- Invoice number
- Date of Invoice
- Bank Account number
- VAT number
- Route number
- Daily Contract price
- Number of School days
- Total of Invoice

Invoices should be sent to:

Oxfordshire County Council
School & Social Care Transport
PO Box 867
Oxford
OX1 9NR

2.2 The number of school days claimed, will refer to the number of school days operated, subject to any deductions and/or cancellations as set out in this schedule.

2.3 Without prejudice to any other right or remedy of the Council, the Council may reduce payment in respect of any part of the Route, which the Service Provider has failed to provide or has provided inadequately. Any

deductions made in respect of inadequate operation as shown in Appendix A of Schedule 3 – Quality Monitoring and Performance Review, will be notified to the Service Provider within seven (7) days of the incident occurring, in order for the invoice to be amended accordingly. Deductions will not be made if notification has not been communicated within the specified time.

- 2.4 Should the Service Provider wish to appeal against the deduction, he must do so in writing to the Council's Contact within twenty one (21) days of his receiving notification of it. Appeals will normally only be successful where incorrect operation of the Contract was due to circumstances completely outside the Service Provider's control.
- 2.5 Subject to the application of Condition 31 (Force Majeure) of the Conditions of Contract, the Council shall give the Service Provider twenty four (24) hours' notice of cancellation of a Route on particular days and the Service Provider shall not be entitled to be paid the daily rate in respect of the Route so cancelled.
- 2.6 Furthermore, in the event of an Emergency Closure as set out in Appendix A – Reasons For Emergency Closure and where less than twenty four (24) hours' notice is given, the Service Provider will only be entitled to half a days' payment for the specific Route that has been affected. The Council shall not be obliged to notify the Service Provider of Emergency Closures.
- 2.7 The Service Provider will ensure that any deductions and reductions in payment due to cancellation as set out above are reflected in the invoices submitted.
- 2.8 If any amount paid by the Council to the Service Provider was in excess of the actual amount due, the Service Provider shall refund the excess amount paid by the Council within twenty eight (28) days of the relevant dispute being resolved. If the Service Provider fails to repay the sum owing within seven (7) days, then the Council shall have the right to charge interest on the overdue amount at the rate of 4% above the base rate of Lloyds TSB.

3 INFLATION

- 3.1 Subject to section 3.2 below, each year the Contract Price will be increased by the lesser of 2% or the percentage increase in RPI(X) in the 12 month period prior to the preceding December and the adjusted Contract Price will apply from 1st April of that year until 31st March of the following year. In the event that there is a percentage decrease in RPI(X), the Contract Price will not be adjusted.

For the purposes of this paragraph, RPI(X) shall mean the Retail Prices Index (All Items, excluding mortgages) as published by the Office for National Statistics from time to time, or failing such publication, that

other index as the Council, acting reasonably, determines most closely resembles such index.

- 3.2 Where the 1st April is less than 6 months after the Commencement Date the Contract Price will not be adjusted during the first year of the Contract but will be adjusted from 1st April of the second year of the Contract and thereafter in accordance with section 3.1 above.

Appendix A (Schedule 2 - Finance) – Reasons for Emergency Closure of Schools

- No heating
- Water leak
- Gas leak
- No electricity
- Severe weather conditions
- Strike
- School staff illness
- Fire
- Bomb scare
- Police investigation
- Suspicious package
- Unscheduled building work

Schedule 3 – Quality Monitoring and Review

1 APPROACH

- 1.1 The Council and the Service Provider will work together for the duration of the Contract. Any issues arising during the Contract Period will be dealt with by the Service Provider and the Council's Contact in an open and honest manner.
- 1.2 The Service Provider will be expected to share the Council's objective to continually improve and take advantage of improvement opportunities and new technologies.

2. THE QUALITY MONITORING TEAM

The Council's Contact for issues during the Contract Period will be a member of the Quality Monitoring Team. Contact names and numbers for this team are provided separately.

Team Email: QMCC@oxfordshire.gov.uk

3. PERFORMANCE

- 3.1 The Service Provider and the Council's Contact will meet at least once a year to discuss any compliancy issues, information provided by the Service Provider (including pursuant to paragraph 3.5 below) and any general issues regarding efficiency and good performance. The Council's Contact will also use this opportunity to check that documents and compliances are up to date (see 4).
- 3.2 The Council may at any time carry out an assessment of the Service Provider's compliance with the terms set out in this Contract. The Council will work closely with the Service Provider in this instance and any corrective work agreed will be formally communicated to the Service Provider within five days.
- 3.3 Where an issue has been identified which has not been resolved within agreed timescales, or where there are re-occurrences of the same issue (whether under this or this and other similar contracts between the Service Provider and the Council), the Council may impose a deduction for non-compliance as shown in section 5. This will be

administered by the Contract Manager together with the Quality Monitoring Officer who will be the first point of contact for service providers.

3.4 The rights of the Council to address performance issues and make deductions set out in this Schedule 3 are without prejudice to any other right or remedy that the Council may have under the Contract and the Service Provider is reminded that a repeated failure to resolve issues or major non-compliances may result in the termination of the Contract pursuant to the Conditions of Contract.

3.5 Performance Indicators

- Upon request, the Service Provider shall supply the Council with any further information reasonably required to enable the Council to monitor the performance of the Service Provider, including but not limited to details of children travelling, arrival times and complaints.

4. VEHICLE CHECKS

4.1 The QM team will from time to time carry out spot checks.

4.2 As part of the QM check, the Council's Contact may ask the drivers for certifications for the Vehicle as well as ID for the driver and the documents set out below.

4.3 For taxi

- DBS badge (photo ID)
- Taxi private hire or Hackney badge (photo ID)
- MOT and Insurance documentation

4.4 Drivers of Chauffeur driven Vehicle

- DBS badge (photo ID)
- Taxi private hire or Hackney badge(photo ID)
- MOT and Insurance documentation
- Local Authority letter headed – Exemption Certificate which refers to the Vehicle
- Taxi plate in the Boot

4.5 Bus\Coach

- DBS Badge
- Driver's Licence – check for expiry date and Licence must indicate they have a PSV which is code D. Code D1 is for driving only up to

16 seats and any driver with D70 can only drive an automatic vehicle.

- Drivers must now carry a CPC licence.
- Route Number must be clearly visible in front of vehicle.
- If applicable, school bus sign must be clearly displayed front and back of vehicle

4.6 Service Provider checks

The Council's Contact may request to check the Operator license issued by the Driver and Vehicle Standards Agency (DVSA). This will indicate the number of vehicles the company have registered and the number of licenses issued. The license (disc) can be transferred between vehicles.

Checking how many licences the service provider has against number of contracts held locally or in neighbouring counties will indicate if the Service Provider has sufficient licences/vehicles to operate the contracts awarded.

The Council's Contact may request the following documents for inspection:

- Operators licence
- List of vehicles registered
- Weekly Inspection Reports
- VOSA/ DVSA 6 weekly MOT tests per vehicle
- Last VOSA/ DVSA report and prohibitions per vehicle
- Public Liability Insurance documents
- Employer Liability documents
- Number of drivers
- Driver licence documentation - expiry dates, points etc
- List of OCC badged drivers
- CPC Documentation per driver
- List of recent foreign drivers employed
- Record of Accidents
- Policies
- Procedure for how to deal with accidents
- Procedure for how to deal with complaints
- Records of Staff Training

5 PAYMENT REDUCTIONS

It is the Council's intention to work with Service Providers to overcome minor compliancy issues. However in accordance with Schedule 2 (Finance), the Council reserves the right to deduct certain monies as set out below in respect of any part of the Route, which the Service Provider has failed to provide or has provided inadequately. These rights are without prejudice to any other right or remedy that the Council may

have under the Contract including but not limited to the Council's rights to recover any losses suffered as a result of breaches of contract and its rights to terminate the Contract for material or persistent breach.

Deductions should not form part of any disciplinary process and simply apply when a route is not operated to the standard expected, in which case OCC does not want to pay for something that hasn't been delivered.

Where this has impacted to an extent that significant officer or management time is spent resolving an issue or dealing with the after effects of a 'non- journey', the OCC retains the right to recover salary costs.

| ISSUE | DEDUCTION |
|---|--|
| Failure to operate a journey without reasonable explanation | No payment for that journey (on the assumption that the day rate relates to two journeys the deduction would be equivalent to half the day rate) |
| Departure from any timing point early that results in a child missing the bus | No payment in relation to relevant journey (half the day rate) |
| Departure from any timing point more than ten minutes late without providing reasonable explanation | No payment in relation to relevant journey (half the day rate) |

6 USE OF UNLICENSED VEHICLES AND DRIVERS

In the event that the Service Provider uses an unlicensed vehicle or unlicensed driver on any Route, without prejudice to any other right or remedy the Council may have including but not limited to the Council's rights to recover any losses suffered as a result of breaches of contract and its rights to terminate the Contract for material or persistent breach, the Council may require that driver to be removed from the Route with immediate effect pursuant to Condition 8.6.

Schedule 4

DBS Process

DBS Process for dealing with Driver/Escort approvals, refusals and appeals

- Applicant applies for an OCC badge through the OCC Transport Hub
- Applicant visits an OCC location, has their ID documents checked and scanned by an OCC staff members and fills out an online DBS application through the Integrated Business Centre (IBC)
- The Transport Hub approves the application on-line by verifying the applicant's identification documents.
- The IBC DBS Team HR Vetting Team approves the on-line application by submitting the application to the DBS Bureau at the Home Office.

If the disclosure is returned CLEAR - the Transport Hub (OCC) automatically issue an OCC Identification badge provided that the member of Staff has completed generalist child protection face to face training through Oxfordshire Safeguarding Children's Board or has passed a Council assessment in relation to the same and the member of Staff has provided evidence of this.

If the disclosure is returned detailing Convictions/Cautions and/or Additional Information then a risk assessment process commences.

Risk Assessment Procedure

- Letters are sent to driver and provider advising we have been made aware that convictions/cautions/additional information appear on the Enhanced DBS Disclosure. The letters ask the driver to complete and return a Risk Assessment Part 1 form giving us details listed on their disclosure, and also ask the provider to complete a Driver/Escort Questionnaire (reference). Both forms are to be completed and returned preferably by email within 4 weeks of the date of the letter. If the forms are not received after 3 weeks, this is registered on CRM and the provider is sent an emailed reminder.
- Once the Driver/Escort Questionnaire and the Risk Assessment Part 1 are received, CRM is updated and a standard letter is sent to the applicant inviting them to a Risk Assessment Meeting. A date for the meeting will be offered at this stage, giving the driver the option to rearrange if the applicant is unable to attend.
- Risk Assessment meeting is held - this gives applicant the opportunity to offer any additional information or evidence to be taken into account.
- Following the Risk Assessment Meeting, a Risk Assessment part 2 is completed - this document contains the details of the convictions/cautions/ additional information from the disclosure, and also the information given at the meeting. The driver/escort questionnaire is also taken into account when the risk is assessed, which is assessed jointly by the OCC panel members who attended the Risk Assessment Meeting.
- The information the driver gives at the meeting can inform the decision to either recommend a badge is approved or declined.

- The Risk Assessment Part 2 is prepared by the School & Social Care Transport Service Manager. Here the information on the applicants disclosure is taken into account, and is assessed against the information given by the applicant at the meeting, any references provided, and any additional information the applicant has given.
- The Risk Assessment Part 2 is then approved by the Customer Service Centre, Operations Manager.
- The document is filed in the applicants locked file, and recorded on CRM, where the applicant's status is then changed to either 'approved' or 'banned'. If the status is changed to 'approved' the applicants details automatically appear on the list of badges to be printed on CRM for the HR Vetting and DBS Team provided that the member of Staff has completed generalist child protection face to face training through Oxfordshire Safeguarding Children's Board or has passed a Council assessment in relation to the same and the member of Staff has provided evidence of this.
- Letters are sent to both applicant and Service Provider informing them of the decision.
- If the badge is not approved, the standard letter gives details of a further appeal at a higher Officer level.

Appeal Meeting

- Applicant and/or Service Provider on behalf of applicant contacts S&SCT to arrange 2nd Appeal Meeting.
- S&SCT will then assemble a panel of senior officers to hear the appeal
- Date for 2nd Appeal meeting is arranged.
- Letter is sent to the applicant confirming date, time and venue.
- Appeal meeting is held.
- Following 2nd appeal meeting, another Risk Assessment part 2 is completed. The decision to refuse/accept is made jointly by the panel and the Risk Assessment part 2 is completed by the Chair of the panel - this document details the Appeal Meeting.
- If the applicant has been able to offer any mitigation that lowers the risk the applicant will be approved.
- The applicants information is updated on CRM.
- If the applicant has been approved, CRM will automatically add the applicants details to the list of badges to be issued for the HR Vetting and DBS Team provided that the member of Staff has completed generalist child protection face to face training through Oxfordshire Safeguarding Children's Board or has passed a Council assessment in relation to the same and the member of Staff has provided evidence of this.
- All documents are filed in the applicants locked, electronic file.
- If applicant has been unable to offer any mitigation that lowers the risk, the application is refused.
- Letters sent to applicant and Service Provider informing them of the decision no further appeal is offered. However if the decision is made not to approve, the applicant is given the details of the Ombudsman process.

Oxfordshire County Council is a data controller under the Data Protection Act 1998 and will use the sensitive and non-sensitive personal data provided by the applicant for the purpose of security vetting to ensure suitability to work with children and vulnerable adults. We may disclose information to other Local Authorities, District Councils and Thames Valley Police where there are significant concerns or ongoing investigations relating to allegations made. Where required by the DPA, the Service Provider shall ensure that all drivers and escorts are notified of this and that their consent to such disclosure is obtained.

[Schedule 5]

[Form of Deed of Novation]

[Note – Schedule 5 only applicable to Contracts for Routes in Lot 2]

THIS DEED is made the day of
20

BETWEEN:

- (1) **Oxfordshire County Council** of County Hall, New Road, Oxford OX1 1ND (“the Council”);
- (2) [] (company number []) whose registered office is at [] (“the Service Provider”); and
- (3) [] (company number []) whose registered office is at [] (the New Customer”).

WHEREAS:

- A This Deed is supplemental to the Contract (defined below).
- B The Council no longer requires the provisions of the Services under the Contract. The New Customer does require these Services and has agreed to take over the Council’s rights and obligations under the Contract.
- C The Council wishes to be released and discharged from the Contract and all of its obligations and liabilities thereunder with effect from the Effective Date, and the Service Provider has agreed to release and discharge the Council from the Effective Date upon the terms of the New Customer’s undertaking to comply with and perform all of the Council’s obligations and accept responsibility for all of the Council’s liabilities to the Service Provider under the Contract and be bound by the terms of the Contract in complete substitution for the Council.

NOW IT IS AGREED as follows:

1 Interpretation and Construction

1.1 In this Deed the following words shall have the following meanings:

“**Contract**” means the contract for [] dated [] entered into between the Council and the Service Provider; and

“Effective Date” means []

Other capitalised words shall have the meaning given to them in the Contract.

- 1.2 Words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction.
- 1.3 The headings and titles in this Deed are for ease of reference only and shall not be taken into account in its construction or interpretation.

2 New Customer’s Undertaking

- 2.1 With effect from the Effective Date and in consideration of the undertakings given by the Service Provider in Clause 3 and the Council in Clause 4, the New Customer hereby undertakes to the Council and the Service Provider to observe, perform, discharge and be bound by the Contract in every way as if the New Customer was and had been a party to the Contract in the place of the Council.
- 2.2 The New Customer hereby grants to the Service Provider the same rights under the Contract in every way as if the New Customer had been named in the Contract as a party in the place of the Council.

3 The Service Provider’s Undertaking and Release of the Council

With effect from the Effective Date, and in consideration of the undertakings given by the New Customer in Clause 2 and the Council in Clause 4, the Service Provider:

- 3.1 releases and discharges the Council from all claims and demands whatsoever (including future claims and demands) in respect of the Contract and from all obligations to observe, perform, discharge and be bound by the Contract provided that nothing in this Deed shall affect or prejudice any claim or demand whatsoever which the Service Provider has against the Council in relation to any fact, matter or circumstance which occurred or is attributable to any period of time prior to the Effective Date;
- 3.2 accepts the New Customer’s undertaking to observe, perform, discharge and be bound by the Contract in place of the Council;
- 3.3 agrees to observe, perform, discharge and be bound by the Contract in every way as if the New Customer was and had been a party to and had been named in the Contract as a party in the place of the Council; and
- 3.4 grants to the New Customer the same rights under the Contract in every way as if the New Customer was and had been named in the Contract as a party in the place of the Council.

4 The Council's Undertaking and Release of the Service Provider

4.1 With effect from the Effective Date, and in consideration of the undertakings given by the Service Provider in Clause 3 and the New Customer in Clause 2, the Council hereby releases and discharges the Service Provider from all claims and demands whatsoever (including future claims and demands) in respect of the Contract and all obligations to the Council to observe, perform, discharge and be bound by the Contracts provided that nothing in this Deed shall affect or prejudice any claim or demand whatsoever which the Council has against the Service Provider in relation to any fact, matter or circumstance which occurred or is attributable to any period of time prior to the Effective Date.

4.2 With effect from the Effective Date and in consideration of the undertakings given by the Service Provider in Clause 3 and the New Customer in Clause 2, the Council hereby undertakes to the New Customer to indemnify and keep indemnified the New Customer at all times against any and all damage, liabilities, costs, claims, demands, expenses and fees (including but without limitation legal and other professional fees), actions, proceedings, judgements awarded and damages made against, or incurred or sustained by the New Customer, its successors and/or assigns, in respect of, or in connection with, the obligations and liabilities of the Council prior to the Effective Date.

5 Contracts (Rights of Third Parties) Act 1999

An entity which is not expressly a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall be expressly excluded from this Deed.

6 Further Assurance

The parties to this Deed agree to do or procure the doing of all acts and things and execute or procure the execution of all such documents, instruments, consents, forms or acknowledgments as is necessary to give full effect to the terms of this Deed.

7 Law and Jurisdiction

This Deed shall be governed by and construed in accordance with English law and the parties shall submit to the exclusive jurisdiction of the English courts.

8 Entire Agreement

This Deed represents the entire agreement between the parties relating to the novation of the Contracts and supersedes all prior agreements, arrangements and understandings between the parties relating to the novation of the Contract.

This document is executed as a Deed and delivered on the date stated at the beginning of this Deed.

THE COMMON SEAL of
OXFORDSHIRE COUNTY COUNCIL
was hereunto affixed in the presence of:

.....
Solicitor to the Council/Designated Officer

SIGNED as a DEED by
[SERVICE PROVIDER]

acting by a Director and its Secretary
or two Directors

.....
Director

.....
Director/Secretary

SIGNED as a DEED by
[NEW CUSTOMER]

acting by a Director and its Secretary
or two Directors

.....
Director

.....
Director/Secretary