



PROVISION OF PASSENGER TRANSPORT

CONTRACT

CONTRACT

THIS CONTRACT is made First of November Two Thousand and Fourteen

PARTIES

- (1) SHROPSHIRE COUNCIL of Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND (hereinafter called "the Council") of the one part and
- (2) _____ of _____ (hereinafter called "the Contractor") of the other part.

RECITALS

- (a) The Council has agreed to engage the Contractor to provide Services to the Council as set out in this contract;
- (b) In consideration of the payments to be made by the Council to the Contractor in accordance with the provisions of this Contract the Contractor has agreed to enter into this Contract for the provision of the Services.

NOW IT IS HEREBY AGREED as follows:-

DEFINITIONS AND INTERPRETATIONS

"Best Value "	means those principles consistent with s3 of the Local Government Act 1999 which ensures arrangements are consistent with the securing of continuous improvement having regard to a combination of economy, efficiency and effectiveness.
"Contract"	means this agreement including its Schedules and any valid variations hereto
"Contract Price"	means the sum set out in Schedule 1 as being payable for the Service
"Commencement Date"	First of November Two Thousand and Fourteen
"Commercially Sensitive Information"	Comprises the information of a commercially sensitive nature relating to the Contractor, its Intellectual Property Rights or its business which the Contractor has indicated to the Council in writing that, if disclosed by the Council, would cause the Contractor significant commercial disadvantage or material financial loss;

“Council Data”	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 are: (a) supplied to the Contractor by or on behalf of the Council; or which the Contractor 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
“Council’s Transport Officer”	means the officer nominated from time to time by the Council to be responsible for the running and management of this Contract
“Council’s Vehicle Inspector”	means the person appointed by the Council from time to time to carry out Vehicle inspections
“Data Controller”	shall have the same meaning as set out in the Data Protection Legislation
“Data Protection Legislation”	the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy of Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
“Defect Notice”	means a notice served in accordance with clause 4.1 hereof
“Driver”	means the driver of any Vehicle
“EIR”	means the Environmental Information Regulations 2004 (as may be amended from time to time)
“Exempt Information”	means any information or class of information (including but not limited to any document, report, contract, or other material containing information) relating to this contract or otherwise relating to the parties to this Contract which potentially falls within

	an exemption to FOIA (as set out therein)
“FOIA”	means the Freedom of Information Act 2000 and all regulations made thereunder from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA shall have the same meaning in this clause
“FOIA Notice”	means a decision notice, enforcement notice and/or an information notice issued by the Information Commissioner.
“Hackney Carriage”	a taxicab allowed to ply the streets looking for passengers and licenced by the Local Authority
“Local Bus Service Contracts”	means Shropshire Council subsidised public transport contracts
“Operator’s License”	an Operator’s License or “O” License is the main instrument of regulation used by the regulatory bodies of The Office of The Traffic Commissioner & Driver Vehicle Standards Agency (DVSA) and its purpose is to ensure the safe and proper use of vehicles which fall the Operator Licensing regulations and are used for commercial purpose.
“Passenger”	means any person using the Services
“Passenger Assistant”	means an assistant to a passenger or passengers where applicable
“PCV”	means Passenger Carrying Vehicle
“Personal Data”	shall have the same meaning as set out in the Data Protection Act 1998;
“Plate”	means identification plate issued by a Council to a Hackney Carriage or Private Hire Vehicle authorising its use
“Private Hire”	a private hire vehicle is a motor vehicle constructed or adapted to seat fewer than 9 passengers (other than Hackney Carriage, Public Service Vehicle or London Cab) which is provided for the hire with the service of a driver for the purpose of carrying passengers
“Prohibition Notice”	A notice specifying activities that, in the opinion of an inspector, involve a risk of serious personal

	injury and prohibiting them until specified safeguards have been adopted.
“PSV”	means Public Service Vehicle
“Party and Parties”	means in the singular either the Council or the Contractor and in the plural means both the Council and the Contractor together
“Public Body“	as defined in the FOIA 2000
“Receiving Party“	means a party to this Contract to whom a Request for Information is made under FOIA, and who thereafter has overall conduct of the request and any response.
“Request for Information“	means a written request for information pursuant to the FOIA as defined by Section 8 of the FOIA.
“Services”	means the Services set out in the tender
“Staff”	means the Driver and any Passenger Assistant or staff member paid or unpaid and used in the provision of the Services on behalf of the Contractor
“Tender”	means the written offer by the Contractor to provide the Services
“Traffic Commissioner”	Traffic Commissioners are responsible and regulating operators of heavy goods vehicles (HGVs), public service vehicles (PSVs) and local bus services.
“Vehicle”	means any vehicle used in the provision of the Services
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales.

In this Contract:

- a) Reference to any statute or statutory provision includes a reference to

- that statute or statutory provision as from time to time amended extended or re-enacted;
- b) Words importing the singular include the plural, words importing any gender include every gender and words importing persons including bodies corporate or unincorporate and (in each case) vice versa;
 - c) Any reference to a Party to this Contract includes reference to their successors in title and permitted assigns;
 - d) The headings to the clauses are for ease of reference only and shall not affect the interpretation or construction of this Contract;
 - e) Where the Parties to this Contract comprise more than one person these persons will be jointly and severally liable for the performance and obligations under this Contract

1 SCOPE OF CONTRACT

- 1.1 The Contractor shall provide the Services in accordance with the provisions of this Contract and to the entire satisfaction of the Council.
- 1.2 The Contractor in performing its duties under this Contract shall take all action reasonably necessary to ensure the health, safety and convenience of Passengers and shall exercise maximum care and regard for the Passengers.
- 1.3 Where an obligation is expressed to be the responsibility of the Staff, then the Contractor will be contractually bound to ensure that the Staff carries out the obligation.

2 PERFORMANCE

- 2.1 The Contractor undertakes with the Council to comply with the following in the provision of the Services:
 - (a) all terms and conditions set out in this Contract, and in the Schedules hereto and any variations thereof;
 - (b) the provisions of the Health and Safety at Work Act 1974 and provide evidence of doing so to the Council at any time upon request and in any event at least once in each year whether or not requested by the Council.
 - (c) the principles of Best Value;
 - (d) the Contractor where appropriate shall take account of the Human Rights Act 1998 and shall not do anything in breach of it and provide evidence of doing so to the Council at any time upon request and in any event at least once in each year whether or not requested by the Council.
 - (e) the exercise of all due care and diligence and the

observance of all obligations and responsibilities placed upon the Contractor directly or indirectly in carrying out the Services under the Contract.

- (f) the Contractor must permit the Council's Transport Officer to visit its operational base to undertake compliance audits. Information required to be provided and recorded from compliance audits is as follows.
- Original driving licences (including photo cards and their counterparts)
 - Private Hire & Hackney carriage documentation.
 - PCV Operating Licence documentation
 - Vehicle Maintenance records and defect reporting procedures.
 - Original vehicle insurance documentation.
 - Original Public Liability and Employers Liability insurance documentation.
 - Original MOT and PSV test certificates for all Vehicles used in the delivery of the Service.
 - Driving and Passenger Assistant training records, if applicable.
 - Any other documentation requested by the Council in relation to the operation of this Contract.
- (g) that any Public Carrying Vehicles (PCV) used in the performance of the Services are less than 20 years old during the period of the Contract.

2.2 If for any reason the Contractor is unable to comply with any of the obligations under this Contract they shall forthwith notify the Council in writing of their failure and reasons therefor.

3. CONTRACT PERFORMANCE

3.1 For Local Bus Service Contracts, upon notification by the Council of the acceptance of the Tender the Contractor will, at their own expense, register the Service(s) detailed in Schedule 1 in accordance with Section 6 of the Transport Act 1985, with the Traffic Commissioner, and send a copy of the registration to the Council.

Period of Contract

3.2 The Contract shall commence on the Commencement Date and shall remain in force for a period of five years. For any contracts that differ to this then this will be clearly stated on the tender or other relevant documentation when the contract is tendered.

Sub-Contracting

- 3.3 The Contractor shall not without the written consent of the Council (such consent not to be unreasonably withheld) sub-let the obligations and benefits of this Contract except in the case of an emergency arising from breakdown of the Contractor's Vehicles or unavoidable shortage of Staff in which event, the Contractor may for a maximum of one day arrange for the Services to be discharged by such other person or company (previously approved by the Council's Transport Officer) who shall perform all the Contractor's undertakings in every respect (notwithstanding that the Contractor shall remain liable to the Council for the performance thereof) and shall display a notice visible to intended Passengers that the vehicle is on hire to the Contractor.
- 3.4 Where sub-contracting is agreed by the Council, it shall be the responsibility of the Contractor to ensure that the sub-contractor complies with the terms of this contract in respect of the provision of the sub-contracted Services as if they were a party to the Contract.

Surveys and Monitoring

- 3.5 The Contractor shall permit the Council's duly authorised representative to travel free of charge on any of the Contractor's Vehicles while being used on any of the journeys shown in Schedule 1 for the purpose of collecting information on Passenger journeys, ensuring the safety and good conduct of Passengers, to inspect the Contractor's Vehicles whether or not upon their premises and to ensure the Vehicles are being run in accordance with Schedule 1.

Complaints

- 3.6 The Contractor shall reply promptly to all complaints about the Service and shall keep records of such complaints for a minimum period of 18 months. The Contractor shall within 10 days of receipt of the complaint or representation provide the Council with a copy of any written complaints or representations received relating to the operation of the Services together with a copy of any reply thereto.

Accidents

- 3.7 The Contractor shall notify the Council immediately with the details of any accidents involving loss of life or injury to persons or serious damage to any property or vehicles during performance of the Services, and supply a written report within 24 hours of the incident and within 14 days will provide the Council with a copy of any report of any such incident to the Police or the Contractor's insurers.

- 3.8 The Contractor shall notify the Council within 24 hours of any minor accidents or incidents which do not result in injury or damage or any minor accident or incidents which could of led to injury or damage and submit a written report of the incident to the Council within 48 hours.
- 3.9 The procedure for dealing with breakdowns is the same as for accidents, please see 3.7

Passenger Injury & Illness

- 3.10 In all but the most minor injuries or illnesses the Passenger must be referred or taken to hospital. The Council must be notified with the names of the Passengers as soon as possible.

Quality of Service Monitoring

- 3.11 The Council operates a performance database in order to monitor the quality of service provided by contractors. The Contractor must ensure measures are taken to rectify any non-conformances.

In some cases the Council will monitor certain routes or operators for a period of time, issue warnings or meet with individual operators to discuss any performance concerns in order to try and work together to improve performance.

4. VEHICLE DEFECTS

- 4.1 If any Vehicle is found to be defective and/or not in accordance with the Contract standard, the Council may serve on the Contractor a Defect Notice requiring the listed defects to be corrected within the timescales stated in the Defect Notice.
- 4.2 If the Contractor fails to comply with any Defect Notice then the Council may terminate this Contract in accordance with the provisions of Clause 16.
- 4.3 The Contractor must notify the Council without delay of any Immediate Prohibition Notice that has been or will be issued by the Department of Transport in respect of any vehicle owned or operated by the Contractor.
- 4.4 The Council may instruct the Contractor not to use any Vehicle which is found to have a defect which could affect the safety or well-being of the Passengers and in such circumstances the Contractor will be required to provide at his own expense an alternative Vehicle for the performance of the Services under this Contract.

5 INDEMNITY AND INSURANCE

- 5.1 The Contractor shall be liable for and shall indemnify the Council against any expense liability loss claim or proceedings whatever arising under any statute or at common law in respect of personal injury to or death of any person whomsoever (which shall be deemed to include any Passenger) or damage to any property real or personal arising out of or in the course of or caused by the provision of the Service in accordance with this Contract unless due to any act or neglect of the Council or any person for whom the Council is responsible.
- 5.2 Without prejudice to its liability to indemnify the Council as aforesaid the Contractor shall maintain such insurance's as are necessary to cover their aforementioned liabilities to include third party and passenger liability in respect of all vehicles used in the provision of the Service and public liability insurance (both to a minimum of £5m. for any one claim) together with compulsory insurance under the Employers Liability (Compulsory Insurance) Act 1969 or any subsequent amendment thereof (to a minimum of £10m for any one claim) and any other category of insurance which the Council may require from time to time.
- 5.3 The Contractor must send to the Council at its own expense copies of all insurance certificates and schedules, cover notes on renewal or where changes have occurred to the policy. Failure to comply with this requirement may result in termination of the Contract.
- 5.4 The Contractor shall immediately notify the Council in writing if for any reason whatsoever any policy of insurance is cancelled by its insurers or for any reason becomes inoperative. In entering into this Contract the Contractor authorises the Council to approach the Contractor's insurers to verify any information as to insurances held by the Contractor for the performance of this Contract.
- 5.5 The Council shall not be liable for any claim that may be made by the Contractor in respect of any damage that may be caused to the Vehicle(s) in performing the Services.

MOT & PSV Test certificates

- 5.6. The Contractor must send to the Council at its own cost copies of all MOT & PSV Test Certificates on renewal for any vehicle used to operate the Services.

6 COMMUNICATIONS

- 6.1 The Contractor shall ensure that its Staff shall have an appropriate means of communication available whilst operating the Service in case of emergency such as but not limited to radio or mobile phone devices.

7. CAPACITY

Where the Contractor permits a Vehicle to be used, with capacity below that required for the performance of the Services as specified in this Contract, (unless previously agreed in writing by the Council) this will be considered as a breach of Contract. Notice of such a breach of Contract will be communicated to the Contractor in writing by the Council and if the Contractor either does not respond, in the reasonable opinion of the Council, fails to provide a satisfactory response within 30 days of the date of the communication from the Council, the breach will be presumed admitted. Three admitted breaches of this nature within any three month period during the term of this Contract shall be regarded as a persistent breach of contract pursuant to clause 16.1(a) and give us rise to the Council's rights of termination.

8. CONTRACTOR STAFF REQUIREMENTS

- 8.1 The Contractor must ensure that any Driver or Passenger Assistant is registered with and approved by the Council prior to a Driver or Passenger Assistant being used to operate the services under this Contract. Driver and Passenger Assistant registration forms are available upon request from the Council. The Driver and Passenger Assistant registration forms should be completed by the Contractor and not the individual driver or passenger assistant. The Driver and Passenger Assistant registration forms require the following information to be submitted:

Full name
Address
Date of birth
Category of Vehicles authorised to drive.
Driver registered as a Private Hire or Hackney Carriage Licence holder
Any relevant training undertaken
Whether or not a Disclosure and Barring Service (DBS) check has been carried out on the Driver/Passenger Assistant. If yes, the date of the DBS check and the responsible body for carrying out the DBS check

- 8.2 If requested, the Contractor at its own cost must ensure that copies of driving licences are forwarded to the Council for any

Driver who may be employed in the operation of this Contract.

- 8.3 If requested, and upon 14 days' notice, the Contractor must ensure that original driving licences are available for inspection by the Council's Transport Officer.
- 8.4 Failure to comply with the Council's registration requirements as set out in clause 8.1 above for Staff may result in the termination of this Contract.
- 8.5 The Contractor must inform all Staff that this information will be passed to the Council and that the Council will only use the information in accordance with the current Data Protection Legislation.
- 8.6 The Contractor must have a suitable and appropriate recruitment policy and must obtain 2 independent satisfactory references for all Drivers and Passenger Assistants before confirming employment, one of which must be from the most recent employer. Any gaps in employment history must be explained. A copy of the Contractors recruitment policy is to be made available to the Council on request.
- 8.7 The Contractor must instruct Staff not to offer gifts to or accept gifts from Passengers. Where Staff do engage in any such behaviour, the Council may require the Contractor to remove the offending member of staff from the operation of the Contract.
- 8.8 The Contractor shall not, without first obtaining written consent from the Council, use a Driver or Passenger Assistant in the operation of this Contract where the Council has previously required that such a Driver or Passenger Assistant is removed from the provision of other services operated with or on behalf of the Council. The Contractor must ensure that it obtains written confirmation from every Driver or Passenger Assistant that he/she has not previously been removed from any Contract with or on behalf of the Council.
- 8.9 The Contractor should understand that Shropshire Council is committed to the highest possible standards of openness, probity and accountability, and it encourages the Contractor and the staff to inform the Council if they have any concerns about transport provision (e.g. speeding, dangerous driving, problems with a vehicle, improper conduct and mismanagement) or any other unlawful acts.
- 8.10 The Contractor will ensure that all Staff used to provide the Service have access to copies of the Council's whistle blowing policy "Speaking up about wrongdoing" and that the policy content is fully explained to them.

9 SUPERVISION

- 9.1 The Contractor's Staff shall take all reasonable steps to maintain order amongst Passengers during a journey. The Contractor must instruct Staff not to get involved in any personal, suggestive or intimate conversations with any Passengers, and neither must they touch, hold or make any other physical contact with Passengers other than may be reasonably required for the purpose of assisting Passengers to get into or out of a Vehicle if appropriate, or in the case of emergencies. Any disorder must be reported to the Council as soon as possible by telephone or in writing.
- 9.2 Contractors will ensure that all Staff have copies of, understand and will adhere to at all times to the Council's Code of Conduct for Operators, Drivers and Passenger Assistant's engaged in the provision of the Services for the Council.

10 ALCOHOL, DRUGS & SMOKING

- 10.1 The Contractor and its Staff shall not smoke or permit smoking on any Vehicle and the Contractor shall at its own expense supply and fix "no smoking" notices in prominent positions within all Vehicles.
- 10.2 The Contractor shall ensure that all Staff and Passengers are prevented from drinking alcohol or taking any illegal substances whilst travelling on any Vehicle and that Staff do not carry out or attempt to carry out their duties whilst under the influence of alcohol or any drugs (prescribed, illegal or otherwise) which may affect their ability to perform their obligations under the Contract.
- 10.3 The Contractor shall use its reasonable endeavours to ensure that the provisions of Clause 10.1 - 10.2 are complied with.
- 10.4 The Contractor shall inform all Staff that if they have reasonable cause to believe that a Passenger is under the influence of illegal substances, drugs or alcohol or is behaving in such a manner and to such an extent that it puts the Staff, other Passengers or road users at serious risk of physical harm they should refuse to transport that Passenger.

11 SUSPENSION BY THE COUNCIL

- 11.1 In the event of a failure by the Contractor to comply with any of the terms of this Contract or if the Council has reasonable grounds to question the Contractors ability to perform the Services, the Council may by written notice suspend the Contract or the Contractor for a reasonable period of time, whilst

the future of the Services and the Contractor's ability to perform the Services and carry out the Contract is investigated by the Council. During the period of suspension the Council and Contractor agree that all payments under the Contract will cease. After due consideration the Council may at its sole discretion either reinstate the Contractor or reinstate the Contractor's performance of the suspended Services or (in the event that the failures by the Contractor to comply with the conditions of this Contract are proven and cannot be remedied or that the Contractor is unable to continue to perform the Contract) terminate the Contract without penalty. Reasons for the Council's decision will be communicated to the Contractor in writing within 14 days.

- 11.2 For a PCV, suspension may occur in any one of (but not limited to) the following circumstances:
- (a) failure to possess a current valid Operator's Licence issued by the Traffic Commissioners;
 - (b) failure to comply with the authorisation of the Operator's Licence;
 - (c) failure to effect or provide evidence of suitable and adequate motor or public liability insurances;
 - (d) service of a Prohibition Notice on any vehicle operated by the Contractor;
 - (e) failure of a Driver to have the required licence to drive the Vehicle;
 - (f) where any Vehicle is in the opinion of the Council's Vehicle Inspector unroadworthy;
 - (g) any other reason which makes any journey under the Contract either unlawful or in the opinion of the Council's Vehicle Inspector unsafe;
 - (h) failure to comply or maintain compliance with a Defect Notice;
 - (i) failure, in the reasonable opinion of the Council, to provide appropriate or satisfactory customer care;
 - (j) where, in the Council's reasonable opinion, non compliance with the Contract may occur for whatever reason;

- 11.3 For a Hackney Carriage or Private Hire Vehicle, suspension may occur in any one of (but not limited to) the following circumstances:
- (a) failure to possess a current valid Hackney Carriage and/or Private Hire Licence issued by the appropriate Council;
 - (b) loss of entitlement for any Vehicle operated by the Contractor to carry a Plate;
 - (c) failure to comply with the conditions of the Operator's Licence or Plate;
 - (d) failure to effect or provide evidence of suitable and adequate motor or public liability insurances;
 - (e) service of a Prohibition Notice on any Vehicle operated by the Contractor;
 - (f) failure of a Driver to have the required licence to drive the Vehicle under the Contract;
 - (g) where any Vehicle is in the opinion of the Council's Vehicle Inspector unroadworthy;
 - (h) and any other reason which makes any journey under the Contract either unlawful or in the opinion of the Council's Vehicle Inspector unsafe;
 - (i) failure to comply or maintain compliance with a Defect Notice;
 - (j) failure to provide appropriate and satisfactory customer care;
 - (k) where, in the Council's reasonable opinion, non compliance with the Contract may occur for whatever reason;
- 11.4 The Contractor shall immediately notify the Council of any occasion or circumstance which falls within the matters contained in this Clause 11.

12 EQUALITIES

- 12.1 The Contractor and any sub-contractor employed by the Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race or ethnic origin, disability, gender, sexual orientation, religion or belief, or age in the supply and provision of the Services under this Contract or in its employment practices

- 12.2 Without prejudice to the generality of the foregoing, the Contractor and any Sub-Contractor employed by the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 12.3 In addition, the Contractor and any Sub-Contractor employed by the Contractor in providing the Services to the Council will comply with the general duty imposed on local authorities by Section 149 of the Equality Act 2010 to eliminate discrimination, harassment and victimisation and promote equality of opportunity between persons who share a protected characteristic and those who do not share it and to foster good relations between persons who share a protected characteristic and those who do not share it .
- 12.4 The Contractor and any sub-contractor employed by the Contractor will take all reasonable steps to observe as far as possible the Codes of Practice produced by the Equalities and Human Rights Commission, which give practical guidance to employers on the elimination of discrimination.
- 12.5 In the event of any finding of unlawful discrimination being made against the Contractor or any sub-contractor employed by the Contractor during the Contract period, by any court or employment tribunal, or any adverse finding or formal investigation by the Equalities and Human Rights Commission over the same period, the Contractor shall inform the Council of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 12.6 The Contractor and any sub-contractor employed by the Contractor will provide a copy of its policies to the Council at any time upon request and in any event at least once a year during the duration of this Contract. In addition, the Council may reasonably request other information from time to time for the purpose of assessing the Contractor's compliance with the above conditions.

PAYMENT AND FINANCE

Basis of Payment

- 13.1 The basis for payment shall be the application of a daily, weekly or yearly price per Service. This daily, weekly or yearly price shall be based on the price as specified in the Tender or quotation/estimate and no increase in price will be permitted during the first six months of the Contract. After this period a variation in price may be permitted entirely at the Council's discretion subject to a request being submitted to the Council in

writing by the Contractor at least one month in advance of the proposed commencement of the variation in price.

- 13.2 In the case of severe weather conditions where the Service, or part of a Service cannot operate the Council will make the following payments to the Contractor:
- For the first day of severe weather – 100% payment of the contract Price for the non-operational Service, as specified in 13.1; and
 - for second consecutive day of severe weather, and any subsequent consecutive day of severe weather after that – 50% payment of the Contract Price for the non-operational Service, as specified in 13.1
- 13.3 When a service is cancelled within 24 hours of the time the Service is due to be provided, the Contractor shall be paid the daily price of the route. If a Service is cancelled over of 24 hours prior to the time the Service is due to be provided then payment shall not be made for that cancelled service. For the avoidance of doubt notification of cancellation is based on a 24 hour period and not 24 hours of a Working Day.
- 13.4 In the cases where an establishment may close unexpectedly, in unforeseen or emergency circumstances e.g. Industrial Action then the Contractor may charge 50% of the daily cost.
- 13.5 Where a Passenger has been added to an existing route and a cost has been added for that particular Passenger by the Contractor then the Council will expect the same reduction if that passenger is then removed from the route or does not travel for 5 consecutive days or more.
- 13.6 If a passenger does not travel on a route for 5 consecutive days or more or has been permanently removed from a route then the Council may seek a reduction in the cost for the route. We will always seek a reduction if the mileage decreases and is in excess of 10% of the total daily mileage.
- 13.7 Contractors must operate within the needs of the contract. This may include Bank/Public Holidays. Please refer to individual contracts and tenders.

Invoice Submission

- 13.8 The Contractor shall within 28 days from the last day of each month or within 7 days from the last day of an accounting period specified by the Council, deliver to the Council an account or invoice, giving sufficient details and full particulars of the sum

payable to them under the Contract for the preceding month/accounting period.

- 13.9 The Council will, within 30 days of receiving each correctly completed and authorised claim form/invoice, pay to the Contractor the sum calculated in accordance with the agreed Contract Price, provided that the Council is on each occasion satisfied as to the provision of the Service and to the accuracy of the information contained on the claim form.

Invoices should be forward to:
Passenger Transport Commissioning Group
Shropshire Council
Shirehall
Abbey Foregate
SHREWSBURY
SY2 6ND

Price Increases

- 13.10 The Council will after the expiry of the first six months of the term of this Contract and upon written request from the Contractor review the Contract price in the following September and in September of each year of the duration of the Contract thereafter to determine any adjustments in the Contract Price that may be due to reflect any changes in the costs of operating the Service that may be applicable for the corresponding year.

Recovery of Money

- 13.11 If at any time during the operation of this or any other Contract money becomes due from the Contractor to the Council then the Council reserves the right to deduct such sum or sums from any money then payable to the Contractor and due to the Council in settlement of any such sums outstanding to the Council.
- 13.12 Where any overpayment has been made by the Council in respect of the Services and there are insufficient funds to enable a deduction to be made in accordance with Clause 13.11 above, then the Contractor shall within 30 days of receiving a demand for such overpayment, make payment to the Council of such sum or sums as may be requested.
- 13.13 In the event of the Council sustaining losses as a result of the Contractor's unsatisfactory performance (such decision to be at the direction of the Council's Transport Officer or such other person approved by them) of the Contract the Council may recover (including by way of legal proceedings) any and all such losses from the Contractor.

Records

- 13.14 All books, vouchers, accounts and records relating to the operation of this Contract shall be maintained by the Contractor at their place of business and shall be available for inspection by the Council's Transport Officer at all reasonable times during the term of this Contract and for three years after the making of the final payment by the Council, provided that, should the Contractor want to destroy any records within the three year period they may do so after obtaining the written permission of the Council's Transport Officer. The Contractor must at all times during normal working hours afford to the Council's Transport Officer access to all information which the Contractor may reasonably be expected to have or is required to retain under this Contract in order that the Council's Transport Officer may monitor the operation of the Contract or audit the claims for payment.
- 13.15 The Contractor will at its own expense supply to the Council annually, such information as the Council may reasonably require in connection with this Contract.

Deductions

- 13.16 The Contractor must maintain a record of all mileage and journeys which are not completed in accordance with this Contract and all other failures to comply with the conditions of this Contract including details of the cause in each case and must make such records available to the Council upon request. For Local Bus Service Contracts Schedule 2 Clause 8.1 applies.
- 13.17 If in the reasonable opinion of the Council the Service is not being operated in an effective manner or if the Service has not been provided in accordance with the terms of the Contract having taken full and reasonable account of the explanation provided by the Contractor then the Council shall have the right to make deductions in the amount.
- 13.18 The Council reserves the right to deduct appropriate sums from the amounts payable for the maintenance of the Service and in the case of non operation of all or part of the Service in accordance with the terms set out in this Contract.

14 CONFIDENTIALITY AND DATA PROTECTION

- 14.1 The Contractor will keep confidential any information it becomes aware of by reason of the operation of this Contract including Council Data and Personal Data and shall not use divulge or communicate the same to any third party, except as

reasonably necessary for the proper performance of this Contract, without the express consent in writing of the Council.

- 14.2 The Contractor shall implement appropriate organisational and technical measures to ensure the integrity and security of information obtained including but not limited to ensuring that Council Data and Personal Data is not stored, copied, disclosed or used except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Council and in particular shall ensure that Council Data and Personal Data is not stored on any portable equipment or storage device or media unless encrypted to protect the Council Data and Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure.
- 14.3 The Contractor shall at all times comply with the provisions of the Data Protection Legislation and shall provide the Council with evidence of such measures upon request.
- 14.4 The Contractor shall use its reasonable endeavours to prevent the unauthorised publication or disclosure of any such information or documents.
- 14.5 The Contractor shall ensure that its Staff, employees and agents are aware of and comply with this clause and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of any breach of this clause.
- 14.6 The provisions of this clause shall survive the expiration or termination of this Contract.

15 TRANSPARENCY

- 15.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract and any associated tender documentation provided by the Contractor (the Tender Submission) is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of this Contract or the Tender Submission is exempt from disclosure in accordance with the provisions of the FOIA.
- 15.2 Notwithstanding any other term of this Contract the Contractor hereby gives his consent for the Council to publish this Contract and the Tender Submission in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 15.3 The Council may consult with the Contractor to inform its

decision regarding any exemptions but the Council shall have the final decision in its absolute discretion.

- 15.4 The Contractor shall assist and cooperate with the Council to enable the Council to publish this Contract and the Tender Submission.

16. TERMINATION

16.1 The Council shall be entitled to terminate this Contract or any of the Services specified in the Schedule or schedules under this Contract forthwith by notice in writing to the Contractor given at any time on one of the following grounds

- (a) if the Contractor shall be in a (singular) breach or persistent breach or demonstrates persistent poor performance or fails to observe or perform any of their obligations under the Contract; which are not capable of remedy in accordance with 16.1 (b) below;
- (b) if the Contractor commits any breach of any of its obligations hereunder which is capable of being remedied, and following service of a written notice by the Council specifying the breach, the action to be taken to remedy the breach and the timescale for remedy (the Remedial Notice) the Contractor fails to remedy the breach in accordance with the Remedial Notice.
- (c) If the Council has reasonable grounds for believing that the Contractor will be unable to fulfil the terms and conditions of this Contract;
- (d) if the Contractor becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986 or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- (e) if the Contractor has a receiver, manager, administrator or administrative receiver appointed over all or any parts of its undertaking, assets or income;
- (f) if the Contractor has a petition presented to any court for;
- (g) if the Contractor ceases all threatens to cease to carry on all or part of its business or has passed a resolution for its winding up or an administration order;
- (h) if the Contractor has any distant, execution or other processes levied or enforced on any property and is not paid out, withdrawn or discharged with 14 days;
- (i) If the Contractor has fixed or adjusted the prices/discount

offered by or under or in accordance with any agreement with any other person or company or the Contractor has communicated with any other person other than the Council the amount of the offer accept where disclosure of the approximate amount of the offer was necessary in order to obtain any insurance premium or the Contractor has entered into agreement with any other person or company that the person or company shall refrain from making an offer;

- (j) if at any time it becomes known to the Council that the Contractor or any person employed by the Contractor or acting on its behalf whether with or without the knowledge of the Contractor shall have
 - i) offered, paid or given or agreed to give directly or indirectly to any person any gift in money or any other form or any financial or other advantage to any member, employee or agent of the Council as an inducement or reward in relation to the obtaining or execution of this Contract or any other Agreement with the Council; or
 - ii) favoured or discriminated against any person in relation to this or any other Contract or Agreement with the Council; or
 - iii) committed an offence in relation to any Agreement with the Council under the Bribery Act 2010 or Section 117(2) Local Government Act 1972 (as amended).
- (k) If an Immediate Prohibition Notice is issued by the Department of Transport in respect of any vehicle owned or operated by the Contractor.

16.2 This Contract may also be terminated by either Party in accordance with the provisions contained in Schedule 2 paragraph 9 of this Contract.

16.3 The Party giving notice in writing to terminate the Contract shall provide a full explanation of the reasons for termination.

16.4 The Contractor shall indemnify the Council against any loss or damage resulting from the termination of the Contract including (without prejudice to the generality of the foregoing) any additional cost arising from having the Contract work carried out by an alternative contractor as set out in Schedule 2 paragraph 9.2.

16.5 The Council shall, following notice of termination cease to be under any obligation to make any payments to the Contractor until all costs, loss and/or damages resulting from or arising out

of the termination of the Contract have been calculated.

16.6 When the total costs, loss and/or damages resulting from or arising out of the termination of the Contract have been calculated and the Contractor is to receive a payment of money due then this will be made by the Council to the Contractor. If the calculation provides for a payment to be made by the Contractor to the Council then the Council may recover such sum in accordance with provisions of Clause 12 and where any funds that may be held by the Council prove insufficient to satisfy its claim against the Contractor then any outstanding sum shall become recoverable by the Council as a debt.

16.7 This Contract may be terminated immediately by notice in writing to the Contractor if the said Contractor is in material breach of this Agreement and shall have failed (where the breach is capable of remedy) to remedy the breach within 14 days of the receipt of a request in writing, such a request setting out the breach and indicating that failure to remedy the breach may result in termination of this agreement.

17 CONSEQUENCES OF TERMINATION OR EXPIRY

The Contractor will on the expiry or termination of the Contract and at its own cost return (or at the request of the Council destroy) all information obtained in undertaking the performance of the Contract.

18 NOTICES

Any notice to be served by either Party in respect of this Contract shall be in writing and sent to the address of the recipient set out in this Contract or such other address in England as the recipient may designate by notice given in accordance with the provisions of this clause. Any such notice may be delivered personally or by first class pre-paid letter or facsimile transmission to 01743 254382 and shall be deemed to have been served by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when despatched.

19 MEDIATION/RESOLUTION OF DISPUTES

If any significant dispute or difference shall arise between the Parties as to the construction of this Contract or any matter arising under it or in connection with it then the same shall be dealt with as follows:-

- 19.1 day to day issues will be dealt with by the Council's Transport Officer and the Contractors appointed representative who shall be notified to the Council, and both parties will act in good faith and use their best endeavours to resolve any dispute.
- 19.2 If the issue cannot be resolved pursuant to 19.1 above then the matter shall be referred to the Council's Transport Officer and where the Contractor is a limited company, one of its Directors or where the Contractor is a Partnership, one of its Partners authorised to act on behalf of the Partnership or where the Contractor is an individual, the Contracting person or such other person whom the Contractor may nominate to the Council for this purpose. The parties will act in good faith and use their best endeavours to resolve any dispute.
- 19.3 If the dispute cannot be resolved as in 19.1 and 19.2 above then such dispute may be referred by either party to the Centre for Dispute Resolution 7 St Katherine's Way London E1 9LB ("CEDR") and the Parties shall attempt to settle such dispute in accordance with "CEDR" Model Mediation Procedures and Agreement;
- 19.4 Neither Party may commence any court proceedings in relation to any dispute arising out of this Contract until the Parties have attempted to settle by mediation and that mediation procedure has terminated;
- 19.5 If the dispute is not settled by the Parties within 42 days from when the mediation procedure was instituted by a notice from either Party to the other then the Parties reserve the right to take whatever action is deemed appropriate including the instigation of legal proceedings to resolve the dispute.
- 19.6 None of these mediation clauses will apply where the Council considers that there has been a fundamental breach of contract by the Contractor (which cannot be remedied) and in such circumstances the Council reserves the right to terminate this Contract with immediate effect.

20 VARIATIONS

- 20.1 Without prejudice to any other provisions of this Contract no omission from, addition to or variation of this Contract shall be valid or of any effect unless it is agreed in writing and signed by the Council's Transport Officer or such other person nominated by the Council.

20.2 Where any variation or Schedule conflicts with this Contract it shall be at the discretion of the Council's Transport Manager to decide which shall have precedence.

21 INDEPENDENT CONTRACTOR

The Contractor is independent and nothing in this Contract shall render it an agent or partner of the Council and the Contractor shall not hold itself out as such nor have the right or power to bind the Council to any obligations.

22 WHOLE CONTRACT

This Contract and its Schedules contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals oral or written.

23 WAIVER

Failure by the Council at any time to enforce any provision of this Contract or to require performance by the Contractor of any of the provisions of the Contract shall not affect the validity of the Contract or any part of it and shall not be a waiver of such provision or of the right at any time subsequently to enforce any provision in accordance with the terms.

24 SEVERANCE

If any provision of the Contract shall become or shall be declared by any Court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

24 EUROPEAN FRAMEWORK AGREEMENT

Unless in the opinion of the Council's Transport Officer exceptional circumstances prevail, contracts will only be awarded to Contractors who have been included on the Council's European Framework Agreement.

25 FORCE MAJEURE

25.1 Neither the Council nor the Contractor shall be in breach of this Contract nor liable for any failure or delay in performing their obligations under this Contract where it is directly caused,

arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("Force Majeure Event"), provided that:-

25.1.1 any delay by a sub-contractor or supplier of the Party who is delayed will not relieve that Party from liability for delay except where the delay is beyond the reasonable control of the sub-contractor or supplier concerned; and

25.1.2 staff or material shortages or strikes or industrial action affecting only the Party who is delayed will not relieve that Party from liability for delay.

25.2 If a Party is subject to a Force Majeure Event it shall not be in breach of this Contract provided that:-

25.2.1 it promptly notified the other Party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and

25.2.2 it has used its reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible

in which case the performance of that Party's obligations will be suspended during the period that those circumstances persist and that Party will be granted a reasonable extension of time for performance up to a maximum equivalent to the period of the delay.

25.3 Save where that delay is caused by the act or failure to act of the other Party (in which event the rights, remedies and liabilities of the Parties will be those conferred by the other terms of this Contract and by law):-

25.3.1 any costs arising from that delay will be borne by the Party incurring the same; and

25.3.2 either Party may, if that delay continues for more than 5 weeks, terminate this Contract immediately on giving notice in writing to the other. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Contract occurring prior to such termination.

26 RIGHTS OF THIRD PARTIES

The Parties to this Contract Council do not intend that any of its terms will be enforceable by any person not a party to it by

virtue of the Contracts (Right of Third Parties) Act 1999.

27 LAW

It is the responsibility of the Contractor to comply with all relevant European and English legislation. This Contract shall be governed by and construed in accordance with English Law and the Parties agree to submit to the exclusive jurisdiction of the English Courts.

28. SUSTAINABILITY

The Contractor will at all times use its best endeavours to source all material used in the operation of the Services where applicable from sustainable and renewable resources.

29 FREEDOM OF INFORMATION ACT 2000

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

29.2 The Contractor shall notify the Council of any Commercially Sensitive Information provided to the Council together with details of the reasons for its sensitivity and the Contractor acknowledges that any lists or schedules of Commercially Sensitive Information so provided are of indicative value only and that the Council may be obliged to disclose such information.

29.3 The Contractor shall and shall procure that its Sub-contractors shall:

29.3.1 transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

29.3.2 provide the Council, at the Contractor's expense, with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and

29.3.3 provide, at the Contractor's expense, all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

- 29.4 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations and in considering any response to a Request for Information the Council may consult with the Contractor prior to making any decision or considering any exemption.
- 29.5 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 29.6 The Contractor acknowledges that (notwithstanding the provisions of this Freedom of Information clause) the Council may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
- 29.6.1 in certain circumstances without consulting the Contractor; or
- 29.6.2 following consultation with the Contractor and having taken their views into account;
- provided always that where sub-clause 29.6.1 above applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 29.7 The Contractor shall ensure that all Information required to be produced or maintained under the terms of this Contract, or by law or professional practice or in relation to the Contract is retained for disclosure for at least the duration of the Contract plus one year together with such other time period as required by the Contract, law or practice and shall permit the Council to inspect such records as requested from time to time.
- 29.8 The Council shall in no event be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA, or any other Law, of any information (including Exempt Information) whether relating to this Contract or otherwise relating to any other party.

30. RISK ASSESSMENT

- 30.1 With immediate effect the Contractor will assess the risks associated with operating each transport route on an annual basis or following any changes made on the route (the Risk Assessment) and will submit these Risk Assessments to the Council.
- 30.2 In relation to the Vehicle and the route the Contractor will put in place all required safe operating practices and control measures. This process shall be included in the route Risk Assessment.
- 30.3 Any risk assessment forms for Passengers should be kept in a secure location at all times and only pertinent information should be held in the Vehicle.
- 30.4 The Contractor must permit the Council's Route Assessment Officer to travel free of charge on routes where necessary and capacity allows.

31. VEHICLE COMPLIANCE – SEATBELTS

- 31.1 All Vehicles that perform the Service on educational routes must be fitted with appropriate seat belts to all passengers seats in accordance with the Road Vehicles (Construction & Use) Regulations 1986 (SI 1986/1078) (as amended) and Operators must also comply with the requirements of the Motor Vehicle (Wearing of Seat Belts) (Amendment) Regulations 2006.
- 31.2 Notwithstanding clause 31.1 above the Operator must support compliance with regard to the Council's policy on seatbelt wearing. A copy of this policy is available on request.

32 TRANSFERS OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006

TUPE may apply in some cases and Contractors are advised to take their own legal advice.