



Transportation Services

General Terms and Conditions of Contract for the Provision of Passenger Transport Services to the East Riding of Yorkshire Council using

Passenger Carrying Vehicles (PCV) and Community Transport Vehicles

1st May 2021

TERMS AND CONDITIONS OF CONTRACT

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1. DEFINITIONS

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

“Accounting Period” means in most instances a period of four weeks duration for which payment of the Period Contract Payment is due.

“Approved Driver List” means a central list held by the Council of those drivers authorised to carry out passenger services contracts on behalf of a Contract Operator

“Approved Driver” means those licensed drivers registered as such with the Council on the Approved Driver List who have provided relevant evidence (as set out in the Specification) to the Council and considered to be ‘safe and suitable’ drivers to drive in accordance with the Council’s specific requirements.

“Change” means a change to the Services made in accordance with Clause 15.

“Closed Contract” means a contract not operated as a local registered bus service.

“Commencement Date” means the date the Services are to commence as notified in the Letter of Award.

“Concessionary Fares Scheme” means the Scheme established by the Council for the provision of concessionary fares to certain categories of the travelling public as amended from time to time.

“Contract” means these terms and conditions of contract together with the Letter of Award, the Service Schedule, the Invitation to Tender and any other

documentation expressly incorporated into the Contract by the Letter of Award and any subsequent changes made by agreement between the parties.

“Contract Manager”

means the person nominated by the Contract Operator to oversee and manage the Contract.

“Contract Operator”

means the individual, company, legal partnership or other legal entity whom the Contract is awarded and named in the Letter of Award.

“Contract Period”

means the period specified in the Letter of Award unless otherwise terminated or extended in accordance with the provisions of the Contract.

“Contract Price”

means the amount specified in the Letter of Award being the total value of payments to be made under the Contract.

“Council”

means East Riding of Yorkshire Council or any successor body.

“Employee”

Means an Approved Driver of the Contract Operator or those operating under the instruction of the Contract Operator and registered as being so with the Council prior to them working on the Contract.

“Force Majeure”

means any event or occurrence which is outside the reasonable control of the either party concerned and which is not attributable to any act or failure to take preventive action by the party concerned including without limitation, war, national emergency, flood or, earthquake. It does not include (1) any industrial action by Employee or occurring within the Contract

Operator's organisation or within the organisation of any sub-contractor of the Contract Operator; or (2) any failure by the sub-contractor's to deliver.

"Invitation to Tender"

means the documents issued by the Council inviting the Contract Operator to submit a tender.

"Letter of Award"

means the letter sent by the Council awarding the Contract to the Contract Operator.

"Lost Mileage Deductions"

means deductions to be made from any Period Contract Payment for a Service (or part thereof) which has not operated or is deemed not to have operated (in whole or part) in accordance with clause 12.3.

"Minimum Cost Contract"

means those contracts for which the Contract Operator tenders on the basis of his operating costs but the Council receives the fare revenue.

"Minimum Subsidy Contract"

means those contracts which the Contract Operator tenders on the basis of his operating costs and receives the fare revenue.

"Passenger"

means any person (save for any employee, agent or representative of the Contract Operator) travelling in a Vehicle during the performance of the Services.

"Passenger Revenue"

means the fares collected on the Services operated in the performance of the Contract including any on bus sales of prepaid tickets (except to the extent that there is agreement between the Contract Operator and the Council to the contrary or that the sale relates to the sale of a multi operator ticket and the Contract Operator is obliged to pass on that revenue to the body

administering the sale proceeds of multi operator tickets).

“Passenger Revenue/Performance Return”	means the four-weekly statement which the Contract Operator is required to submit setting out the number of passengers carried, the fares collected (Passenger Revenue), any instances of non-operation and such other information as may reasonably be required by the Supervising Officer.
“Period Contract Payment”	means the amount due to the Contract Operator (before any deductions or adjustments are made) for any Accounting Period.
“Route” or “Routes”	means a route or routes to be delivered by the Contract Operator as specified in the Service Schedule.
“Service Schedule”	means the schedule to the Contract which details the vehicle specification, the route for the service and the timetable to be followed for providing the Service.
“Service” and “Services”	means the public transport service(s) which the Contract Operator is required to provide in accordance with the Contract.
“Specification”	means the specification incorporated into the Contract in accordance with the Letter of Award.
“Supervising Officer”	means the Council’s representative nominated by the Council to oversee and manage the daily operations of the Contract.
“Ticketing Equipment”	means any equipment and/or software either of the Contract Operator or the Council used to issue tickets, record Passenger Revenue, record the use of passes and all

forms of prepaid travel, provide real time information and/or any other information.

“Vehicles”

means the vehicle or vehicles used to provide the Services which conforms to the requirements of the Specification and Service Schedule.

“Working Days”

means the days of operation of the Contract which are outlined in the Contract Schedule.

A reference to any Act of Parliament or to any Order Regulation Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same.

Words importing the masculine gender include the feminine gender. Words in the singular include the plural and vice-versa and words importing individuals shall be treated as importing corporations, companies and vice-versa.

Headings are for ease of reference only and shall not affect construction or interpretation of the Contract.

2. DURATION

- 2.1 The Contract will continue for the Contract Period unless terminated earlier in accordance with the terms and conditions of Contract.

3. CONTRACT OPERATOR'S OBLIGATIONS

- 3.1 The Contract Operator will at all times during the Contract Period provide the Route or Routes to the standard required by the Contract and in accordance with the Service Schedule and Specification issued by the Council.
- 3.2 For the operation of all Contracts it is the Contract Operator's obligation to warrant that it has obtained and will retain all licences, approvals, registrations, permits, insurances and any other matters legally required for the provision of the Services, before the services commence and will make these available for validation to the Council on request. Where these legal requirements become invalid the Council will deem this to be a breach and reserve the right to terminate the Contract in accordance with clause 17.
- 3.3 The Contract Operator will at all times exercise all skill, care and diligence in providing the Services.
- 3.4 The Contract Operator will at all times participate in the Concessionary Travel Scheme and allow travel for qualifying Passengers at the concessionary fare applicable at the time of travel. No claim for reimbursement under the Concessionary Travel Scheme shall be made for a Contract awarded on a Minimum Cost Contract basis.
- 3.5 Except where the Service being delivered is a taxi service, the Contract Operator will provide electronic data for analysis in an agreed format as approved by the Council.
- 3.6 Where the Council stipulates the fares to be charged by the Contract Operator then until such time as the Council notifies the Contract Operator of a variation the Contract Operator shall apply the fares so notified to it.
- 3.7 Where the fares to be charged by the Contract Operator for operating the Services are not stipulated by the Council then the fares charged will not be higher than the maximum fare charged and not be lower than the lowest fare charged by operators operating on the route or part thereof, or if there is no such comparable fare it will be in line with the prevailing fare scale in the area. The Contract Operator will provide the Supervising Officer with a current faretable for the Services and will make this available on request to Passengers. No change to fares will be made without the prior written agreement of the Supervising Officer (such consent not to be unreasonably withheld or delayed). The Contract Operator will use reasonable endeavours to ensure that all Passengers are charged the correct fare for the journey.

- 3.8 The Contract Operator shall at all times while providing the Services accept valid tickets that have been issued in advance by the Council and may refuse travel to Passengers who do not pay a fare or have a valid pass or permit. When deciding whether to refuse travel the Contract Operator should have regard to any national or local guidance issued in respect of refusing travel to specific groups of Passengers e.g. children or the elderly. Nothing in this clause 3.8 confers any obligation on the Contract Operator to carry the Passenger where to do so would mean that the vehicle capacity was exceeded nor any prepaid or other ticket issued by the Council confer any priority in respect of travel rights.
- 3.9 Without prejudice to the Council's rights under clause 9 (Performance Monitoring) the Contract Operator shall immediately notify the Council if it becomes aware that it will be unable to operate a Service or part thereof. Such notification must be made by telephone to the Supervising Officer and confirmed in writing.
- 3.10 The Contract Operator shall make every reasonable effort to run the Service in adverse conditions of snow, ice, fog, flood or any other extraordinary circumstances. In such conditions, the final decision on whether to run or not is left to the judgment of the Contract Operator. If the decision relates to an outgoing journey of a Route, it shall be deemed to apply to the return journey of the same Route. When the Contract Operator decides not to provide the Service because of the circumstances beyond his reasonable control, the Council will, after the first 24 hours of any disruption, pay only a proportion of the appropriate Contract Price for the journeys missed for a maximum of six (6) days in any financial year. Any such temporary cessation of Service in excess of the six day maximum will be without payment, except in exceptional circumstances as agreed with the Council. The proportion will be 75% for closed or Minimum Subsidy Contracts, and 50% for Minimum Cost Contracts. Details of, and reasons for, any journeys not run should accompany the invoice for the relevant period. Should the Contract not be delivered for any other reasons than detailed in this clause then the Council reserves the right to withhold full or pro rata payment to the Contract Operator.
- 3.11 Under no circumstances will the Contract Operator make any variation or change to the Services without the express written approval of the Supervising Officer. Where circumstances beyond the control of the Contract Operator prevent the specified route or timetable from being followed the Contract Operator shall adopt an alternative which is as close as practically possible to the specified Route and timetable. Any such alterations lasting for more than one day must be agreed with the Supervising Officer as soon as possible thereafter.
- 3.12 The Contract Operator shall advise the Supervising Officer of any regular problems experienced in complying with the specified Route and timetable. In the event of the Contract Operator reporting such problems to the Council it will co-operate with the Contract Operator to agree any changes required and shall agree to their implementation as soon as possible. Consent for any such change will not be unreasonably withheld.

- 3.13 If a Passenger tenders legal currency in an amount that covers the fare then provided such amount tendered does not exceed £20.00 the Contract Operator will not refuse to carry that passenger due to the fact that the Passenger does not tender the correct change for the fare or due to the fact that the Contract Operator has insufficient change on the vehicle at the time of boarding. This clause shall not oblige the Contract Operator to accept a denomination of currency if the Contract Operators policy is not to accept such currency due to the risk of fraud.
- 3.14 Drivers and Passengers shall be prohibited from smoking or carrying a lighted pipe, cigar, cigarette or electronic cigarette on all Services and appropriate signage shall be displayed. The Contract Operator shall take all reasonable steps to enforce such prohibition.
- 3.15 Where required in the Service Schedule, Vehicles will use ticketing equipment. Information from the ticketing equipment is a mandatory requirement of the Contract; this will be provided to the Council with necessary Passenger Revenue detail to inform Government returns. All Passengers who pay a fare must be issued with a ticket to the appropriate value, showing the appropriate Passenger category and the date of issue. A record must be kept of all Passengers who for whatever reason travel without payment of a fare.
- 3.16 Except for circumstances beyond the Contract Operator's reasonable control the Operator will at all times use the designated stands within bus stations and interchanges, subject to any changes which may be notified from time to time and also designated bus stops along the route of the Service.
- 3.17 In the event of any accident or incident occurring whilst the Contract Operator is undertaking the Contract, this must be notified to the Supervising Officer as soon as is reasonably practical, first by telephone and then followed up in writing. Where any Passengers are injured then contact must be made as soon as it is practicable to do so but within one hour of the accident/incident.
- 3.18 Where the Contract Operator has an educational establishment named in the Contract Schedule they shall ensure that they pick up and drop off within the grounds of the establishment or as close to the school gates as is reasonably practical to do so and ensuring no adverse impact on road safety. Any deviation from this can only be authorised by the Supervising Officer.
- 3.19 The Contract Operator shall at all times operate the level of service specified for the appropriate day of the week, with the exception of any days notified (e.g. Bank Holidays).

4. VEHICLES

- 4.1 In providing the Services the Contract Operator shall only operate Vehicles that meet or exceed the qualitative requirements contained in the Specification and Service Schedule.

- 4.2 Without prejudice to clause 4.1 above any Vehicle used in providing the Services will meet all the requirements of all relevant Acts of Parliament, Statutory Instruments, Orders or Regulations in force.
- 4.3 The Contract Operator will keep all Vehicles and associated equipment used to provide the Services in good and serviceable repair and in such condition both mechanically and in external appearance as is suitable for the proper performance by the Contract Operator of its obligations under the Contract.
- 4.4 All Vehicles will be equipped with heaters which must be used as necessary.
- 4.5 The Contract Operator will at all reasonable times with appropriate notice and subject to the Contract Operators obligations to the Traffic Commissioner to operate its services, permit the Supervising Officer access to any Vehicle or equipment used to provide the Services. The Supervising Officer (acting reasonably) shall be entitled to serve upon the Contract Operator a notice in writing requiring the Contract Operator to put any Vehicle into such condition (including mechanical and cleanliness) as is reasonably required for the proper performance of the Services at the Contract Operator's cost. The Contract Operator shall forthwith upon receipt of such notice cause all necessary works to be carried out in order to comply with such notice.
- 4.6 Without prejudice to the generality of clause 4.5 the Council shall have the right to inspect and audit (or to procure the inspection and audit of) the Contract Operator's systems of maintenance and repair.
- 4.7 The Contract Operator shall ensure that it has adequate vehicle and approved driver cover at all times, save for exceptional circumstances as agreed by the Council.
- 4.8 The Contract Operator must operate Vehicles which provide the specified seating capacity, and shall notify the Supervising Officer if this capacity is regularly found to be inadequate for any journey within the Contract, giving full details of the problem.
- 4.9 The Contract Operator will not use any open-top, vintage or similar vehicle in the performance of the Services without prior written agreement from the Supervising Officer.
- 4.10 The Contract Operator shall display on its Vehicles used under the Contract any notices as reasonably required by the Council, including if required an indication of the destination and route number of each journey on the front of the Vehicle at all times for the journeys operated under Contract.
- 4.11 The Contract Operator must obtain the Council's agreement for any proposals relating to the parking of Vehicles outside the boundaries of the Contract Operator's premises.

- 4.12 The Contract Operator shall ensure that Vehicles operated on this Contract display the same livery and fleet name for all Services delivered under the Contract. Any changes to livery or fleet names must obtain the prior consent of the Council in writing.
- 4.13 Upon request from the Council the Contract Operator shall ensure that the Council's monitoring staff are carried free of charge on any Vehicle operating a Service and allowed to conduct relevant surveys and to carry out inspections on such Vehicles. At all times such staff shall comply with all regulations covering the conveyance of Passengers (including any maximum to be carried) and shall at all times comply with the reasonable instructions of the approved driver in relation to the operation of the Vehicle or the Service.

5. LICENCES, REGISTRATIONS, ETC.

- 5.1 The Contract Operator shall be in possession of and keep in force an Operator's licence appropriate to and for the number and size of Vehicles to be operated. The Contract Operator shall notify the Supervising Officer within seven (7) days of any change to his Operator's licence and provide a copy of the current licence to the Supervising Officer within seven (7) Working Days prior to commencement of the Contract.
- 5.2 Where required under the Service Schedule, the Contract Operator shall be responsible for registering the Service with the Traffic Commissioner and paying any necessary fees. The cost of any subsequent variation to the registration requested by the Supervising Officer shall be invoiced to the Council with the next monthly account. The Contract Operator will provide a copy of the current registration document to the Supervising Officer, seven (7) Working Days prior to the commencement of the Contract.
- 5.3 If at any time any insurance, licence, approval, registration or other permission required to provide the Services is revoked, removed, restricted, suspended or amended or if the Contract Operator or any sub-Contract Operator shall have any action taken, or be called to public inquiry, by any competent agency or body including without prejudice to the generality the licensing authority, the Police, the Traffic Commissioner, the Health and Safety Council and DVSA, then the Contract Operator shall notify the Supervising Officer by telephone within one (1) working day and confirm this in writing.
- 5.4 If as a consequence of any matter referred to in clause 5.3 above the Contract Operator may no longer lawfully operate the Services or any part thereof then the Supervising Officer must be notified immediately and the Services or the relevant parts thereof (as appropriate) shall be suspended immediately and the Traffic Commissioner notified accordingly. Without prejudice to the Council's rights under clauses 17 and 19 (Termination and Recovery of Sums Due) if the Contract Operator's licence, approval, registration or permission is restored the Council may by written notice require the Services to be recommenced immediately. The Council may at any time while the Services or any part thereof are suspended terminate the Contract or part thereof in accordance with clause 17 (Termination).

5.5 The Contract Operator shall copy to the Council all relevant correspondence relating to any licence, approval, registration or permission lawfully required to operate the Services being removed, revoked, restricted, suspended or amended and keep the Supervising Officer fully informed within one (1) working day.

6. CONTRACT OPERATOR'S EMPLOYEES

6.1 The Contract Operator shall appoint a Contract Manager to act on his behalf for all purposes connected with the Contract and the Services and shall promptly notify the Supervising Officer of such appointment and any change thereto. Any notice, information, instruction, request, or other communication given or made to the Contract Manager by the Council shall be deemed to have been given or made to the Contract Operator. The service of any such notice shall comply with the provisions of clause 22 (Service of Notices).

6.2 The Contract Operator shall at all times during the Contract Period employ sufficient, qualified and adequately trained employees who, prior to their use in providing the Services have been advised to the Council and for whom the Council have agreed fulfil the requirements to be a safe and suitable to go on the Approved Driver List.

6.3 No Employee of the Contract Operator will in connection with the Services solicit any gift or gratuity from a Passenger.

6.4 The Contract Operator will issue identification in a form prescribed by the Council to all persons employed in the provision of the Service which should be clearly displayed as required by the Council and detailed in the Specification.

6.5 All persons employed in the provision of the Service must be able to demonstrate to the reasonable satisfaction of the Council that they each have sufficient skills in the English language to enable them to perform their duties under the Contract.

6.6 The Contract Operator shall ensure that before any Driver commences work in connection with the provision of the services, that driver:

- a. is subject to an enhanced Disclosure and Barring Service (DBS) check, must subscribe to the on-line DBS Update Service and maintain their registration at all times whilst carrying out the Services. Consent must be given to the Council to carry out these checks on the DBS Update Service at the point of Drivers applying to go onto the Approved Drivers List.
- b. has undertaken a Safeguarding/Child Sexual Exploitation course recognised and approved by the Council to ensure that they can promote this important area of responsibility.

- 6.7 The Contract Operator shall ensure that the Council is kept advised at all times of any Approved Driver who, subsequent to his/her commencement of employment as a member of staff, is arrested for an offence, or receives a conviction or caution.
- 6.8 The Council reserves the right to require removal or suspension of any individual, employee or agent used by the Contract Operator in performance of the Services, who in the reasonable opinion of the Supervising Officer:
- a. is not performing in compliance with the Contract;
 - b. is guilty of serious or repeated misconduct and/or negligence;
 - c. is acting in a manner detrimental to the Council's interests;
 - d. is not fit to perform the Services; or
 - e. is a potential risk to the public safety or safeguarding of passengers or other road users.
- 6.9 Any Contract Operator or Driver who is subject to an investigation by either the police, the Traffic Commissioner and/or a Child Safeguarding Team or Adult Safeguarding Team, irrespective of whether or not this investigation has a direct link to the Contract, may be suspended from performing the Services until such time as the investigation has concluded and the Supervising Officer in conjunction with the Safeguarding Team is able to conclude that the person poses no risk to the travelling public.
- 6.10 The right contained in 6.9 above shall not be exercised arbitrarily or capriciously by the Supervising Officer.
- 6.11 The Contract Operator will replace any Driver removed in accordance with clause 6.8 above with a driver satisfying the requirements of this clause 6 within a timescale that the Supervising Officer considers is reasonable and at no cost to the Council.
- 6.12 The Council shall in no circumstances be liable either to the Contract Operator or to any Employee of the Contract Operator in respect of any liability, loss or damage occasioned by the withdrawal, suspension or removal of a Driver from providing the Service pursuant to this clause 6 and the Contract Operator shall fully indemnify the Council in respect of any claim made by any of its Drivers, including any costs incurred by the Council in defending or settling any such claim.

7. STATUTORY COMPLIANCE

- 7.1 In performing the Contract the Contract Operator shall carry out all of its obligations so as to comply with all relevant laws (whether such are mandatory or permissible) and with the requirements of the common law, all acts of Parliament, statutory instruments, regulations and orders in force.

8. DISPUTE RESOLUTION

- 8.1 Where any dispute arises between the parties in connection with the Contract which cannot be resolved by the Supervising Officer and the Contract Manager (who shall cooperate in good faith to resolve the dispute), either party may by written notice request that a Director (or his senior nominee) of each party meet in good faith to attempt to resolve the dispute without recourse to legal proceedings. Where such a request is made the meeting must take place within ten (10) Working Days of the date the written request is made.
- 8.2 If the dispute is not resolved as a result of such meeting, either party may (at such meeting or within five (5) Working Days of its conclusion) propose to the other in writing that structured negotiations are entered into with the assistance of a neutral adviser or mediator (“Neutral Adviser”).
- 8.3 If the parties are unable to agree on a Neutral Adviser or if that person is unable or unwilling to act, either party may apply to the President of the Law Society to appoint a Neutral Adviser within five (5) Working Days from the date of the proposal to appoint a Neutral Adviser or within five (5) Working Days of notice to either party that he or she is unable or unwilling to act.
- 8.4 The parties shall as soon as possible meet with the Neutral Adviser in order to agree a programme for the exchanging of any relevant information and the structure to be adopted for the negotiations.
- 8.5 The Neutral Adviser shall produce recommendations based upon a review of information provided by the parties.
- 8.6 If the parties accept the Neutral Adviser’s recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be recorded in writing and once signed by their representatives, shall be binding on the parties. The parties shall bear their own costs in connection with this clause but the costs of the Neutral Adviser shall be borne as the Neutral Adviser directs.
- 8.7 Unless concluded by the written binding agreement referred to in clause 8.6, all negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
- 8.8 If the parties fail to reach agreement within ten (10) Working Days of the Neutral Adviser’s recommendations then any dispute between them may be referred to the courts unless within such period or a further period of five (5) Working Days the parties agree to refer the matter to arbitration to an arbitrator whose method of appointment is agreed between them.
- 8.9 Nothing in clause 8 shall operate so as to require any party to follow the dispute resolution procedure where in its reasonable opinion it considers that any legal rights

that it may have would be prejudiced by delay including the possible loss of availability of interim relief.

9. PERFORMANCE MONITORING

- 9.1 The Council's Supervising Officer will monitor the performance of the Contract Operator undertaking the Contract.
- 9.2 In the provision of the Services, should the Contract Operator become aware of any breach in its performance of the Services, whether the same has been brought to its notice by the Council or not, the Contract Operator shall, where such breach is capable of remedy, at its own expense use all reasonable endeavours to remedy the same as soon as reasonably practicable.
- 9.3 In the event of the Contract Operator committing a breach of any of the obligations under the Contract then the Council may at any time within ninety (90) calendar days knowledge of such an event (without prejudice to any other right or remedy available to it) do any one or more of the following:
- a. terminate the Contract (in which case the provisions of clauses 17 shall apply); or
 - b. without terminating the Contract provide or procure the Services or any relevant part thereof in accordance with the provisions of clause 10 (Substituted Performance); or
 - c. without terminating the whole of the Contract terminate the Contract in respect of the relevant part of the Services only (whereupon a corresponding reduction in the Contract Price payable to the Contract Operator shall be made as if such termination was a change in accordance with clause 17) and thereafter itself provide or procure such relevant part of the Services.
- 9.4 The Council may charge the cost of any part of the Services provided by it or by a third party under this clause to the Contract Operator in accordance with clause 10 (Substituted Performance).
- 9.5 The Council may at any time by notice to the Contract Operator suspend the transport arrangement for a specified day. The Council will pay the Contract Operator the agreed sum for any previously agreed day on which transport is suspended and for which less than forty-eight (48) hours notice of suspension was given. In the event of a period of notice of forty-eight (48) hours or longer being given by the Council to the Contract Operator no payment will be due for the period of suspension, except in exceptional circumstances as agreed with the Council.

10. SUBSTITUTED PERFORMANCE

- 10.1 In accordance with clause 9.3.b if without good reason in the opinion of the Supervising Officer the Contract Operator for whatever reason regularly fails to perform the Services in whole or in part strictly in accordance with the terms of the Contract, or in performing the Services there is an unacceptable level of deficient Service, then without prejudice to any other remedy available to the Council the Supervising Officer may make alternative arrangements to provide and perform such of the Services which the Contract Operator fails to perform or performs deficiently. The costs shall be payable by the Contract Operator to the Council on demand as a debt.

11. DATA PROVISION/AUDIT

- 11.1 It is a mandatory requirement of the Contract that the Contract Operator shall within six (6) Working Days of the end of each Accounting Period submit to the Council the Passenger Revenue/Performance Return duly completed and certified by the Contract Operator where required under the Service Schedule.
- 11.2 The Passenger Revenue/Performance Return shall be made on a pro-forma annexed hereto as Appendix 1 (as amended from time to time or as agreed) and will (unless agreed otherwise) be sent electronically to the Council to the e-mail address notified to the Contract Operator.
- 11.3 In addition to the Passenger Revenue/Performance Return the Council may require that the Contract Operator provide and make available to the Council as soon as practical any passenger, revenue, timekeeping, or ticket data extracted from the Ticketing Equipment in agreed format. All data supporting the information provided in the Passenger Revenue/Performance Return must be retained by the Contract Operator for a period of twelve (12) months from the date of submission of the relevant return.
- 11.4 The Council may use any data provided by the Contract Operator for any purpose connected with the provision of the Services, including, without prejudice to the generality of this clause, to audit the Passenger Revenue/Performance Return.
- 11.5 The Council its employees and agents shall have a right of access at reasonable times and upon reasonable notice to the Contract Operators premises and vehicles for the purpose of:
- a. auditing Contract compliance;
 - b. auditing all records and information provided under clause 11.3 and any other documents relevant to the Contract;
 - c. the Contract Operator and its Employees must co-operate at all times with the Council and behave in a professional manner.

12. PAYMENT

- 12.1 No payment will be made to the Contract Operator until the Commencement Date and any costs incurred by the Contract Operator prior to the Commencement Date shall be deemed to have been included in the Contract Price.
- 12.2 Provided the Contract Operator shall have performed the Services in accordance with the Contract the Council shall pay the Contract Operator the Period Contract Payments in accordance with this clause 12.
- 12.3 The Lost Mileage Deductions for each Accounting Period shall be calculated by deducting the number of days where the Service has not operated (in whole or in part) from the total number of days to be operated during the Contract Period. This will then be converted into a percentage figure which will then be deducted from the Period Contract Payment.
- 12.4 The Period Contract Payment for any Accounting Period shall be equal to the sum of the Contract Price divided by the number of days of operation in the Contract Period multiplied by the number of days of operation in the Accounting Period.
- 12.5 The total of the Lost Mileage Deductions incurred for each Accounting Period shall be made from the next or any subsequent Period Contract Payment. In the case of the Lost Mileage Deductions to be made in respect of the last Accounting Period of the Contract these shall, at the discretion of the Council be paid by the Contract Operator to the Council or set off against other amounts owed by the Council to the Contract Operator under any other contract with the Contract Operator.
- 12.6 Not later than six (6) Working Days after the end of the relevant Accounting Period the Contract Operator shall submit to the Council the Passenger Revenue/Performance Return for that period and payment by the Council of the Period Contract Payment for the corresponding period shall be conditional upon receipt of the Passenger Revenue/Performance Return and the provision of the data collected by electronic ticketing within the specified time period.
- 12.7 If the Passenger Revenue/Performance Return is not submitted or the data is not received in accordance with clause 12.6 above the relevant Period Contract Payment shall be withheld until the payment date next after the submission is received (provided it is received within the timescales stipulated in clause 12.6). No interest shall be payable by the Council in such circumstances. If the Council has been unable to process a properly received Passenger Revenue/Performance Return it shall pay the Period Contract Payment to the Contract Operator and it reserves the right to deduct any amounts that would have been properly deducted had the return been processed from the next or any subsequent payment.
- 12.8 Subject to clause 12.7 above for each Accounting Period the payment of the Period Contract Payment (less Passenger Revenue for a Minimum Cost Contract and less any other deductions) shall be made within thirty (30) Working Days of the last day of that

Accounting Period into the nominated bank account of the Contract Operator. It will be a condition of payment that the Contract Operator has issued a properly constituted VAT invoice for the monies due which include the contract number and the contract period. Incomplete or incorrect invoices will not be paid. It is the responsibility of the Contract Operator to ensure that invoices are received by the Council.

- 12.9 The Contract Operator agrees and acknowledges that it has satisfied itself as to the accuracy and sufficiency of the Contract Price and hereby confirms that the Contract Price shall cover all the Contract Operator's obligations hereunder having obtained all necessary information as to risks, contingencies and other circumstances which might influence or affect the Contract Operator.

13. PRICE FLUCTUATIONS

- 13.1 Where there is an increase in the price paid by the Contract Operator for the delivery of the Services under the Contract or where the Contract Operator is put to additional cost in the delivery of the Services specified in the Contract owing to an increase in wages or the price of materials or owing to any other cause outside the control or beyond the jurisdiction of the Contract Operator the Contract Operator shall nevertheless continue to provide the Services at the Contract Price during a period of twelve (12) months after the commencement of the Contract. After such period of twelve (12) months the Contract Operator shall be at liberty to give notice to the Council of any increase in price (which notice shall contain details of how such increase is made up) and make application to continue the Services at such increased price.

- 13.2 Within 28 days of the receipt of such notice and application the Council may by notice in writing to the Contract Operator either:

- a. to refuse the increased price and agree with the Contract Operator to continue at the tendered price paid, or
- b. to refuse the increased price and forthwith to terminate the Contract in which event the Contract shall forthwith be determined, or
- c. to accept the increased price in which case the Contract shall continue to subsist as if such increased price had been substituted in the Contract for the original Contract Price.

- 13.3 If the Council shall fail to give such notice to the Contract Operator within the period of twenty eight (28) days as aforesaid, the Council shall be deemed to have refused the increased price.

- 13.4 The Contract Operator shall in the event of the Council accepting such increased price continue to supply the Services during a period of twelve (12) months from the date of the acceptance by the Council of such increased price, and after such period of a further twelve (12) months the Contract Operator may give notice to the Council of a further

increase in price and make application to continue the Services at such further increased price and such notice and application for a further increase shall be dealt with in the same way as a notice and application for an increased price as aforesaid. Any order given by the Council under the Contract after the service of a notice and application by the Contractor as aforesaid shall not be executed by the Contract Operator until after the receipt by him of the Council's notice to accept the increased or further increased price, and when executed shall be so executed at such increased or further increased price, but if the Contract Operator should execute an order before the receipt of the Council's notice he shall execute it at the price obtaining before the Contractor's notice and application for an increased or further increased price was given.

- 13.5 Following application by the Contract Operator the Council may at its absolute discretion choose (and shall not in any way be obliged to do so) to vary the Contract Price (including Grouped Route Bid costs) in line with the Retail Price Index or other acceptable provision of passenger transport services and refuse any increase in price which is not in accordance with this. The relevant rate for the Retail Price Index shall be calculated as that on the, or as close as can be obtained, the anniversary date of the Contract.

14. INDEMNITY AND INSURANCE

- 14.1 The Contract Operator shall be responsible for and shall release and indemnify the Council, its employees, agents and other Contract Operators from and against all liability for death or personal injury, loss of or damage to property (including property belonging to the Council for which the Contract Operator is responsible) and any other loss, damage, cost and/or expense which may arise out of or in the course of or by reason of the performance or non-performance of the Contract by the Contract Operator, its employees or agents whether such injury, loss, damage, cost and/or expense be caused by negligence or otherwise provided always that the Contract Operator shall not be liable to indemnify the Council for any injury, loss, damage, cost and/or expense to the extent that the negligence of the Council its employees, agents or Contract Operators is shown to have contributed to the said injury, loss, damage, cost and/or expense.

- 14.2 Without prejudice to its liability to indemnify the Council under this clause 14 the Contract Operator shall, at its own expense, arrange and maintain throughout the Contract Period the following insurances ("the Insurances"):

- a. public liability in the sum of not less than £5,000,000 (five million pounds) per incident or such greater sum as may be applicable in accordance with current legislation from time to time; and
- b. employers' liability in the sum of not less than £10,000,000 (ten million pounds) per incident or such greater sum as may be applicable in accordance with current legislation from time to time; and
- c. motor vehicles liability (as required under the Road Traffic Act 1988 or any subsequent legislation or statutory requirements) and in the sum appropriate to

reflect their use as Public Service Vehicles carrying up to the maximum authorised capacity of the Vehicle or such other insurance/deposit scheme which satisfies the Contract Operators legal responsibility with an insurer (or insurers) authorised to underwrite such risks in the United Kingdom.

- 14.3 The Contract Operator shall ensure that the insurances cover the Contract Operators legal liability (including liability assumed under the Contract) which may arise out of or in the course of or by reason of the performance or non-performance of the Contract and that the insurance policy effecting the cover specified in clause 14.2 above shall have the interest of the Council endorsed thereon or shall otherwise expressly by its terms confer its benefit upon the Council.
- 14.4 At any time during the Contract Period the Contract Operator shall on request from the Supervising Officer provide proof to the reasonable satisfaction of the Supervising Officer that the Insurances have been affected and are in force.

15. CHANGE PROCEDURE

- 15.1 The Council and the Contract Operator acknowledge and agree that during the Contract Period the Council may require the Services provided under the Contract to be changed or that the provisions of Appendix 2 (if not already applicable) shall become applicable to the Contract.
- 15.2 The Supervising Officer will discuss with the Contract Operator any Change proposed. If the parties agree the changes and any financial implications of such Change then the Change shall be documented as detailed in clause 15.6 below.
- 15.3 Where the Council and the Contract Operator are unable to agree the proposed change in accordance with clause 15.2 above the Supervising Officer shall, if the Council wish to proceed with a Change, issue a Change Control Notice ("CCN") to the Contract Operator in the form set out in Appendix 2.
- 15.4 The Contract Operator shall give proper consideration to the CCN and if agreed shall sign the same. If the Contract Operator does not accept the CCN it shall within five (5) Working Days of its receipt respond in writing to the Council to that effect setting out the reasons.
- 15.5 If the CCN is not agreed then the parties shall use all reasonable endeavours to meet within five (5) Working Days of receipt of the Contract Operators response under clause 15.4 to discuss the proposed change and the reasons for non acceptance. If agreement is not reached at the meeting then the Council may at its sole discretion at any time thereafter refer the matter for consideration in accordance with the provisions of clause 8. The decision of the Neutral Adviser shall be binding upon the parties except that the Council do not have to proceed with the Change in any event.

- 15.6 When any change is agreed with the Contract Operator, the Council shall agree the date from which the Change will become effective subject to the requirements of registration and shall be incorporated into this Contract. The agreement shall be recorded in a letter issued by the Council and signed by the Supervising Officer and countersigned by the Contract Manager.
- 15.7 Where the change is to a Contract awarded on the basis of the grouped route bid submitted by the Contract Operator then the Council will apply the daily fixed cost and rate per mile calculation specified in the tender submission to calculate the revised grouped route price. This will be notified to the Contract Operator in accordance with clause 15.2.

16. CONTRACT PERFORMANCE

- 16.1 The Council requires Contract Operators to deliver Services as specified in the Contract. The Supervising Officer will monitor the Contract Operators performance on each Contract using a traffic light system.
- 16.2 When the Supervising Officer becomes aware that the Contract Operator has not delivered Services as specified in the Contract, they will investigate. If satisfied that the Contract Operator has failed to deliver Services as specified in the Contract they will issue an amber or red warning. If the Supervising Officer is unable to substantiate that Services were not delivered as specified in the Contract then no further action will be taken.
- 16.3 The traffic light system will apply to individual Contracts.
- 16.4 The traffic light system will remain in force for the duration of the Contract.
- 16.5 The table below shows the application of the traffic light system:

Green	All new Contracts will be considered to be green and will remain so unless the Contract Operator fails to deliver Services as specified in the Contract.	
Amber	When	An Amber warning will be issued when Supervising Officer is satisfied that the Contract Operator has failed to deliver Services as specified in the Contract.
	How	This will be communicated to the Contract Operator by email.
	Why	Examples of possible failures to deliver services, leading to an Amber warning: <ul style="list-style-type: none"> - non-adherence with the timetable - failure to follow the required route - provision of insufficient passenger seats on a journey - failure to issue passenger tickets

		<ul style="list-style-type: none"> - failure to comply with PSVAR requirements <p>These examples are provided for guidance only and this list is not exhaustive.</p>
	Appeal Process	<p>An appeal by the Contract Operator must be made within 10 working days of the notification of the decision in writing to:</p> <p>Transport Commissioning Manager psu-tenders@eastriding.gov.uk</p>
Red	When	A red warning will be issued when the Contract Operator has been issued with three Amber warnings in relation to this Contract or where in the opinion of the Supervising Officer there has been a significant failure to deliver the Contract.
	How	The Contract Operator will be invited to a meeting to review performance and to seek assurance that the Contract Operator has put in place systems to prevent further re-occurrences. Following the meeting the outcome will be communicated to the Contract Operator and a Red warning issued by email.
	Why	<p>Examples of possible failures to deliver services, leading to a Red warning:</p> <ul style="list-style-type: none"> - the issue of 3 Amber warnings in relation to this Contract - failure to report an accident or serious incident <p>These examples are provided for guidance only and this list is not exhaustive.</p>
	Appeal Process	<p>An appeal by the Contract Operator must be made within 10 working days of the notification of the decision in writing to:</p> <p>Group Manager – Transportation Services psu-tenders@eastriding.gov.uk</p>

16.6 When a red warning has been issued and the Contract Operator fails to deliver Services as specified in the Contract, the Supervising Officer with the Transport Commissioning Manager will consider termination of the contract in accordance with clause 17. The Contract Operator will be invited to a meeting to advise them of the Council’s position and to consider any mitigation the Contract Operator wishes to put forward. Following the meeting the Transport Commissioning Manager and Supervising Officer will review the information provided by the Contract Operator and decide if to terminate the Contract or if the Contract remains on a Red warning. The decision will be communicated to the Contract Operator by email.

16.7 The Council will consider the performance of an existing Contract Operator before determining the award of an additional Contract where the Contract Operator has had a red warning issued. At the Council’s discretion they may or may not award the Contract Operator a further Contract(s).

17. TERMINATION

Termination by the Council

- 17.1 Without prejudice to any other right or remedy it may possess the Council shall be entitled upon the occurrence of any of the following events to immediately terminate this Contract by written notice to the Contract Operator if the Contract Operator:
- a. shall not offer or give, or agree to give, to the Council or any other public body or any person employed by or on behalf of the Council or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract or commit any offence under the Bribery Act 2010;
 - b. uses a Driver who has not been accepted by the Council as fulfilling the criteria to be on the Approved Driver List, in accordance with clause 6;
 - c. uses an Employee who is no longer subject of an enhanced DBS check or is not on the on-line DBS update service or has not completed relevant recognised Safeguarding training;
 - d. commits a material breach of Contract;
 - e. is in persistent breach of the Contract, has been issued with a red warning and commits a further breach of Contract, in accordance with clause 16;
 - f. commits a breach of any of its obligations under the Contract and in the case of such a breach which is capable of remedy fails to remedy the same within twenty eight (28) days of formal notification specifying the details of the breach by the Council; or
 - g. becomes bankrupt or makes a composition or arrangement with its creditors, or has a proposal in respect of its company for voluntary arrangement for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986
 - h. has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver;
 - i. has a winding up order made, or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
 - j. has a provisional liquidator receiver or manager of its business or undertaking duly appointed;

- k. has an administrative receiver, as defined in the Insolvency Act 1986 appointed;
- l. has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge;
- m. changes its composition or staffing in a way which in the reasonable opinion of the Council seriously affects the ability of the Contract Operator to discharge its obligations under the Contract to the standards required;
- n. is in circumstances which entitle the Court or a creditor to appoint, or have appointed a receiver, a manager or administrative receiver, or which entitle the Court to make a winding-up order.

17.2 Subject to clause 17.3 the Council may give notice to terminate the Contract by not less than forty two (42) calendar days written notice for registered local bus services or otherwise twenty eight (28) calendar days written notice in any of the following circumstances:

- a. The Council or other funding source make insufficient finance available to the Council for revenue support of the Services (or part thereof);
- b. a commercial service is registered, which in the opinion of the Supervising Officer removes the need for the Services to be provided;
- c. following a network review the provision of the Services (or part thereof) is or will no longer be required.

17.3 If the Contract is terminated as provided in clause 17.1 or 17.2 the Council shall:

- a. cease to be under any obligation to make further payment until any costs, loss and/or damage resulting from or arising out of the termination of the Contract have been calculated and, provided such calculation shows a sum or sums due to the Contract Operator;
- b. be entitled to provide itself or procure and pay other persons to provide and complete the provision of the Services or any part thereof;
- c. be entitled to deduct from any sum or sums which would but for Clause 17.6 have been due from the Council to the Contract Operator under the Contract or any other Contract or be entitled to recover the same from the Contract Operator as a debt any loss or damage to the Council resulting from or arising out of the termination of the Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Services or any part thereof;

- d. when the total cost, loss and/or damage resulting from or arising out of the termination of the Contract has been calculated and deducted so far as practicable from any sum or sums which would but for clause 17.6 have been due to the Contract Operator, any balance shown as due to the Council shall be recoverable as a debt, or alternatively the Council subject to clause 19 (Recovery of Sums Due) shall pay to the Contract Operator any balance shown as due to the Contract Operator.

17.4 The rights of the Council under this clause 17 are in addition to and without prejudice to any other rights the Council may have.

17.5 If the Contract is terminated under clause 17.3 the Contract Operator shall be entitled to receive from the Council any sum or sums due in respect of providing the Services up to the time of termination of the Contract.

17.6 Except where the Council reasonably deems that the decline in passenger numbers is caused by the inadequate performance of the Services by the Contract Operator, the Contract Operator may give notice to terminate a Minimum Subsidy or Cost Contract by not less than twenty eight (28) calendar days written notice (42 calendar days if it is a registered local bus service).

17.7 The Contract may be terminated by either party giving not less than twenty eight (28) calendar days notice for Closed Contracts or forty two (42) calendar days notice for registered local bus services.

18. CONSEQUENCES OF TERMINATION OF CLOSED CONTRACTS

18.1 Following the termination of a closed Contract the Contract Operator and its Employees shall not without the Council's written consent operate any other passenger transport service on the Route(s) for a period of twenty six (26) weeks unless:

- a. such service is to be operated at substantially different times to the Service; or
- b. a new Contract between the Contract Operator and the Council has been entered into in relation to such service; or
- c. the Council has not invited tenders for such a service; or
- d. the Contract Operator has given the Supervising Officer at least twelve (12) weeks notice in writing prior to the date of termination of its intention to operate such a service. Such notice shall specify the route to be operated and the period of the day or week when such operation will take place.

18.2 The parties agree that damages for any breach of this clause 18 may include expenses incurred by the Council in any abortive tendering exercise relating to the Closed Contract and any compensation paid to any other Contract Operator as a result of the operation

of transport services on such Closed Contract which may be deducted from sums due under invoices submitted in respect of the Contract Price.

- 18.3 If a Closed Contract is terminated as provided in clause 17 or if the Contractor elects to terminate this Contract for any reason then the Contract Operator agrees that the Council shall be under no obligation to consider a tender from the Contract Operator in relation to the Closed Contract or any Closed Contract for a period of twenty six (26) weeks from the date of termination.
- 18.4 The provisions of clauses 12 (Payment), 18 (Consequences of Termination of Closed Contracts), 23 (Law and Jurisdiction), 24 (Contracts (Rights of Third Parties) Act 1999), 26 (Severability), 30 (Freedom of Information) and 35 (Entire Agreement), and shall survive termination or expiry of this Contract.

19. RECOVERY OF SUMS DUE TO THE COUNCIL

- 19.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contract Operator to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Contract Operator under the Contract or any other contract with the Council except to the extent that such sum is the subject of legal dispute.

20. ASSIGNMENT AND NOVATING

- 20.1 The Contract is personal to the Contract Operator who shall not assign, novate or otherwise dispose in whole or in part of its rights hereunder nor assign or otherwise delegate in whole or part any of its obligations hereunder without the prior written consent of the Council.
- 20.2 Where a Contract Operator is seeking to novate a Contract(s) with the sale of a business they must notify the Council in writing at least ten (10) Working Days prior to any proposed novation of Contract(s). The written notification must specify the Contract(s), the Approved Driver(s), the Approved Vehicle(s) and the current daily contract cost. The written notification must be signed by both parties. In the case of a Limited Company all Directors named on the Company Registration with Companies House must sign the notification.

21. TUPE

- 21.1 The Contract Operator acknowledges and agrees that prior to the expiry or termination of the Contract it shall use all reasonable endeavours to identify and comply with any obligations which may arise out of a transfer to another operator under the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended ("TUPE") and it

shall comply with such requirements prior to such expiry or, if the period of any notice permits, termination.

- 21.2 At any time during the fifty two (52) week period before the expiry of or during any period of notice terminating the Contract or at any time after expiry or termination of the Contract the Council may require the Contract Operator to provide to the Council (prior to any other operator or operators notified by the Council) such information as is reasonably required by the Council or such other operators relevant to the potential liabilities of any new operator arising under TUPE including but not limited to information on the following:
- a. the names of employees operating the Services, their salaries and other conditions of employment, ages and length of service;
 - b. the method of organisation of the employees operating the Services and documentary evidence relating to such organisation;
 - c. the proposals for consultation with affected employees; and
 - d. details of collective agreements and union recognition agreements

and shall in addition provide copies to the Council upon request of any communication with any potential or intended new operator or the Contract Operator's employees or their representatives relating to the effect on such employees of the expiry or termination of the Contract.

- 21.3 The Contract Operator shall provide the Council with the name and address of a person within its organisation to whom all queries and requests for information under this clause 21 shall be addressed in the first instance.

22. SERVICE OF NOTICES

- 22.1 Any demand notice or other communication required to be given hereunder shall be sufficiently served if served on the Contract Operator's Contract Manager or if unincorporated on the proprietor or any partner and in respect of the Council if served on the Supervising Officer by electronic communication.
- 22.2 Any document which may be served on the Contract Operator by the Council shall be sent to the registered office or last known address of the Contract Operator.
- 22.3 Any document which may be served by the Contract Operator on the Council or the Supervising Officer shall be sent to the Supervising Officer at:

psu-tenders@eastriding.gov.uk

And in the case of the Contract Operator, to the email address set out in the Form of Tender.

- 22.4 Any notice shall be deemed to have been received by the addressee on the third Working Day after the date of posting, or if it is emailed at the time of transmission.

23. LAW AND JURISDICTION

23.1 The Contract shall be governed by and construed in accordance with English Law.

24. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

24.1 A person who is not a party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999.

25. WAIVER

25.1 Failure by the Council at any time to enforce the provisions of the Contract or to require performance strictly or otherwise by the Contract Operator of any provisions of the Contract or any failure or delay by the Contract Operator to exercise any act, right or remedy shall not be construed as a waiver in connection with any such provisions and shall not affect the validity of the Contract or any part hereof or the right of the Contract Operator to enforce any provision.

26. SEVERABILITY

26.1 If any provision of the Contract shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

27. HUMAN RIGHTS

27.1 The Contract Operator acknowledges that the Council is subject to the Human Rights Act 1998. The Contract Operator warrants to the Council that neither it, nor any sub-contractor will during the operation of the Contract act in a way which would, if the Contract Operator was the Council, be incompatible with any convention right (as defined in the Human Rights Act 1998 or any amendment thereto). The Contract Operator will indemnify the Council and keep the Council fully and effectively indemnified on demand against all costs, claims, demands, expenses and liabilities of whatsoever nature arising or incurred by it in respect of any breach of this clause by the Contract Operator.

28. DISCRIMINATION

28.1 The Contract Operator shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any other legislation which prohibits discrimination of any kind by an employer or provider of services to the public.

28.2 The Contract Operator shall take all reasonable steps to secure that all of its servants, employees, agents or sub-contractors employed in the provision of the Services do not unlawfully discriminate as set out in clause 28.1.

28.3 The Contract Operator shall indemnify and keep indemnified the Council against all claims, costs awards and fees arising from or relating to any claims under the Equality Act 2010 or any other legislation as aforesaid brought against the Council by any employees of the Contract Operator.

29. DATA PROTECTION

29.1 The Contract Operator shall comply in all respects with the provisions of the Data Protection Act 2018 and the General Data Protection Regulations including any subsequent re-enactment (“the Act”) and will indemnify the Council against all actions, costs, expenses, claims, proceedings and demands which may be brought against the Council for breach of statutory duty under the Act howsoever arising.

29.2 Where the Contract Operator receives any personal data as defined by the Act from any third party in relation to this commission, he shall ensure that he fully complies with the provisions of the Act and only deals with the data to fulfil its obligations under this commission. The Contract Operator must comply with the Data Protection Schedule in Appendix Three.

29.3 The Contract Operator shall ensure that he has made such notification to the Information Commissioner, pursuant to the Act, which is required for the performance of this Contract.

29.4 In fulfilment of its obligations under the Act the Contract Operator shall have such systems in place to ensure:

- a. full compliance with the Act;
- b. in particular, compliance with the security of personal data;
- c. the reliability of all its employees who may be involved in processing the personal data.

29.5 The Contract Operator shall allow the Council reasonable access to such information as is necessary to ensure that it is complying with the above provisions and the Act as a whole.

29.6 The Contract Operator will comply with both the Act and the Freedom of Information Act 2000 and ensure that all employees, partners and those involved in this Contract are aware of their responsibility under both legislation.

30. FREEDOM OF INFORMATION

- 30.1 Where the Council receives a request to disclose information to a third party under the Freedom of Information Act 2000 ("the 2000 Act") or the Environmental Information Regulations 2004 ("the 2004 Act") or any subsequent re-enactment which relates to the Contract Operator or the Contract, the Council shall:
- a. inform the Contract Operator about the request for information and the nature of the information being sought as soon as reasonably possible;
 - b. consult with the Contract Operator prior to the disclosure of any such information provided that the Contract Operator responds to any consultation within the timescale requested in order that the Council can comply with the time limits specified by the 2000 Act or 2004 Act as applicable; and
 - c. consider and apply all lawful exemptions provided under the 2000 Act or 2004 Act as applicable to withhold information sought in terms of the request for information consistent with the exercise of their discretion and duties under the 2000 Act or 2004 Act.

31. COMPLAINTS

- 31.1 The Contract Operator shall immediately, where reasonably practical to do so, advise the Supervising Officer of all complaints verbally and within twenty four (24) hours confirm the detail in writing and shall forthwith investigate the complaint and take such corrective action as is appropriate in a prompt, courteous and efficient manner.
- 31.2 Copies of all correspondence relating to the complaints must be forwarded to the Supervising Officer within five (5) Working Days of receipt or reply.
- 31.3 The Contract Operator shall record all complaints, of any nature, received from whatever source, in a register kept for that purpose, a copy of which will be available to the Supervising Officer on request.

32. INFORMATION ON RETENDERING

- 32.1 Eight (8) months prior to the expiry of the Contract Period (or in the case of earlier termination of the Contract as soon as possible), the Contract Operator shall provide to the Council any and all relevant information to permit the Council to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Services.
- 32.2 The Contract Operator shall co-operate fully with the Council and any successor Contract Operator upon any re-letting of the Services to another Contract Operator so as to ensure a smooth transition of the Service to that Contract Operator.

33. FORCE MAJEURE

- 33.1 Neither party shall be liable to the other in any manner whatsoever for any failure or delay in performing its obligations under this Contract arising due to Force Majeure. If either party becomes aware of any circumstances of Force Majeure which will give rise to a failure or delay, or which appear likely to do so, that party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other party of the period for which it estimates that the failure or delay will continue.
- 33.2 Except in the circumstances set out in clause 3.10, during such period of Force Majeure, the Council shall not be liable to make any payment to the Contract Operator in respect of any part of the Services not yet performed. Any such sums already paid shall be held to the credit of the Council and returned to the Council within twenty eight (28) days of the start of the Force Majeure.
- 33.3 Notwithstanding the above each party shall use its reasonable endeavours to perform its obligations for the duration of the Force Majeure event. However if such event prevents either party from performing all of its obligations under the Contract for a period in excess of twenty eight (28) days either party may terminate the Contract by notice in writing with immediate effect.
- 33.4 For the avoidance of doubt, it is hereby expressly agreed that failure to provide adequate premises, equipment, materials, consumables and/or staff which could have been avoided by a prudent and diligent Contract Operator with the application of foresight, do not fall within the definition of Force Majeure.

34. HEALTH AND SAFETY

- 34.1 The Contract Operator must comply at all times with the Health and Safety at Work etc. Act 1974, the regulations made under the Act including but not limited to the Management of Health and Safety at Work Regulations 1999, and all other health, safety and welfare requirements applicable to the works subject of this Contract.
- 34.2 The Supervising Officer is further empowered to suspend the provision of the service if the Contract Operator fails to comply with any legal requirements in regards to Health and Safety.
- 34.3 The Contract Operator shall not resume provision of the Service until the Supervising Officer is satisfied that the non-compliance has been rectified. In respect of any such period of suspension, the provisions for default, as set out in this Contract shall apply.
- 34.4 The Contract Operator shall ensure that a suitably competent person is responsible for health and safety matters as required by law, for the duration of the Contract.

35. ENTIRE AGREEMENT

- 35.1 The Contract together with the documents referred to herein or any additional agreement between the parties which is stated to form part of the Contract contains the whole agreement between the parties in respect of the subject matter of agreement and supersedes any prior written or oral agreement between them relating to that subject matter and the parties confirm that they have not entered into the Contract on the basis of any representations that are not expressly incorporated in the Contract.
- 35.2 With the exception of liability for fraud all other terms in relation to any aspect of the Contract whether statutory or otherwise are hereby excluded.

Appendix One



Monthly Passenger & Revenue Return

Contract Operator:	
Month:	

Date	Information	Contract Number				
		1.	2.	3.	4.	5.
w/c	Passengers					
	Revenue					
w/c	Passengers					
	Revenue					
w/c	Passengers					
	Revenue					
w/c	Passengers					
	Revenue					
w/c	Passengers					
	Revenue					
Total	Passengers					
	Revenue					

Date	Information	Contract Number				
		6.	7.	8.	9.	10.
w/c	Passengers					
	Revenue					
w/c	Passengers					
	Revenue					
w/c	Passengers					
	Revenue					
w/c	Passengers					
	Revenue					
w/c	Passengers					
	Revenue					
Total	Passengers					
	Revenue					

Appendix Two



EAST RIDING
OF YORKSHIRE COUNCIL

Change Control Notice

Contract Number:	
Service:	
Contract Operator:	
Details of Change Required:	
Reasons for Change:	
Impact of Change:	
Implementation Date Required:	
Financial Implications:	

Signed:	
Name of Supervising Officer:	
Designation of Supervising Officer:	

Date Issued:	
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Contract Operator:

Response:	Accept
	Reject
Reason for Rejection:	

Signed:	
Name:	
Date:	

Appendix Three

DATA PROTECTION SCHEDULE

(PROCESSING, PERSONAL DATA SUBJECTS)

1. The Contract Operator shall comply with any further written instructions with respect to processing by the Authority.
2. Any such further instructions shall be incorporated into this Schedule.

<i>Description</i>	<i>Details</i>
Subject matter of the processing	The provision of transport services for children or adults.
Duration of the processing	The period specified in the Letter of Award unless otherwise terminated or extended in accordance with the provisions of the Contract.
Nature and purposes of the processing	<p>The provision of transport services for children or adults.</p> <p>The operation of contract services transporting clients from their home (or other designated address) to a learning, training or day care establishment (or other designated address).</p> <p>The Council will provide details of the clients requiring transport to the Contract Operator. The Contract Operator will store, retrieve and disseminate this information to employees engaged in the provision of transport services.</p> <p>The Contract Operator will be required to destroy all data at the end of the Contract.</p>
Type of Personal Data	Name, address, details of any specific transport requirements to meet a client's disability.
Categories of Data Subject	The Authority's clients and students/pupils.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	All data must be destroyed at the end of the Contract.