

# Contract for School Transport Services

between

Ministry of Education

and

[Contractor]



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## Parties

**The Sovereign in right of New Zealand** acting by and through the **Secretary for Education**, at Wellington (*Ministry*)

**[Contractor]** a company having its registered office at **[Location]**, registration number **[insert]** (*Contractor*)

## Background

- A. Section 139D of the Education Act 1989 provides that the Ministry may arrange for the provision of school transport assistance by selecting transport providers.
- B. The Ministry may provide school transport assistance to Students who meet location and distance eligibility criteria.
- C. The Ministry has sought proposals from providers of school transport services through an open tender process.
- D. The Ministry has decided to accept the Contractor's tender and offers an agreement based on the following terms and conditions.
- E. This Contract sets out the basis on which the Contractor will provide:
  - (a) the Pre-Start Requirements from the date of this Contract until 1 January 2022; and
  - (b) subject to completion of the Pre-Start Requirements in accordance with this Contract, the Services for the term of six years from 1 January \_\_\_\_ through to 31 December \_\_\_\_, unless extended under the terms of this Contract.



## **A - Scope of Contract**

### **Term of Contract**

1. This Contract shall commence on the date on which it is signed by all parties.
2. The Contractor shall perform and complete the Pre-Start Requirements from the date of this Contract until the earlier of the following:
  - the Commencement Date; or
  - termination in accordance with this Contract, by or under any Laws, or by operation of law.
3. The Contractor's obligations to perform the Services under this Contract shall commence on the Commencement Date set out in Schedule 1 – Reference Schedule and will continue until the earlier of the following:
  - the Expiry Date; or
  - termination in accordance with this Contract, by or under any Laws, or by operation of law.

### **Extension of Term**

4. Unless the Term is extended pursuant to clauses 5 or 6, the Expiry Date shall be the Initial Expiry Date. On the Expiry Date this Contract shall expire without prejudice to either party's rights against the other.
5. The Ministry may extend the term of this Contract for a further two terms of up to three years each by giving the Contractor notice in writing at least three months before the Expiry Date of the then current term.
6. Any extension under clause 5 will be on the same terms and conditions as set out in this Contract.



## **B - Contractor obligations**

### **Performance of Pre-Start Requirements and Services**

7. From the date of this Contract to the Commencement Date, the Contractor shall perform and complete the Pre-Start Requirements in accordance with this Contract at its sole cost in all things. The Ministry shall not be obliged to make any payment in respect of the Contractor's performance of the Pre-Start Requirements.
  - 7.1. It is essential to the Ministry that the Pre-Start Requirements are undertaken and completed in compliance with Appendix 2 of Schedule 2 of this Contract. Therefore, without prejudice to any other rights or remedies the Ministry may have under this Contract or otherwise at law, the Ministry may terminate this Contract immediately by giving written notice to the Contractor where the Ministry is satisfied, in its sole and absolute discretion, that the Contractor is at serious risk of not being capable of performing the Services from the Commencement Date to the standard required under this Contract.
  - 7.2. The Ministry's termination right in clause 7.1 above may be exercised at any time between the date on which this Contract is signed to the date on which the first Route is run by the Contractor.
8. Unless this Contract is terminated pursuant to clause 7.1 above, from and including the Commencement Date, the Contractor shall perform the Services and comply with all its obligations under this Contract.
9. The Contractor shall:
  - 9.1. perform the Pre-Start Requirements and the Services in accordance with Schedule 2 – School Transport Services (including its appendices) and the requirements of this Contract;
  - 9.2. meet or better the performance and reporting requirements set out in Schedule 3 – Contract Monitoring & Evaluation Framework; and
  - 9.3. meet or better the performance, service levels, warranties and representations contained in the Tender.
10. The Contractor shall exercise proper skill, care and diligence in performing the Pre-Start Requirements and Services, and shall comply with all applicable Laws in the performance of the Pre-Start Requirements and the provision of the Services.
11. The Contractor shall perform the Pre-Start Requirements and provide the Services to a standard that the Ministry can reasonably expect of competent skilled professionals working in this area of expertise.
12. The Contractor shall ensure that all staff (employed or contracted) treat Students with respect and courtesy at all times, and all reasonable assistance is offered to facilitate the safe travel of a Student.
13. The Contractor shall ensure that all written and oral communication it has with Schools and members of the public (including any Students) regarding the delivery of the Services is accurate, timely and professional. The Contractor shall acknowledge all written or emailed complaints or correspondence it receives regarding the delivery of the Services and provide a record of complaints, acknowledgements, responses and other actions taken to the Ministry when requested.
14. The Contractor will ensure policies are in place advising staff (employed or contracted) and subcontractors of their obligation to act in accordance with the provisions of this Contract and otherwise in a professional manner at all times when acting in relation to this Contract and delivering any of the Services provided under it, and will have systems to deal with breaches of these policies.
15. The Contractor will not, by its acts or omissions, do anything that would damage the reputation of the Ministry and the integrity of Government policies at all times whilst carrying out the Services.
16. In the performance of the Pre-Start Requirements and the delivery of the Services the Contractor shall be cognisant of the public sector environment in which the Ministry operates.



17. If the Contractor wishes to make any regular or long term change to any Routes, the Contractor shall provide such information as to the proposed change that the Ministry shall reasonably require, and shall not make any such change without obtaining the prior written approval of the Ministry (which may be given or withheld in the Ministry's absolute discretion).

### **Contractor warranties and representations**

18. The Contractor acknowledges and confirms to the Ministry that all representations and warranties contained with the Tender are true and correct as at the date on which this Contract is signed and the Commencement Date, and are repeated throughout the Term of this Contract. Should any representation or warranty be or become untrue, the Contractor shall notify the Ministry immediately the Contractor becomes aware. Where any ambiguity, conflict or inconsistency exists between the warranties and representations set out in the Tender and those contained in the rest of this Contract (excluding Schedule 7 - Tender), the highest or best standards of performance or compliance shall prevail, but in any other case the Contract shall prevail.
19. The Contractor represents and warrants to the Ministry as follows:
  - 19.1. The Contractor has full power and authority to enter into and perform its obligations under this Contract, has taken all action required to authorise execution, delivery, and performance of this Contract, and represents and warrants that this Contract constitutes legal, valid and binding obligations on the Contractor and is enforceable in accordance with its terms.
  - 19.2. The Contractor has the expertise and experience to provide the Services in a professional and competent manner to the Ministry.
  - 19.3. The Contractor must at all times during the term of the Contract be registered on the New Zealand Transport Agency's on-line transport organisation register (TORO) and be set up to receive alerts from TORO. The Contractor must obtain all necessary consents to enable it to access all information on TORO in relation to the Drivers and the Services. The Contractor must provide copies of TORO consent forms to the Ministry on request.
  - 19.4. The Contractor shall at all times during the Term of this Contract maintain operational status (as appropriate to the type of Vehicles being operated under this Contract), as one or more of either:
    - a. the holder of a passenger service licence, operating a passenger service using small passenger service vehicles; or
    - b. the holder of a passenger service licence operating large passenger service vehicles.
  - 19.5. The Contractor, Vehicles and Drivers shall comply at all times with all Laws in force during the Term of the Contract.
  - 19.6. The Contractor shall ensure that all staff (employed or contracted), Drivers and subcontractors, their replacements or substitutes and any other personnel involved in providing the Services have the skills, experience, qualifications, training and hold the licences and ratings required by any Laws that are necessary to provide the Pre-Start Requirements and the Services under this Contract. Any person failing to meet these standards must be replaced immediately by a suitably qualified person at the Contractor's own cost.
  - 19.7. The Contractor acknowledges that it may become aware, or the Ministry may notify the Contractor, from time to time of a change in the number of Eligible Students on a given Route or in a Group. Within a reasonable time determined by the Ministry (but in any event no less than 10 days) of the Contractor becoming aware or being advised by the Ministry of such change in the number of Eligible Students, the Contractor shall ensure that any Vehicle used in the provision of Services has the capacity to convey the numbers of Eligible Students requiring transportation at any time during the Term of this Contract.
  - 19.8. The Contractor shall ensure that in respect of each Driver:



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- a. all reasonably practicable steps are taken to be sure the Driver does not have any medical condition which would affect or impair the Driver's ability to drive a Vehicle in a safe and proper manner;
  - b. the Driver must be examined by a medical practitioner authorised to use and complete the NZ Transport Agency form DL9 in accordance with the NZ Transport Agency document *Medical Aspects of Fitness to Drive: A Guide for Health Practitioners* issued by the New Zealand Transport Agency, under the medical fitness standards that are applicable for a Class 2, 3, 4 or 5 Driver Licence with a Passenger Endorsement:
    - (i) in accordance with the DL9 standard;
    - (ii) no less frequently than once every 12 months;
    - (iii) at any other time requested by the Ministry where the Ministry reasonably considers a Driver's ability to perform the Services is affected; and
    - (iv) the Contractor must maintain a current list and evidence of completed medical examinations for each Driver used in service and present it on request to the Ministry. The evidence must include reasonable particulars of the examination, including (but not limited to) indication that the Driver was examined by a named medical professional and was assessed as being fit to drive Vehicles applicable to a Class 2, 3, 4 or 5 Driver Licence holder with a Passenger Endorsement.
  - c. the Driver has passed any NZTA or Police vetting and the Contractor is not aware of any circumstances which would result in the Driver not passing any further vetting;
  - d. the Driver does not carry any animal in the Vehicle except in the case of any guide dog for a vision impaired passenger or otherwise has a certified disability assist dog;
  - e. the Driver does not carry for reward in the Vehicle, when providing the Services, any mail, parcels, papers or goods of any description except with the express permission of the Ministry;
  - f. the Driver does not allow any person to board the Service other than a Student or person required on the vehicle for a task specific to conducting the Service, such as (but not limited to) Driver training, assessment or supervision, or supervision of Students;
  - g. the Driver is aware of, observes and adheres to any relevant terms and conditions of this Contract when they are engaged in providing the Services;
  - h. if any Driver is accused of Inappropriate Behaviour, the Driver must be stood down immediately by the Contractor pending investigation into the allegation. The Contractor must notify the Ministry of the allegation, and must consult with the Ministry and receive permission from the Group Manager School Transport or their authorised delegate to reinstate the Driver before allowing the Driver to drive any Ministry service;
  - i. if an allegation of sexual misconduct towards a Student (physical or verbal) or assault against a Student is made, the Contractor must ensure that a Report of Concern is provided to Oranga Tamariki and to the Police as soon as practicable;
  - j. the Driver is provided with at least:
    - (a) the training, wellbeing resources, and continuing access to programmes that were represented in the Tender; and
    - (b) the training, wellbeing resources, and continuing access to programmes that are required under this Contract.
20. If the Ministry reasonably considers that any Driver may pose a risk to the health and safety of Students or to the Ministry's reputation as an operator of a safe service, without limiting any other rights of the Ministry, the Ministry may require the



Contractor to immediately stand down the Driver from driving any Ministry service indefinitely or until any risks are managed to the Ministry's satisfaction.

### **Ineligible Students**

21. The Contractor must obtain the prior written agreement of any School affected by the operation of a Daily Route if the Contractor wishes to transport any Ineligible Student on that Route.
22. Notwithstanding clause 21, the Contractor must not transport any Ineligible Student on any Technology Route.
23. Subject to clauses 21 and 22, the Contractor may only transport Ineligible Students if:
  - 23.1. there is excess seating capacity after all Eligible Students have been catered for;
  - 23.2. all Students will be seated;
  - 23.3. transportation of any Ineligible Student does not delay the provision of the Services; and
  - 23.4. the Contractor maintains a list of Ineligible Students being transported.
24. The Contractor shall use best endeavours to ensure that, while transporting Ineligible Students, the Ineligible Students do not:
  - 24.1. harass or bully Students;
  - 24.2. behave in a socially unacceptable manner.
25. Subject to clauses 21 and 23, the Contractor must not deviate from the contracted Daily Route to pick up any Ineligible Students for transportation.
26. Prior to transporting any Ineligible Student, the Contractor must advise all Ineligible Students in writing of the conditions of transportation set out in clauses 21 - 25, and advise that transport may stop without notice if these conditions cannot be met, and retain a record of that advice signed by the Contractor and the Ineligible Student (if aged 18 or over) or their Caregiver (if the Ineligible Student is aged under 18).
27. The Contractor at its discretion may charge Ineligible Students a fare.

### **Resources**

28. The Contractor shall provide or cause to be provided sufficient resources, in terms of staff numbers, staff expertise, equipment, Vehicles and funding to perform the Pre-Start Requirements and the Services, and meet its responsibilities and duties under the terms of this Contract.
29. The Contractor shall, except where otherwise specified in this Contract, supply at its own cost everything necessary for the completion of the Pre-Start Requirements, performance of the Services, and performance of its obligations under this Contract, including minor items not expressly mentioned and of a type not normally detailed but necessary for the performance of the Pre-Start Requirements and the Services.
30. The Contractor must inform the Ministry in writing of the identity and contact details of its designated Depot Managers and health and safety officers. The Contractor must promptly advise the Ministry in writing of any changes to these roles.
31. The Ministry may make new policies, directions, guidelines, toolkits or other resources available to the Contractor from time to time and the Contractor shall, subject to clause 53, comply with the requirements or recommendations of such resources when they are available.

### **Access to Contractor Sites and Auditing**

32. Provided the Contractor receives reasonable prior notice, the Contractor will allow, and will ensure its staff and subcontractors allow, the Ministry and accompanied representatives of other Government agencies reasonable access to any of its premises, having regard to normal business operations in the workplace, where any part of the Pre-Start Requirements or the Services is provided or where data, information and records relating to the Pre-Start Requirements or the Services are stored.



33. The Ministry will comply with the Contractor's (or its subcontractor's) security procedures, health and safety requirements and building regulations for access to their premises under clause 32. In addition to any conditions of access, the Ministry's representatives shall undertake their tasks in a proper, diligent and competent manner.
34. The Ministry may have access to premises under clause 32, and any of the Contractor's systems or records, for the purposes of:
- 34.1. carrying out a review, audit, investigation or inspection as to the performance of the Pre-Start Requirements, the provision of the Services, or the compliance by the Contractor of its obligations under this Contract;
- 34.2. preparing the Services for any future operation of the Services by the Ministry or a third party.
35. Where the Ministry considers that the Contractor's premises are not suitable for conducting a review, audit, investigation or inspection, the Ministry may specify an alternative site and the Contractor will be responsible for providing access at that site to the Contractor's Vehicles, information or records.
36. During any review, audit, investigation or inspection by the Ministry the Contractor shall provide to the Ministry such information, assistance and co-operation as is reasonable. The Ministry shall have the right to observe the operations of the Contractor, including the performance of the Pre-Start Requirements and the delivery of the Services, and shall have the right to conduct interviews with anyone involved in the performance of the Pre-Start Requirements or the delivery of the Services (providing 5 Working Days' notice is given to the Contractor and the interviewee is given an opportunity to have a representative present)
37. Without limiting the Contractor's obligation to comply with the terms of this Contract, the Ministry may undertake follow up reviews, and may report back to the Contractor with any requirements of the Ministry in relation to performing the Services. The Contractor shall take all reasonably practicable steps to comply with such requirements.

#### **Care of information**

38. The Contractor acknowledges that the Ministry owns all data, information and records associated with the Pre-Start Requirements and the Services. Nothing in this clause shall limit the Ministry's obligations in relation to such information at clauses 43 and 64.
39. The Contractor will only use the Ministry Data for the purpose of the performance of the Pre-Start Requirements, the provision of the Services, and the fulfilment of its obligations under this Contract or such other purposes as are specifically authorised in writing by the Ministry.
40. The Contractor will take due care of the Ministry Data. The Contractor will take all reasonable steps to ensure such Ministry Data is held in a secure and safe place and to avoid damage to, or destruction of, the Ministry Data.

#### **Sharing of information**

41. The Contractor agrees to the unlimited accessing and sharing of information between the Ministry, the New Zealand Transport Agency and the New Zealand Police in relation to the Pre-Start Requirements and the Services, the identity and operating record of the Contractor, and any matters directly or indirectly bearing on the Pre-Start Requirements, the Services, this Contract, or the Contractor.
42. The Contractor agrees to the accessing and sharing of passenger information between the Ministry and Regional Local Authorities in relation to the performance of the Pre-Start Requirements, the provision of the Services, and this Contract.

#### **Clarifying use of information received**

43. The Ministry may use and receive information relating to the performance of the Pre-Start Requirements and the delivery of the Services for the purposes of monitoring the performance of the Pre-Start Requirements and the delivery of the Services under this Contract, development or improvement of the Services, policies, practices and for the



associated evaluation of this Contract, and the exercise and enforcement of any rights under this Contract.

### **Subcontractors**

44. The Contractor may not subcontract any of the Pre-Start Requirements or the Services without the Ministry's prior written approval, which may be given or withheld at the Ministry's discretion. The Contractor shall provide the Ministry, promptly on the Ministry's request, with any information reasonably requested by the Ministry for the purpose of considering a request for approval of any proposed subcontracting.
45. In the event the Ministry consents to any subcontracting of any obligation under this Contract, such subcontracting will, at the Ministry's discretion:
  - 45.1. be subject to the Contractor and the subcontractor agreeing to any reasonable conditions imposed by the Ministry's consent;
  - 45.2. be subject to the same terms and conditions of this Contract;
  - 45.3. not relieve the Contractor from liability for the acts or omissions of the subcontractor in the performance of the obligations, responsibilities or duties under this Contract.

### **Health, safety and security at Schools**

46. The Contractor will comply, and ensure that all of its personnel comply, with the relevant School's health, safety, operating and security requirements while on or adjacent to the relevant School premises.

### **Health and Safety at Work Act 2015**

47. The Contractor shall:
  - (a) consult, cooperate and coordinate with the Ministry, to the extent required by the Ministry, and to ensure that the Ministry and the Contractor will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to this Contract;
  - (b) perform its, and ensure that its personnel perform their, obligations under this Contract in compliance with its and their obligations under the Health and Safety at Work Act 2015;
  - (c) comply with all reasonable directions of the Ministry relating to health, safety, and security;
  - (d) report any health and safety incident, injury or near miss, or any notice issued under the Health and Safety at Work Act 2015, to the Ministry to the extent that it relates to, or affects, this Contract;
  - (e) comply with the additional health and safety requirements described in Appendix 1 to Schedule 2;
  - (f) have appropriate and measurable health and safety targets.

For the purposes of clause 47, "personnel" includes (but is not limited to) all persons falling within the meaning of "worker" under the Health and Safety at Work Act 2015.

For the purposes of subclause (d), incidents resulting in, or having the potential to result in, serious harm to an individual must be notified to the Ministry and WorkSafe immediately. All other incidents or near misses must be reported to the Ministry as soon as reasonably practicable and in any event not longer than 48 hours after the event.

### **Taxes and levies**

48. The Contractor shall be responsible for payment of all taxation and ACC levies payable in respect of earnings and payments made by the Contractor under this Contract.

### **Children's Act 2014**

49. The Contractor will maintain during the Term of this Contract a child protection policy that accords with the requirements of section 19 of the Children's Act 2014 ("Policy"). The Contractor further undertakes to ensure its Policy is reviewed on a



regular basis so that at any time during the Term its Policy has been reviewed within the last three years.

50. The Contractor must operate and maintain a documented process in accordance with the requirements of the Children's Act 2014 that will include:
- (a) A safety checking (including Police vetting) process for new drivers;
  - (b) A safety checking (including Police vetting) process for existing drivers;
  - (c) Scheduling of safety checking every three years;
  - (d) Risk assessment;
  - (e) Core worker exemption process; and
  - (f) Data protection.

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## **C - The Ministry's obligations**

### **Ministry's obligations**

51. The Ministry shall perform and comply with its obligations under this Contract.
52. The Ministry will perform its obligations under this Contract in compliance with its obligations under the Health and Safety at Work Act 2015.
53. The Ministry may from time to time notify the Contractor of policies, directions, guidelines, or other requirements, and the Contractor shall comply with such new requirements from the date of such notice. Without prejudice to the Contractor's obligation to comply with the new requirements, if the Contractor considers that such compliance is materially inconsistent with the terms of this Contract, or materially increases the Contractor's obligations under this Contract, the Contractor shall notify the Ministry, and the Contractor and the Ministry shall negotiate in good faith the terms upon which the Contractor shall continue to comply with such new requirements. If the parties are unable to agree, then either party may terminate this Contract by giving at least three months' written notice to the other party. The Contractor confirms and acknowledges that it will continue to comply with such new requirements on the terms of this Contract until such time as any further terms are agreed and are incorporated into this Contract, or either party has terminated this Contract.
54. Notwithstanding clause 53, if there is a change in government policy or operations which affects the Ministry's ability to comply with its obligations under this Contract, or which makes it necessary or desirable (in the Ministry's opinion) to terminate this Contract, then the Ministry may terminate this Contract by giving at least three months' written notice to the Contractor.

### **Provision of information**

55. The Ministry will use its reasonable endeavours, subject to confidentiality requirements, to advise the Contractor of any proposed policy or operational changes that will have an effect on the provision of the Services under this Contract.



## D - Payments and charges

### Payments for Services

56. The Ministry shall pay the Contractor for the provision of the Services in accordance with Schedule 4 – Payment Schedule.
57. The Ministry is entitled to offset any amounts due from the Contractor from time to time against any sums payable by the Ministry to the Contractor pursuant to this Contract.
58. If at any time during the Term:
  - 58.1. The Contractor fails to provide a monthly report in the form required under Schedule 3 of this Contract, at the time required under this Contract; or
  - 58.2. The Contractor's report provided under Schedule 3 of this Contract contains incorrect information; or
  - 58.3. Any other default on the part of the Contractor not described in clauses 58.1 or 58.2 occurs,

the Ministry shall be entitled (at its discretion) to deduct 1%, 2% or 5% respectively of the Aggregate Monthly Payment for the Group(s) in respect of which the deduction default event occurred for such defaults for such period as the default remains unremedied. Such deduction is fair and reasonable to compensate the Ministry for the immediate costs losses and expenses incurred in relation to the defaults but the deductions:

- 58.4. shall be without prejudice to the Ministry's right to claim compensation in respect of any loss it suffers over and above the deduction; and
- 58.5. do not constitute an waiver of the Ministry's rights to terminate.

The deductions are cumulative in the event more than one default occurs.



## E - Communications

### Publicity

59. The Contractor shall immediately advise the Ministry's Group Manager School Transport or such other personnel as the Ministry may nominate from time to time if it becomes aware of:
  - 59.1. any issue about the operation or management of this Contract that has or may have media or public interest; or
  - 59.2. any circumstance, act or omission that may result in the Ministry being brought into disrepute through its association with the Contractor (including any circumstance, act or omission relating to the Contractor or any director, principal, shareholder, key personnel or sub-contractor of the Contractor).
60. The Contractor shall not issue to the media or on or in any public forum (including, but not limited to, social media) any oral or written statement about the Pre-Start Requirements, the Services, or the operation or management of this Contract without prior written approval from the Ministry (given or withheld at the Ministry's discretion). Notwithstanding the above, the Contractor is permitted to give real time service updates targeted at Students or their Caregivers.
61. Without prejudice to clause 60, upon the request of the Contractor the Ministry may consent to the release or publication of information the Contractor holds under the Contract if it is necessary to publicise the Services or to facilitate the efficient operation of this Contract.
62. Where high profile issues arise in relation to any aspect of this Contract then:
  - 62.1. either party will immediately advise the other if it becomes aware of any issue about the operation or management of this Contract, which has or may have media, political and/or public interest;
  - 62.2. each party will promptly advise the other if it is required by any Laws to provide information in relation to any aspect of this Contract.
63. The Contractor (or any Driver) may not erect, affix, display, paint or exhibit any billboard or advertisement in or on a Vehicle without first obtaining the prior approval in writing of the Ministry (in its sole and absolute discretion) to the proposed signage. The Ministry may from time to time make guidelines available on the Ministry's criteria for approval of signage, but this shall be without prejudice to the Ministry's discretion as to the approval of such signage in all cases. All signage must comply with legal requirements. Without limiting clause 63 the Ministry's consent will not be required in the case of any signage describing the Contractor's business, or any branding, livery or business logo (provided that it does not include any sponsorship or advertising for a third party), or that is required under and Laws, or is an advisory notice to passengers.



## **Confidentiality**

64. Subject to clauses 28, 41 and 42:
- 64.1. the Contractor will not, other than is required under any Laws, use or disclose to any third party (other than for the purpose of performing this Contract) the terms and conditions of this Contract, or any information confidential to the Ministry, without the prior written consent of the Ministry; and
  - 64.2. the Ministry will not, other than is required under any Laws, use or disclose to any third party (other than for the purpose of performing this Contract) Schedule 6 and Contractor-specific commercially sensitive information contained within this Contract or any information confidential to the Contractor without the prior written consent of the Contractor.
65. The Contractor and the Ministry shall ensure that all the people it is responsible for (including all subcontractors) will respect and protect the confidentiality of all information that comes into its possession pursuant to this Contract ("Confidential Information").
66. All Confidential Information is provided to the Contractor for the sole purpose of performing the Pre-Start Requirements and the Services. No Confidential Information provided during the Term of the Contract may be used by the Contractor for any other purpose.
67. Confidential Information excludes information that:
- 67.1. is or becomes a part of the public domain through no act or omission of the relevant party; or
  - 67.2. is within a party's lawful possession prior to disclosure and has not been obtained by a party either directly or indirectly from the disclosing party or under an obligation of confidence to a third party; or
  - 67.3. is lawfully disclosed by a third party without restriction on disclosure; or
  - 67.4. is independently developed and used by a party without breach of this Contract; or
  - 67.5. must be disclosed by law.

## **Official Information Act**

68. The Contractor acknowledges that the Ministry is subject to the Official Information Act 1982 and that the Ministry may be obliged to disclose information relating to this Contract under that Act.
69. The Contractor agrees to process all requests for official information on any matter relating to the Pre-Start Requirements and the Services in the following way:
- 69.1. immediately advise the Ministry if it receives a request;
  - 69.2. acknowledge receipt of the request and advise the requestor that the Ministry will respond to the request directly;
  - 69.3. forward the request to the Ministry to action.
70. The Ministry will, as soon as practicable, advise the Contractor if it is required to release information about the Contractor under the Official Information Act 1982.

## **Privacy Act and Oranga Tamariki Act**

71. The Contractor acknowledges that both the Contractor and the Ministry are subject to the Privacy Act 1993 and the information sharing provisions in the Oranga Tamariki Act 1989. The Contractor agrees that it will comply with all its requirements under the Privacy Act 1993 and the Oranga Tamariki Act 1989, including (but not limited to) that it will:
- 71.1. only use personal information for the purpose for which it was gathered, unless otherwise permitted under the Act;
  - 71.2. only gather personal information in a manner which is fair and unobtrusive;
  - 71.3. securely hold, store, handle and otherwise manage personal information in accordance with the Privacy Act 1993, which may include limiting the number and identity of its staff who have access to such personal information, and



implementing such security safeguards as are reasonable in the circumstances to take;

- 71.4. take such steps as may be required under the Privacy Act 1993 in order to protect the personal information of Students in the event of any lawful disclosure, for example, by redacting, blurring or summarising the information;
  - 71.5. disclose such information to such persons and at such times as it is obliged to disclose under the Oranga Tamariki Act 1989, or under any policies or directions promulgated by the Ministry in reference to the Oranga Tamariki Act 1989.
72. The Contractor agrees to process all requests for personal information on any matter relating to the Pre-Start Requirements or the Services in the following way:
- 72.1. Immediately advise the Ministry if it receives a request;
  - 72.2. If the request relates to personal information held by another agency and not the Contractor, acknowledge receipt of the request and transfer the request in accordance with section 39 Privacy Act 1993 as soon as reasonably practicable.
73. The Contractor will, promptly upon request by the Ministry, provide to the Ministry reasonable particulars of its methodology, processes and policies for dealing with information requests.
74. Should the Ministry receive an information request which should be transferred to the Contractor in accordance with section 39 Privacy Act 1993, the Ministry will transfer such request to the Contractor as soon as reasonably practicable.

#### **Cameras**

75. If the Contractor is required or otherwise chooses to maintain active security cameras in any Vehicles while performing the Services, the Contractor shall comply with all requirements of the Privacy Act 1993 in respect of the cameras and footage recorded by those cameras, as well as any other applicable Laws.



## **F - Requirements relating to termination or expiry**

76. The Contractor, at its sole cost, will co-operate to the best of its ability with the Ministry as to the transfer of the Services, to any other party as nominated by the Ministry, following the expiry or termination of this Contract, in accordance with this section.
77. The Contractor's obligations under this section F shall include, but shall not be limited to, the following:
  - 77.1. the Contractor shall give the Ministry or its nominee such assistance as is reasonably required by the Ministry from time to time, including the full benefit of the Contractor's knowledge and experience in respect of the Services;
  - 77.2. the Contractor shall promptly provide to the Ministry or its nominee such information or documents relating to the Services as are reasonably required by the Ministry from time to time.
78. To the extent that any monies are due by the Contractor, the Contractor shall make any such payments to any party in the performance of the Contractor's obligations under this Contract.
79. The Contractor shall sign any documents, and do all things reasonably necessary, at its sole cost, promptly on request by the Ministry, that are necessary to facilitate a smooth and orderly transfer of the Services. Where, as a result of the termination or expiry of this Contract, the Contractor no longer requires the services of some of its employees and sub-contractors and the incoming contractor wishes to explore the possibility of engaging some or all of the employees and sub-contractors, the Contractor will facilitate contact between such employees and sub-contractors and the incoming contractor. Nothing shall oblige the incoming contractor to offer employment or a contract for services to any particular employee or sub-contractor and such employees and sub-contractors shall not be obliged to accept any offer made by the incoming contractor.
80. The Contractor shall not make any statement, nor do any act or omission, which may:
  - 80.1. mislead any person about this Contract, the Pre-Start Requirements or the Services;
  - 80.2. divulge confidential or otherwise sensitive information relating to this Contract, the Pre-Start Requirements, the Services, or the Ministry (except as directed by the Ministry);
  - 80.3. bring the Ministry, the Services, or any new contractor appointed by the Ministry to provide the Services, into disrepute.
81. The Contractor shall at all times act in good faith towards the Ministry, or any new contractor appointed by the Ministry to provide the Pre-Start Requirements or the Services.
82. The Ministry shall be entitled, at its sole and absolute discretion, to withhold any monies then due under this Contract to the Contractor as at the date of expiry or termination of this Contract, until the Ministry is reasonably satisfied that the Contractor has performed all of its obligations under this section F.



## **G – Disputes**

### **Procedure**

83. If a dispute, disagreement, question, difference or claim arises between the parties in connection to this Contract or its subject matter ("Dispute"), either party may give the other written notice ("Dispute Notice") requiring that the Dispute be determined in accordance with the dispute resolution process set out in this section G.

### **Negotiation**

84. The parties will enter into negotiations to resolve the Dispute within 10 Working Days of the Dispute Notice being issued. Negotiations will be held between representatives of the parties (who must have authority to settle the Dispute). The Dispute will be escalated to senior management as necessary.

### **Mediation**

85. If:
- 85.1. the parties agree; and
  - 85.2. the Dispute is not resolved by negotiation within 10 Working Days of receipt of the Dispute Notice,
- then the Dispute may be referred to mediation ("Mediation") by one party giving written notice to the other ("Mediation Notice"). The mediation will be heard as soon as possible in Wellington, New Zealand and conducted in accordance with the protocols of the Arbitrators' and Mediators' Institute of New Zealand Inc ("AMINZ"). The Mediation will be conducted by a mediator, and at a fee, agreed by the parties. If the parties fail to agree such matters within 10 Working Days following the date of the delivery of the Mediation Notice, the President for the time being of AMINZ will select the mediator and determine the mediator's fee. The parties will share equally the cost of the mediator's fee.

### **Arbitration**

86. If the Dispute:
- 86.1. has not been resolved within a period of 10 Working Days (or such longer period as the parties may agree) in accordance with clause 84 above; or
  - 86.2. in accordance with clause 85 above,
- then either party may issue a notice ("Arbitration Notice") referring the Dispute to arbitration.
87. Each Arbitration Notice will be regarded as a reference of the Dispute to arbitration in accordance with the Arbitration Act 1996 ("Act"). Each such arbitration will be conducted on the following terms:
- 87.1. the place of arbitration will be Wellington, New Zealand;
  - 87.2. the tribunal will consist of a sole arbitrator, to be appointed by agreement of the parties, but if the parties fail to reach such agreement within 10 Working Days of the date of the Arbitration Notice, then the arbitrator will be appointed by the President for the time being, or his or her nominee, of AMINZ;
  - 87.3. the arbitration will be conducted as quickly as possible and, as far as is practicable, the arbitrator will issue his or her award within four months of his or her appointment. When determining the procedure and scheduling of the arbitration, the arbitrator will take this time period into consideration;
  - 87.4. each party will pay its own costs in relation to the arbitration;
  - 87.5. clauses 3 (Powers relating to conduct of arbitral proceedings) and 6 (Costs and expenses of an arbitration) of the Second Schedule of the Act will apply to any arbitral proceedings under this Contract. No other clauses in the Second Schedule of the Act will apply;
  - 87.6. the award in the arbitration will be final and binding.



**Interlocutory relief**

88. Nothing in this section G will prevent either party, at any time, from seeking any urgent interlocutory relief from a court of competent jurisdiction in relation to any matter that arises under this Contract.

**Continuity**

89. In the event of a Dispute, the Contractor will continue to provide the Services and comply with all its obligations under this Contract unless the Ministry requires otherwise in writing.

**Without prejudice**

90. Unless and until a Dispute is resolved by an express written agreement of the parties, any and all statements and undertakings made by the parties in connection with the associated Dispute resolution process (excluding any arbitration proceedings) will be deemed to have been made on a "without prejudice" basis.

Released under the Official Information Act 1982



## **H - Insurances**

### **Public liability insurance**

91. The Contractor shall effect public liability insurance, for at least the sum of \$1,000,000 for any one claim or series of claims arising out of the same occurrence with no limit on the total number of occurrences payable.
92. The public liability insurance effected by the Contractor must:
  - 92.1. Cover liability for loss or damage to any property, injury or death or illness to any person occurring anywhere in New Zealand arising out of the performance of the Services;
  - 92.2. Be in place from the Commencement Date until 6 months after the Expiry Date; and
  - 92.3. Provide that if a claim is made and accepted, the amount of cover shall automatically be reinstated to the full cover required by this Contract.

### **Passenger Service Industry insurances**

93. The Contractor shall also effect all appropriate Vehicle insurance, passengers' luggage insurance, and any other relevant insurance pertaining to the passenger service industry and as required under any Laws. The cover must be in place until the Expiry Date.

### **Evidence of insurances**

94. The Contractor shall, upon request, produce to the Ministry within a reasonable time after issue and in relation to the insurance arranged by it:
  - 94.1. a copy of the policy or policies; and
  - 94.2. either the receipts for payment of the current premiums or certificates of currency.

### **Annual policies**

95. The insurances required by this Contract may be annual policies provided that:
  - 95.1. Each policy is renewed or replaced so that the insurance are in force for the period required under this Contract; and
  - 95.2. The Contractor shall provide to the Ministry, upon request, the receipt for payment of the annual premium or a certificate of currency for the full period of the policy immediately after such policy is renewed or replaced.



## **I - Liability**

### **Parties' Liability**

96. The total and exclusive liability of either party, whether in contract, tort, equity or otherwise, under or in respect of this Contract shall be as set out in this Contract.

### **Liability limitation**

97. Neither party will under any circumstances be liable under the law of tort, contract or otherwise for any loss of profits or savings or for any indirect or consequential loss or damage, however caused, arising out of or in connection with the performance or non-performance of this Contract.
98. Subject to clauses 99 and 100, each party's liability to the other under this Contract arising out of any claim for damages for any cause whatsoever and including under the law of tort, contract or otherwise will under no circumstances exceed in aggregate the Liability Limitation Amount set out in Schedule 1 – Reference Schedule.

### **Exception for insured risks**

99. The liability limitation set out in clause 98 shall be increased in relation to any claim by the Ministry under this Contract to the extent that the Contractor is able to recover the amount of the claim under its insurance policies up to the amounts listed in Schedule 1 – Reference Schedule in respect of each policy.
100. For any liability of the Contractor to the Ministry in excess of the Liability Limitation Amounts where the Contractor has a right of recovery against a third party, the Contractor will at the election of the Ministry either (a) assign such rights of recovery to the Ministry or (b) use all reasonable endeavours to recover such amounts and will repay such amounts recovered to the Ministry. The Ministry will pay the Contractor's reasonable expenses in pursuing any such claim provided the Contractor:
- 100.1. Gives prior written advice of the recovery opportunity to the Ministry and obtains the Ministry's written confirmation to proceed;
  - 100.2. Keeps the Ministry informed as to progress with the claim; and
  - 100.3. Consults with and obtains the Ministry's prior written approval to any settlement of the claim.



## **J - Default and termination**

### **Contractor Default**

101. Without limiting any other rights or remedies of the Ministry under this Contract, if at any time during the Term any of the following shall occur:
- 101.1. if any material representation or warranty made or given by the Contractor in this Contract or the Tender shall be or shall become incorrect in any material respect;
  - 101.2. if any proceedings are commenced for the winding up of the Contractor (unless the Ministry is satisfied the proceedings are vexatious and will be struck out or stayed) or an effective resolution is proposed or passed for the winding up or dissolution without winding up of the Contractor except winding up for the purpose of reconstruction or amalgamation, previously approved in writing by the Ministry (unless during or following such reconstruction the Contractor becomes, or is declared to be, insolvent);
  - 101.3. if a receiver, receiver and manager, inspector, trustee, liquidator or provisional liquidator is appointed over the Contractor or all or any part of the assets or undertaking of the Contractor or the holder of any security takes possession of any assets or undertakings of the Contractor other than with the prior written consent of the Ministry;
  - 101.4. if any execution, attachment, distress or other process (being a process analogous to insolvency proceedings) of any court or authority is issued against or in respect of, or levied upon, any part of the assets or revenues of the Contractor, and is not discharged or satisfied within 60 days of its filing or is not demonstrated prior to the expiry of that 60 day period as being an application that is frivolous or vexatious. This shall exclude proceedings commenced by the Ministry until such time as judgement is given by the court;
  - 101.5. if the Contractor enters into any arrangement, composition or compromise with its creditors generally or any class of them, or with its members or any class of them, or proceedings are commenced to sanction any such arrangement, composition or compromise is agreed to at any meeting of creditors or members of the Contractor;
  - 101.6. if the Contractor makes any regular or long term change (determined at the Ministry's discretion) to any Routes without obtaining Ministry prior approval;
  - 101.7. the Contractor uses Vehicles older than the Contract stipulates or if the average age of a Service Fleet regularly exceeds (determined at the Ministry's discretion) that which the Contract stipulates;
  - 101.8. if the Contractor fails to meet their performance obligations detailed in Schedule 2;
  - 101.9. if the Contractor fails to meet their reporting obligations detailed in Schedule 3, then the Ministry may by giving three months written notice terminate this Contract, provided however that should a default referred to in this clause also be grounds for termination on 3 Working Days' notice under clause 102, then the applicable timeframe shall be 3 Working Days.
102. The Ministry may terminate this Contract on 3 Working Days' notice to the Contractor where:
- 102.1. The Contractor defaults in the observance or performance of any material duty or material obligation under this Contract;
  - 102.2. The Contractor is the subject of repeated and continuing substantiated (in the Ministry's reasonable opinion) complaints relating to the performance of the Services;
  - 102.3. A Vehicle is ordered off the road by notice from an enforcement officer given under section 115 of the Land Transport Act 1998;
  - 102.4. The New Zealand Transport Agency requires the Contractor to undertake three-monthly COF checks on any Vehicles in a Service Fleet;



102.5. The Contractor assigns or purports to assign this Contract without the prior written consent of the Ministry;

102.6. The Ministry becomes aware of any circumstance, act or omission that has resulted or may (in the Ministry's opinion) result in the Ministry being brought into disrepute through its association with the Contractor (including any circumstance, act or omission relating to the Contractor or any director, principal, shareholder, key personnel or sub-contractor of the Contractor).

On receipt of the termination notice, the Contractor may make submissions to the Ministry prior to the termination of this Contract under this clause 102 as to why the Ministry should rescind its termination notice. The Ministry shall have absolute discretion as to whether to rescind its termination notice, and the Ministry's decision is final. If the Ministry gives notice to the Contractor that it rescinds its termination notice, the termination notice shall be rescinded and shall have no further effect, but such rescission shall be without prejudice to any other rights the Ministry may have.

### **The Ministry may Remedy Default**

103. The Ministry may elect to remedy any default of the Contractor under this Contract (including, but not limited to, by arranging for the Services to be performed by another operator in respect of a given Route or Group), after first giving the Contractor 15 Working Days' notice in writing to remedy the default and the Contractor fails to remedy the default. All reasonable costs and expenses incurred by the Ministry in rectifying a default may be either deducted from any payment due or any other amount otherwise payable to the Contractor or at the discretion of the Ministry, invoiced to the Contractor for immediate payment.

### **Ministry Default**

104. If at any time during the Term the Ministry defaults in the observance or performance of any material duty or material obligation under this Contract and such default has not been remedied within 15 Working Days of the Ministry receiving written notice from the Contractor requiring the default to be remedied, then notwithstanding any prior waiver or failure by the Contractor to take action or indulgence granted by the Contractor to the Ministry in respect of any such matter or default (whether past or continuing), the Contractor may terminate this Contract by giving the Ministry three months written notice.

### **Where this Contract is terminated**

105. In the event that this Contract is terminated by the Ministry the Ministry shall be liable in respect of the amount due and payable to the Contractor for the actual Services properly provided by the Contractor in accordance with this Contract up to the date of termination.

106. In the event that this Contract is terminated by the Ministry as a consequence of the Contractor's default (which includes, but is not limited to, the Ministry exercising the termination rights recorded in clauses 7, 101, 102 and 112), the Contractor shall not be entitled to claim or receive compensation or damages (including but not limited to liquidated, consequential, exemplary or other) on the termination of this Contract, other than the amount specified in clause 105.

107. In the event that this Contract is terminated by the Ministry during the initial Term other than as a consequence of the Contractor's default, the Ministry, in addition to the amount specified in clause 105, shall pay compensation to the Contractor assessed as follows:

107.1. the costs actually incurred by the Contractor in staff and equipment specifically acquired in preparation for providing the Services (such sum to be supported by such evidence as the Ministry reasonably requires);

*less*

107.2. any costs described in clause 107.1 above where such staff and equipment are able to be redeployed to provide transport services commensurate with the business of the Contractor within a reasonable time after termination of this Contract,

provided however that:



- 107.3. such compensation shall be capped at the Liability Limitation Amount;
  - 107.4. no compensation shall be payable in respect of termination after the Initial Expiry Date; and
  - 107.5. under no circumstances shall the compensation include any loss of profits or savings or for any indirect or consequential loss or damage.
108. Clauses 37-43, 56-90, 96-100, and 105-107 shall survive termination of this Contract.

Released under the Official Information Act 1982



## **K – General**

### **Force majeure**

109. Neither party will be liable for any act, omission, or failure to fulfil its obligations under this Contract if such act, omission or failure arises from any cause reasonably beyond its control (or where the party could not reasonably mitigate its effects) including acts of God, strikes or lockouts (other than those involving the employees, agents or contractors of the Contractor), riots, acts of war, terrorism, epidemics, fire, communication line failures, power failures, earthquakes or other disaster (called "Force Majeure"). Any strikes, lockouts or other industrial action by the employees, agents or contractors affecting the performance of the Pre-Start Requirements or the provision of the Services shall not be Force Majeure.
110. The party unable to fulfil its obligations due to Force Majeure will immediately:
- 110.1. Make contact with the other party, advising of the event and likely length of time the Contractor will be unable to perform the Pre-Start Requirements or provide the Services;
- 110.2. Follow by notice in writing of the reasons for its failure to fulfil its obligations and the effect of such failure; and
- 110.3. Use all reasonable endeavours to avoid or remove the cause and perform its obligations.
111. Where the Contractor is unable to fulfil its obligations in respect of the Services, whether in full or in part, under clauses 109 and 110, the Ministry shall not be obliged to make any payments under this Contract in respect of the Services not performed.
112. The Ministry may terminate this Contract immediately where, due to Force Majeure, the Contractor has failed to observe or perform any duty or obligation under this Contract for a continuous period of two calendar months, or for separate shorter periods which together total two calendar months.

### **No partnership**

113. Nothing in this Contract constitutes the parties as partners or as agents for each other. No party has any authority to bind the other or act on its behalf except to the extent expressly provided for in this Contract.

### **No employment contract**

114. The parties expressly acknowledge that this is not a contract of employment but rather requires the Contractor to supply specific services as an independent contractor.

### **Variation**

115. This Contract may be amended, modified or varied or supplemented by agreement in writing signed by duly authorised representatives of the parties.

### **Severance**

116. The illegality, invalidity or unenforceability of any provision in this Contract will not affect the legality, validity or enforceability of any other provisions.

### **Waiver**

117. No right under this Contract shall be deemed to be waived except by notice in writing signed by each party.
118. A waiver for either party will not prejudice its rights in respect of any subsequent breach of this Contract by the other party.
119. Any failure by either party to enforce any clause of this Contract, or any forbearance, delay or indulgence granted by the other party will not be construed as a waiver of either party's rights under this Contract.

### **No assignment**

120. The Contractor shall not assign or transfer this Contract during the first 24 months of the initial Term of this Contract, except with the prior consent of the Ministry, which shall be given or withheld in the Ministry's sole and absolute discretion.



121. After the first 24 months of the initial Term of this Contract, the Contractor shall not assign or transfer this Contract without the prior written consent of the Ministry. The Ministry will not unreasonably withhold its consent to an assignment of the Contract to a respectable, responsible, solvent and suitable assignee. As preconditions to considering any such assignment or transfer, the Ministry shall be entitled to the following:
- 121.1. The Ministry being satisfied in its sole discretion as to the regional and national market share of the assignor and the assignee in the provision of similar services to the Services and any corresponding impact on market competition resulting from the proposed assignment;
  - 121.2. The Contractor shall give to the Ministry written notice of the proposed assignment, together with sufficient details to demonstrate to the Ministry that the proposed assignee is responsible and of sound financial standing, of sufficient size, experience and competence to perform the Contractor's obligations under this Contract in a proper manner; and
  - 121.3. Anything else reasonably requested by the Ministry.
122. Any proposed assignment or transfer of shares in or the restructuring of the Contractor or its controlling entity that has the effect of altering legal or beneficial ownership or control of the Contractor will be a deemed assignment of this Contract for the purpose of this clause and therefore requires the prior written consent of the Ministry in accordance with clause 120 or 121.

### **Novation by Ministry**

123. The Ministry may, on written notice to the Contractor and without requiring the Contractor's consent, assign or novate this Contract to a third party taking over responsibility for managing the Services, whether nationally or locally to the region in which the Schools that are the subject of the Services are based. The Contractor shall sign any documents, and do all things reasonably necessary, promptly on request by the Ministry, that are necessary to give effect to an assignment or novation under this clause.

### **Warranty of interest**

124. The Contractor warrants that it has no actual or potential conflicts of interest and shall not undertake any further work either directly or indirectly which may place the Contractor in a conflict of interest position with respect to the Services to be provided to the Ministry.
125. If an actual or potential conflict of interest comes to the attention of the Contractor during the Term of this Contract they will notify the Ministry of this immediately.

### **Cost**

126. Each party shall bear its own cost incurred in the preparation and execution of this Contract.

### **Changes to Routes and Groups**

127. The Ministry may from time to time, in its sole discretion, notify the Contractor of additions, cessations, curtailments and extensions of Routes within a given Group. The Ministry will give the Contractor written notice as required under this clause of any such changes to Groups or Routes detailing the commensurate changes to the pricing to reflect the changes in the monthly payments payable by the Ministry to the Contractor. The following provisions shall apply in respect of any such changes:
- 127.1. In respect of any new Routes added to a Group, an additional Route Fixed Price and Route Variable Price will be paid by the Ministry in accordance with the instructions provided in Schedule 6 – Pricing Schedule. The Ministry will provide no less than four weeks' notice of any new Routes, unless the parties agree that it may be delivered sooner;
  - 127.2. Where an existing Route is terminated, the Route Fixed Price and Route Variable Price for that Route shall also be terminated. The Ministry will provide no less than ten weeks' notice of any Route terminations;



- 127.3. There shall be no changes to the Group Fixed Price (if any) regardless of any additions, cessations, curtailments or extensions of any Routes (except as otherwise provided in this Contract);
- 127.4. All changes to Routes or Route kilometres shall be recorded in a written notice from the Ministry to the Contractor. The Ministry will provide notice of changes to a Route as soon as possible, but in any event no less than two Working Days' notice will be given;
- 127.5. If the aggregate of all required changes pursuant to this clause during the Term in respect of a given Group results in a reduction of more than 25% of the annual amount payable under this Contract as from the Commencement Date (disregarding any subsequent Global Rate Adjustments throughout the Term) in respect of the same Group, the following shall apply:
- a) the parties shall enter into good faith negotiations to attempt to agree an outcome that is acceptable to both parties and enables the Contractor to continue to provide the Services in respect of the Group. Without limitation, such outcome may include a variation to the terms of this Contract or to Schedule 6;
  - b) should the parties fail to agree a mutually acceptable outcome under paragraph (a) above within 10 Working Days, the Contractor may give three months' written notice to the Ministry terminating that Group from this Contract. At the expiry of such notice the Group shall be deemed to be severed and terminated from this Contract, and the Ministry shall not be liable to make any further payment in respect of such Group;
- 127.6. If the aggregate of all required changes pursuant to this clause during the Term in respect of a given Group results in an increase of more than 25% of the annual amount payable under this Contract as from the Commencement Date (disregarding any subsequent Global Rate Adjustments throughout the Term) in respect of the same Group the following shall apply:
- a) the parties shall enter into good faith negotiations to attempt to agree an outcome that is acceptable to both parties and enables the Ministry to continue to procure the Services on favourable terms in respect of the Group. Without limitation, such outcome may include a variation to the terms of this Contract or to Schedule 6; and
  - b) should the parties fail to agree a mutually acceptable outcome under paragraph (a) above within 10 Working Days, the Ministry may give three months' written notice to the Contractor terminating that Group from this Contract. At the expiry of such notice the Group shall be deemed to be severed and terminated from this Contract, and the Ministry shall not be liable to make any further payment in respect of such Group.

## Notices

128. Any notice, consent, approval, agreement, undertaking, report or other communication given by a party for the purposes of this Contract will be of no effect unless given in writing and addressed to the recipient at the address last notified by the recipient to the other party. Until a change is so notified, the address of each party is as follows:

<p><b>Ministry</b>  Group Manager School Transport  Ministry of Education  33 Bowen Street  P O Box 1666  Wellington 6140</p> <p>Email: <a href="mailto:transport.contracts@education.govt.nz">transport.contracts@education.govt.nz</a></p>	<p><b>[Contractor]</b></p>
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Delivery may be affected by hand, by post with postage prepaid, or by email. A notice or other communication will be deemed to have been received:

- (a) in the case of hand delivery or pre-paid post sent from outside New Zealand, at the time of actual delivery to the recipient's address;
- (b) in the case of delivery by pre-paid post sent from within New Zealand, no later than the 2nd Working Day after posting; or
- (c) in the case of delivery by email, no later than when the recipient's email server acknowledges receipt.

However, if a notice or other communication is received or deemed to have been received after 5 pm on a Working Day in the place to which it is sent, or on a day which is not a Working Day in that place, it will be deemed not to have been received until the next Working Day in that place.

### **Entire Agreement**

129. This Contract, together with the Schedules and Annexure shall be the complete and exclusive Contract between the parties and supersedes all previous arrangements whether written, oral or both relating to such matters.

### **Governing Law**

130. This Contract is governed by New Zealand law. Without prejudice to the dispute resolution provisions of section G, the parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Contract.

### **Counterparts**

131. This Contract may be signed in any number of counterparts (including email copies) all of which, when taken together, will constitute one and the same contract. A party may enter into this Contract by signing any counterpart.



## L - Definitions and interpretation

### Definitions

132. In this Contract including the Schedules unless the text otherwise states:

**'Aggregate Monthly Payment'** means the aggregate of the Group Fixed Price (if any), Route Fixed Price and Route Variable Price which would be due to be paid by the Ministry in a given month in respect of a given Group.

**'Approved Vehicle Telematics System'** means a telematic system approved by the Ministry and includes onboard vehicle time and location recording and accelerometer, with data storage and transmission capability that communicates specified vehicle operating information to an approved Telematics provider, and on to the Ministry.

**'Caregiver'** means any person legally responsible for the care of a Student, including parents and guardians under the Care of Children Act 2004.

**'COF'** means Certificate of Fitness, as issued by the New Zealand Transport Agency via its agents.

**'Commencement Date'** means the commencement date shown in Schedule 1 – Reference Schedule.

**'Contract'** means this document and Schedules 1 to 6 of this document, but does not include Schedule 7 except to the extent otherwise provided in this Contract.

**'Daily Route'** means a Route that is primarily designed to transport Eligible Students to and from School at the beginning and end of each School Day.

**'Driver'** means any individual driver, contractor, employee, subcontractor or a member of a licensed transport operator who will drive a Vehicle in provision of the Services under this Contract.

**'Eligible Student'** means any student aged 5 years and over, who meets the Ministry's school transport eligibility criteria on the Route travelled.

**'Expiry Date'** means the final expiry date of this Contract after the expiry of the Term (including any extensions).

**'Global Rate Adjustment'** means the quarterly adjustment described in clauses 181 to 183.

**'Group'** means a given set of Routes, devised or determined by the Ministry and as recorded in Schedule 6 – Pricing Schedule, for which the Contractor is to provide Services in accordance with this Contract.

**'Group Fixed Price'** means the Group Fixed Price in respect of a given Group as described in Schedule 6 – Pricing Schedule (if any).

**'GST'** means Goods and Services Tax payable under the Goods and Services Tax Act 1985.

**'Inappropriate Behaviour'** means conduct including, but not limited to, such things as assault on a child, sexualised conversations, indecent exposure, verbal abuse of a child, child grooming behaviour, and any activity which a reasonable person would consider unacceptable on a school bus, or by a Driver, such as picking up hitchhikers, driving under the influence of drugs and/or alcohol, or behaving in a manner that is outside of commonly accepted levels of safety and/or decency that the Ministry reasonably considers puts children in a position of risk or untoward discomfort.

**'Ineligible Student'** means any student aged 5 years and over enrolled at a State, State Integrated, Special Character or Private School who is not eligible for school transport assistance on the Route travelled.

**'Initial Expiry Date'** means the initial expiry date shown in Schedule 1 – Reference Schedule, which may be extended in accordance with this Contract.

**'Initial Passenger Number(s)'** in respect of a given Route means:

- a) For Routes shown in Schedule 6 – Pricing Schedule, the initial passenger number(s) recorded in that Schedule; and
- b) For Routes introduced to this Contract after the date on which it is signed, the initial passenger number(s) advised by the Ministry when the Route is introduced.



**'Laws'** means, to the extent they are relevant to the subject matter of this Contract, any rules of common law, principles of equity, national, and local laws, statutes, rules, regulations, proclamations, ordinances and by-laws.

**'Liability Limitation Amount'** means the Liability Limitation Amount set out in Schedule 1 – Reference Schedule.

**'LPSV'** means a large passenger service Vehicle that is used to provide the Services under the terms of this Contract.

**'Maintenance Programme'** means that programme specified by the Contractor in the Tender.

**'Ministry Data'** means data, information and records owned by the Ministry and held by the Contractor as described in clause 38.

**'Ministry's Representative'** means the person named as the Ministry's Representative in Schedule 1, and may be updated from time to time as notified by the Ministry.

**'New Zealand Transport Agency'** means the Crown entity of the same name established under the Land Transport Management Act 2003.

**'Passenger Boarding System'** means an electronic means of collecting information on passenger boarding.

**'PCBU'** means a 'person conducting a business or undertaking' as defined under the Health and Safety at Work Act 2015.

**'Pre-Start Requirements'** means the obligations of the Contractor required to be performed between the date of this Contract and the Commencement Date in preparation for providing the Services from the Commencement Date, as described in Appendix 2 to Schedule 2.

**'Pricing Submission'** means the submission made by the Contractor in response to the Tender that offered the Ministry prices for one or more Routes or Groups (as applicable).

**'Report of Concern'** means a report of concern made to Oranga Tamariki or the Police comprising information provided to either of those agencies about a child or young person by someone concerned for their safety or wellbeing.

**'Route'** means a given Daily Route or Technology Route for which the Contractor is to provide Services in accordance with this Contract, which are initially as recorded in Schedule 6 – Pricing Schedule but may be subsequently added, ceased, curtailed, or extended in accordance with this Contract.

**'Route Fixed Price'** means the Route Fixed Price in respect of a given Route as described in Schedule 6 – Pricing Schedule.

**'Route Variable Price'** means the Route Variable Price in respect of a given Route as described in Schedule 6 – Pricing Schedule, being a per kilometre rate.

**'Service Fleet'** means the aggregate of all Vehicles used by the Contractor in providing the Services in respect of a given Group from time to time.

**'Services'** means the services to be provided by the Contractor as described in Schedule 2 – School Transport Services.

**'School(s)'** means state and integrated schools and designated character schools (as those terms are defined in the Education Act 1989).

**'School Day'** means a day specified as a school day in a relevant School Year, as determined by the Minister and gazetted.

**'School Year'** means in respect of each School the number of days (calculated in full days and not half days) and dates that the School is required to be opened as determined by the Minister under section 65A-D of the Education Act 1989 and gazetted in respect of that School or type of School.

**'SPSV'** means a small passenger service Vehicle that is used to provide the Services under the terms of this Contract.

**'Student(s)'** includes Eligible Students and Ineligible Students.



**'Technology Route'** means a Route that is primarily designed to transport Year 7 and 8 Eligible Students to and from a Technology Training Centre during a School Day.

**'Technology Training Centre'** means any site at which the technology component of the New Zealand curriculum is delivered to Year 7 and 8 Eligible Students.

**'Tender'** means the Contractor's proposal pursuant to which this Contract has been entered into, as attached to this Contract at Schedule 7 - Tender.

**'Term'** means the term of this Contract in accordance with clause 1, and includes any extensions.

**'Transition Plan and Risk Register'** means the transition plan and risk register forming part of the Tender, and forming the basis for the Pre-Start Requirements.

**'Vehicle'** means any SPSV or LPSV that is used to provide the Services under the terms of this Contract.

**'Working Day'** means any day other than a Saturday, a Sunday or a public holiday (as defined in the Holidays Act 2003) in New Zealand.

### Interpretation

133. In this Contract unless the text otherwise states:

- 133.1. all monetary amounts are stated exclusive of GST and in New Zealand dollars unless provided otherwise. GST is payable at the same time and in the same manner as is any other amount payable under this Contract where that amount is subject to GST under the Goods and Services Tax Act 1985;
- 133.2. where the context permits the singular includes the plural and vice versa;
- 133.3. references to any party means the parties to this Contract and includes their respective successors and permitted assignees (as the case may be);
- 133.4. references to clauses, schedules and to any attachments are to clauses in the schedules and attachments (if any) to this Contract (unless otherwise stated);
- 133.5. where the context permits references to the Contractor include the Contractor's employees, agents and officers and the employees, agents and officers of the Contractor's subcontractors;
- 133.6. all references to Laws are references to New Zealand Laws and include all subordinate legislation, any re-enactment of or amendment to any legislation and all legislation passed in substitution for any legislation;
- 133.7. references to a person include a natural person, firm, corporation, association or other entity whether incorporated or not and whether or not having a separate legal personality;
- 133.8. joint and several obligations that bind more than one person shall bind those persons jointly and severally.



## Execution

This Contract was executed on

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Signed for and on behalf of **the Sovereign** in right of New Zealand acting by and through the Secretary for Education:

Signature:	
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Witness signature:	
Witness name:	
Occupation:	
Address:	Ministry of Education P O Box 1666, Wellington 6140

Signed for [**Name of Contractor**]:

Signature:	
------------	--

Witness signature:	
Witness name:	
Occupation:	
Address:	



## Schedule 1 – Reference Schedule

Commencement Date (clause 1):	1 January 2022
Initial Expiry Date:	31 December 2027
Ministry's Representative:	GM School Transport Education Infrastructure Service 04 439 5352
Contractor's Representative:	
Contractor's Legal Entity Name:	
Contractor's Trading Name:	
Contractor's Registered Address:	
Contractor's NZBN:	
Passenger Service Licence Number:	
Public Liability Insurance Amount:	\$1,000,000.00
Liability Limitation Amount:	In the first three months after the Commencement Date, this amount shall be equivalent to the total amount payable by the Ministry to the Contractor on account of the Group Fixed Price (if any), Route Fixed Price and Route Variable Price described in Schedule 6 if every Service was performed on each School Day in the first three months after the Commencement Date, based on the Group(s) and Routes in Schedule 6. From the first three months after the Commencement Date, this amount shall be equivalent to the total amount paid to the Contractor in the prior 3 months.



## Schedule 2 – School Transport Services

### Introduction

134. Safety is of paramount importance in the transportation of Students to and from school each day. The Contractor must ensure that safe and reliable services are provided. This means the Contractor must deliver a reliable service with Drivers and Vehicles that comply with all licensing requirements and are well maintained, to ensure Students arrive at school on time and ready to learn.
135. To the extent any Pre-Start Requirements have not been completed by the Contractor by the Commencement Date, the Contractor shall remain liable to complete the Pre-Start Requirements from the Commencement Date unless waived by the Ministry.

### The Services

136. The Contractor will provide a transport service for all Eligible Students in accordance with the Routes, Group(s), Eligible Students, timetable and rates identified within the Pricing Submission or as is otherwise provided in this Contract.

### Vehicle Age

137. Vehicle age will be calculated as the elapsed time between the date a Vehicle was first registered anywhere in the world and the measurement date.
138. The Contractor must ensure that SPSV ages are less than 15 years for the Term of this Contract.
139. The Contractor must ensure that LPSV ages are less than 26 years for the Term of this Contract and undertakes to comply at all times with the statement as to LPSV age set out in Schedule 5.
140. The Contractor will maintain accurate Vehicle lists for each Service Fleet, including details as to the Vehicles make, model, registration, date of first registration, seating capacity, standing capacity, and Euro Standard (or equivalent). Such Service Fleet lists must also include a quick reference showing the number of Vehicles infringing any age limit specified in this Contract and the average age of Vehicles in the Service Fleet. The Service Fleet list must be made available to the Ministry on request.

### On-boarding and Telematics

141. All Vehicles used on Daily Routes must be fitted with an Approved Vehicle Telematics System compliant with Ministry requirements, supplied through a provider approved by the Ministry. A full list of acceptable systems, and further information, can be seen on the Ministry's website and can be requested at any time. If the Contractor's Approved Vehicle Telematics System provider ceases to trade or an existing Approved Vehicle Telematics System no longer meets the Ministry's standards or specifications as at the date of this Contract and ceases to be an Approved Vehicle Telematics System, the Contractor will replace it promptly with a new Approved Vehicle Telematics System to ensure continuity of the Services, at its sole cost.
  - 141.1. The Contractor acknowledges that the Ministry, or its software telematics agent, will collect data from the Approved Vehicle Telematics System which will be used for contract monitoring, incident investigation and service improvement purposes.
  - 141.2. The Contractor agrees to providing the Ministry, or its software agent, with time, position, accelerometer and incident data from the Approved Vehicle Telematics System at no cost to the Ministry.
142. The Contractor will allow the Ministry to fit, at the Ministry's cost, a Passenger Boarding System to any of its Vehicles (at the Ministry's discretion), and if requested allow it to be connected to the Contractor's Authorised Vehicle Telematics System for data transfer, storage and/or communication with other systems. The Ministry shall be entitled to access the Contractor's Vehicles at all reasonable times for the purpose of installing, commissioning, maintaining, decommissioning and uninstalling a Passenger Boarding System. The Contractor will take due care of the equipment supplied and report any fault identified in its operation to the Ministry.



- 142.1. The Contractor acknowledges that passenger boarding information will be the property of the Ministry and although the Ministry may share non-identifying data with the Contractor, the Contractor will not have access to data that identifies Students, other than for the purpose of emergency management and recognising Students as being eligible or ineligible for transportation.
- 142.2. The Contractor will ensure at its own cost that all Drivers are trained in the use of the Passenger Boarding System, and operate it in accordance with the operating manual and any training or operating resources made available by the Ministry. Such training may be undertaken pursuant to the ongoing Driver development training referred to in clause 150.
- 142.3. The Ministry will be responsible for all costs associated with the installation, commissioning, maintenance, decommissioning and uninstallation of the Passenger Boarding System.
- 142.4. The Contractor will be responsible for the repair or replacement of the Passenger Boarding System where it is damaged due to a negligent act or omission, or by the wilful default, of the Contractor, or its employees, contractors or agents.
- 142.5. Without prejudice to the Ministry's right to install a Passenger Boarding System on any or all of the Contractor's Vehicles, the Ministry intends to only install a Passenger Boarding System on the number of Vehicles required to perform the Services on a given day, plus a reasonable number of spare Vehicles, and that Vehicles fitted with a Passenger Boarding System will be used to provide the Service in preference to those without a Passenger Boarding System.

### **Vehicle Standards and Safety**

143. The Contractor must ensure that:
  - 143.1. Vehicles and their individual components are maintained within safe tolerances of the manufacturer's specifications, and COF standards, as issued by the New Zealand Transport Agency, at all times whilst on a Service Fleet list or if used for transporting Students under this Contract;
  - 143.2. Vehicles are always fit for purpose and presented in a clean and tidy condition. Efforts must be made to ensure that damaged upholstery and bodywork is repaired and that graffiti is removed as soon as possible;
  - 143.3. If a Vehicle used in the service is presented for a Vehicle Condition Assessment at a COF testing station (commonly known as a pre-COF check), copies of the assessment and documented evidence of completed corrective actions must be provided, upon request; and
  - 143.4. A first aid kit is available in all Vehicles.

### **Vehicle Backup and Replacement**

144. The Contractor must ensure that:
  - 144.1 Vehicles introduced during the Term of the Contract comply with the requirements of this Contract whether for back-up or permanent replacement or otherwise; and
  - 144.2. Any Vehicle introduced to the fleet used by the Contractor to provide the Services is younger than any one it replaces.

### **Vehicle Maintenance**

145. The Contractor must ensure that:
  - 145.1. Every Vehicle used in the provision of Services is maintained in accordance with its Maintenance Programme, evidence of which is to be provided to the Ministry on request;
  - 145.2. Every Vehicle is subject to a daily pre-departure check before entering service. This pre-departure check is to be, at a minimum, the New Zealand Transport Agency Walk around Check. The Contractor must undertake randomised compliance checks of this requirement and keep the records for at least three months, providing them to the Ministry on request;



- 145.3. Every Vehicle is subject to an end of Route check to (immediately after last drop-off) ensure all Students have left the Vehicle with the completion of the check being conducted recorded, and the records of which shall be made available to the Ministry on request. Records need to be kept for at least three months; and
- 145.4. All persons involved in the maintenance of Vehicles used in the provision of the Services are to be suitably qualified and/or experienced to undertake activities that relate to Vehicle and coach service maintenance. Qualification and/or experience information is to be recorded, and is to be provided to the Ministry on request.

### **Driver Training**

146. The Contractor will use only trained Drivers to provide the Services at all times. All Drivers must have completed, or have an agreed programme to complete within six months, the following New Zealand Qualification Authority (NZQA) Unit Standards, or an equivalent training programme approved by the Ministry:
- 3465; and
  - 3466; and
  - 26551 or 6401; and
  - 26552 or 6402; and
  - 15162; and
  - 17972; and
  - 24089; and (if applicable)
  - 15163. (optional)

*These NZQA standards may be subject to change or substitution, as notified by the Ministry from time to time.*

147. Any replacement Driver must meet the requirements specified in clause 146 within six months of their engagement by the Contractor.
148. The Ministry requires that all Drivers hold a current first aid certificate from an NZQA approved provider
149. The Ministry reserves the right to amend the two year refresher course required to keep the first aid certificate current if the timeline in the guidance to the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 is amended.
150. The Contractor must ensure that they provide the equivalent of two half-days ongoing Driver development per Driver per annum, on a range of topics such as defensive driving, first aid (refresher), advanced driver training, hazard identification, fatigue management, stress and time management programmes, and Passenger Boarding System operation training as described in clause 142.2. Ad hoc development activities are to be provided for individual driver-specific situations.
151. The Ministry retains the right to require the replacement of an existing training standard or activity with another activity of similar cost and duration. Attendance must be recorded and made available to the Ministry on request.
152. The Contractor must ensure at all times that:
- 152.1. Drivers hold all relevant drivers licences and endorsements at all times they are involved in providing the Services; and
- 152.2. Drivers comply with the Work Time and Logbooks Rule 2007, including working within all requirements of worktime, secondary or other employment, retaining logbook records, and monitoring for signs of fatigue.



## **Timetables and Vehicle stop Locations**

153. The Contractor is to set Daily Route timetables and any on Route Vehicle stop locations and may change them from time to time provided that:
- 153.1. the Ministry can require the Contractor to make changes to:
- a) a Daily Route timetable; or
  - b) on Route Vehicle stop locations,
- and to implement such changes as soon as reasonably practicable after the Ministry notifies the Contractor of such changes. Such changes shall prevail over any changes made or desired to be made by the Contractor; and
- 153.2. the Contractor may, but shall not be required to, make Daily Route timetable changes at the request of Schools.
154. Technology Route timetables shall be initially as provided in the Pricing Submission, provided that the Ministry may require the Contractor to make changes to the Technology Route timetables and to implement such changes as soon as reasonably practicable after the Ministry notifies the Contractor of such changes.
155. The Contractor must use those Vehicle stop locations at Schools as are notified from time to time to the Contractor by either the relevant School or the Ministry (provided however that in the case of conflict, those notified by the Ministry shall prevail), unless doing so would breach the Contractor's health and safety obligations under this Contract.

## **Communications**

156. The Contractor shall at all times:
- 156.1. Provide a phone number whereby Schools can contact the Contractor between 7 am and 5.30 pm, and provide an emergency phone number for use at other times;
- 156.2. Give at least 48 hours prior notice to Schools of Route or pick-up/drop-off time changes, except for short notice changes due to unforeseen circumstances where immediate notice will be provided upon the unforeseen circumstance becoming known to the Operator;
- 156.3. Make available a means of contacting base for all Vehicles providing the Services at all times when providing the Services; and
- 156.4. Make a familiarisation run prior to introducing a new, or substantially changed current Route.
157. The Contractor will promptly advise the Ministry in writing if it becomes aware of any duplication of any Routes, such as the introduction of new public transport services.
158. The Contractor will advise the Ministry in writing if over the period of one term it becomes aware that Eligible Student numbers fall below eight on any Route, or should numbers fall below four on any Ministry designed side road extension.
159. The Contractor must communicate with the Head School on each Route (as shown in Schedule 6 – Pricing Schedule) no less frequently than once every school term to discuss any issues with the Service, Student behaviour and expected changes in student numbers.

## **Vehicle seating requirements**

160. The Contractor shall ensure that every Vehicle used in providing the Services provides seating for the Initial Passenger Numbers for the relevant Route.
161. The Contractor shall ensure that every Vehicle used to provide the Services has a minimum of 12 seats, including the Driver's seat.
162. Standing Eligible Student passengers will be permitted only once the number of Eligible Student passengers on a Route exceeds the Initial Passenger Numbers in respect of that Route, provided that number of passengers on each Vehicle does not exceed each Vehicle's Certificate of Loading.
163. The Contractor may, throughout the Term, reduce the seating capacity on a given Route below that allowed for in clause 160 only in the following circumstances:



- 163.1. After the reduction in capacity, all passengers can still remain seated while the Vehicle is moving;
  - 163.2. The Contractor has given the Ministry prior written notice that it intends to reduce the seating capacity on the Route and sets out its reasons for doing so; and
  - 163.3. Upon the passenger numbers increasing so as to require a larger seating capacity in order to have all passengers seated while the Vehicle is moving, the Contractor will increase the seating capacity on that Route, up to the Initial Passenger Numbers.
164. Where bench seats or lightly moulded touching seats are provided to enable "two/three seating", only Students in years 0 to 6 may sit three across (in line with the certificate of loading) whereas Students in years 7 to 13 (or one Student in years 0 to 6 and one Student in years 7 to 13) must only sit two across. If the seating configuration is not a bench seat, or "lightly moulded touching seats" two/three seating may not be used for any aged Student.

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## Appendix 1 to Schedule 2

### **Additional Health and safety requirements:**

In addition to the requirements set out in clause 47, the Contractor must also meet the following health and safety requirements:

### **Documented health and safety systems**

1. The Contractor shall operate and maintain a documented health and safety system that aligns with ISO 45001 Global Occupational Health and Safety Standard or AS/NZ 4801:2001 (Occupational Health and Safety Management Systems).
2. Consult, cooperate and coordinate with the Ministry, and other PCBUs such as School Boards of Trustees, School Principals, and other contractors. PCBUs are to ensure that they take part in the risk management process particularly where there is a shared health and safety duty in relation to the same matter and to the extent required by the Ministry to ensure that the Ministry and the Contractor will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to this Contract. Comply with all reasonable directions of the Ministry relating to health, safety, and security.
3. Immediately report to the Ministry any health and safety incident resulting in, or having the potential to result in, serious harm to an individual, and report any other incident or near miss to the Ministry as soon as reasonably practicable, but in any event no longer than 48 hours after the event. Immediately report any notice issued under the Health and Safety at Work Act 2015 to the Ministry to the extent that it relates to, or affects, the Services or this Contract, and, as soon as reasonably practicable after an event, provide investigation reports, with root cause analysis undertaken including documented evidence of corrective actions taken to prevent similar occurrences. Complete reports must be provided to the Ministry within one month of the event occurring.
4. Without prejudice to paragraph 3 above, the Contractor will otherwise comply with incident reporting systems or standards notified by the Ministry to the Contractor from time to time during the Term. Any and all information provided to the Ministry under this Appendix shall be in the form or through the system reasonably required by the Ministry from time to time.
5. Provide a monthly health and safety report, in a high level summary format specified by the Ministry as an appendix to the broader monthly report required in Schedule 3, consisting of the following information:
  - (a) Number of incidents per month while Services under the Contract were being provided, categorised under: motor vehicle accident (injury/non-injury), other non-injury, minor injury, Inappropriate Behaviour of Driver, serious injury and fatality. This categorisation may be amended by the Ministry from time to time on notice to the Contractor;
  - (b) Total number of near miss incidents;
  - (c) Traffic Offence Notices, Infringement Notices (all types, including speed camera and parking offences), Police written traffic warnings, prosecutions (both criminal or traffic) by any agency in respect of a Vehicle or Driver being used to provide Services under this Contract;
  - (d) Passenger incidents including verbal, physical abuse and injuries per month;
  - (e) New hazards/risks including controls;
  - (f) Number of vehicle inspections at compliance stations or at the roadside including results of the inspection;



- (g) Number of external audits by safety or transport regulators, e.g. New Zealand Transport Agency, WorkSafe and/or Police, including findings and completed actions or a documented schedule of works;
- (h) Number of employees who undertook health and safety training, specifying the training taken;
- (i) The number of health and safety presentations to Schools (if any, noting there is no contractual requirement for presentations to Schools);
- (j) The number of incident investigations and status of those investigations;
- (k) Number of staff who undertook drug and alcohol testing during the reporting period, and the number of those who tested non-negative; and
- (l) Confirmation of DL9 certificates issued no longer than 12 months prior for all Drivers.

### **Serious Incident Investigations**

6. The Ministry has an obligation to undertake an investigation of all notifiable events, as defined by WorkSafe. The Contractor will provide to the Ministry a full and detailed report that will include Vehicle service documentation, COF records, the date the driver obtained his/her current medical certificate, employee training records, photographs, evidence of corrective actions implemented. The report should also consist of the following:
  - (a) Detailed explanation of what occurred;
  - (b) Key facts relating to the cause;
  - (c) Contributing factors including root cause;
  - (d) Lessons learned; and
  - (e) Identify and address any immediate or long term harm through corrective actions.

### **Drug and Alcohol**

7. The Contractor will operate and maintain an effective drug and alcohol management plan that ensures that testing meets the strict requirement of the relevant standard: AS/NZS 4308:2008 Procedures for the collection, detection and quantitation of drugs of abuse in urine; and AS/NZS 4760:2019 Procedure for specimen collection and the detection and quantification of drugs in oral fluid.
8. All alcohol testing devices must be certified to Australian Standard AS 3547-1997 which specifies that a breathalyser must meet a certain level of accuracy and be able to maintain that accuracy over the calibration period of the device. The Contractor's drug and alcohol management plan needs to cover screening for:
  - (a) Pre-employment;
  - (b) Post incident;
  - (c) Reasonable cause; and
  - (d) Random testing.

### **Selection of Vehicle Stop Locations**

9. Contractors are responsible for ensuring Vehicle stops are as safe as is reasonably practicable. The Ministry recognises three types of locations for the uplift and drop-off of passengers by Vehicles:



- (a) A bus stop established by a Road Controlling Authority. These are clearly marked as a legal bus stop (thus subject to parking/stopping restrictions for other vehicles), and follow guidelines set out by the New Zealand Transport Agency relevant Road Controlling Authority; or
  - (b) An off-road Vehicle stopping area such as a school property or public area such as a layby, rest area, car park or truck stop where a Vehicle can safely stop off the roadway; or
  - (c) A temporary stopping area such as a roadside or driveway entrance where a Vehicle may stop from time to time.
10. The Ministry wishes to ensure that Students, Drivers and the public are not placed at undue risk by Vehicles stopping in unsafe locations. Contractors must have in place safety guidelines for the stopping of Vehicles, particularly as outlined above.
11. It is desirable that the Vehicle is completely off the road when stopped (where practicable), and that a stopped Vehicle does not block a lane, either fully or partially.
12. Procedures established by Contractors should be referenced to the New Zealand Transport Agency Guidelines for Safe Siting of School Bus Stops.



## Appendix 2 to Schedule 2

### Pre-Start Requirements

#### Introduction

1. Prior to entry into this Contract, the Contractor provided the Ministry with the Transition Plan and Risk Register. The Ministry entered into this Contract on the basis that the Ministry has approved the Transition Plan and Risk Register, and that these will be complied with by the Contractor prior to the Commencement Date.
2. The Ministry and the Contractor have agreed that the Contractor will perform the Pre-Start Requirements, to enable the Ministry to track the Contractor's adherence to the Transition Plan and Risk Register, and to satisfy the Ministry as to whether the Contractor will be able to perform its obligations under this Contract as and from the Commencement Date.

#### Performance of Pre-Start Requirements

3. The Contractor must meet or exceed the performance and reporting requirements specified in this Schedule, otherwise in this Contract, and as represented by the Contractor in the Tender.
4. The Ministry reserves the right to select the Contractor for detailed contract monitoring and evaluation at any time and at no additional cost to the Ministry.

#### Monthly reporting

5. From the date which is one month following the date of this Contract, until the later of the Commencement Date or the date on which the Contractor has completed the Pre-Start Requirements to the Ministry's satisfaction, the Contractor will undertake monthly self reporting to the Ministry as to the Pre-Start Requirements, and will make itself available for telephone contact and visits by the Ministry as required.
6. The monthly self reporting must be on the form template supplied and updated from time to time by the Ministry and provided to the Ministry not later than 5 Working Days after the end of each month.
7. Without prejudice to the Ministry's rights and remedies under this Contract or otherwise available at law, the Ministry may opt to engage with the Contractor to remediate any performance failures disclosed in the monthly reports, and may schedule on-site checks and complete follow up reviews as required. The Contractor will work with the Ministry constructively and in good faith to remedy any such failures as soon as possible.
8. Without limitation, the monthly self reporting must contain clear and sufficient particulars (in the Ministry's sole opinion) of at least the following information:
  - (a) the Contractor's preparation to perform the Services from the Commencement Date;
  - (b) the state of the Contractor's adherence to the Transition Plan and Risk Register, including details of any areas in which the Contractor is behind schedule or failing to adhere;
  - (c) achievement of milestones set out in the Transition Plan and Risk Register, the likelihood of achievement of future milestones, and steps taken to ensure achievement of such milestones; and
  - (d) any other matters which the Ministry, in its sole discretion, deems relevant to the Ministry assessing the Contractor's readiness to perform the Services from the Commencement Date.

#### Other obligations

9. The Contractor's obligations and the Ministry's rights set out in sections A to L of this Contract and the Schedules to this Contract (as the context requires) shall each apply in respect of the Pre-Start Requirements.



### **Schedule 3 – Contract Monitoring and Evaluation Framework**

165. The Contractor must meet or exceed the performance and reporting requirements specified in this Schedule, otherwise in this Contract, and as represented by the Contractor in the Tender.
166. The Ministry reserves the right to select Contractors at random for detailed contract monitoring and evaluation at any time.

#### **Monthly Self Reporting**

167. The Contractor will undertake monthly self reporting and will make itself available for telephone contact and visits by the Ministry as required.
168. The Contractor will complete a monthly report using a template supplied and updated from time to time by the Ministry (provided however that any updates requiring changes to the Contractor's reporting must be reasonable) not later than 5 Working Days after the end of each month.
169. Following the monthly self-reporting process:
  - 169.1. The New Zealand Transport Agency may be asked to provide the Ministry with Contractor and Vehicle reports to assist with monitoring;
  - 169.2. The Contractor must advise the Ministry if the New Zealand Transport Agency is investigating the Contractor; and
  - 169.3. The Ministry may schedule on-site checks and complete follow up reviews as required.
170. The Ministry reserves the right, with reasonable notice to the Contractor, to amend the monthly self reporting templates at any time during the Term.
171. Monthly self-reporting will commence from the Commencement Date.
172. Without prejudice to the Ministry's rights and remedies under this Contract or otherwise available at law, the Ministry may opt to engage with the Contractor to remediate any performance failures disclosed in the monthly reports. The Contractor will work with the Ministry constructively and in good faith to remedy any such failures as soon as possible.
173. If required by the Ministry (but not more often than once per school term), the Contractor shall provide the Ministry with details of the number of Students using the Vehicles on a daily basis for each Route for the period specified by the Ministry, and provide the resulting totals to the Ministry in the form reasonably required by the Ministry.



## Schedule 4 – Payment Schedule

### Payments to Contractor

174. From the Commencement Date the Ministry shall pay the Contractor for providing the Services in respect of each Group and Route as specified in Schedule 6 – Pricing Schedule.
175. Except as provided elsewhere in this Contract, the Ministry shall pay the Contractor a monthly payment:
- 175.1. not later than 20th day of the month following the month to which each monthly payment relates; and
- 175.2. by direct credit into an account nominated by the Contractor.
176. The monthly payment shall include the amounts due from the Ministry to the Contractor in respect of each Group and Route, on account of the Group Fixed Price (if any), the Route Fixed Price, and the Route Variable Price for that month, with each component being calculated as follows:
- 176.1. *Group Fixed Price:* 1/12 of the annual Group Fixed Price specified in Schedule 6 – Pricing Schedule (if any);
- 176.2. *Daily Route Fixed Price:* For each Daily Route, 1/12 of the annual Daily Route Fixed Price specified in Schedule 6 – Pricing Schedule;
- 176.3. *Daily Route Variable Price:* For each Daily Route the Daily Route Variable Price specified in Schedule 6 – Pricing Schedule multiplied by the number of kilometres in each Daily Route multiplied by the number of School Days in the relevant School Year, divided by 12;
- 176.4. *Technology Route Fixed Price:* For each Technology Route, the Technology Route Fixed Price specified in Schedule 6 – Pricing Schedule multiplied by the number of return trips in the relevant month on which the relevant Technology Route was run;
- 176.5. *Technology Route Variable Price:* For each Technology Route, the Technology Route Variable Price specified in Schedule 6 – Pricing Schedule multiplied by the number of kilometres in each Technology Route as specified in Schedule 6, and further multiplied by the number of return trips in the relevant month on which the relevant Technology Route was run.

### Payment arrangements

177. The Contractor shall no later than 5 Working Days after the end of each calendar month provide the Ministry with details of Technology Routes run in the immediately preceding month. The details must be on the form template supplied and updated from time to time by the Ministry.
178. The Ministry shall provide the Contractor with details of the monthly payment for the Services provided during the immediately preceding month. These details may be provided in Remittance Advices, Buyer Created Tax Invoices, Altered Rate Non-Global Change Advices and Global Change Advices or other documents containing the equivalent level of information.
179. The Ministry may pay for services above and beyond those specified in this Contract but only if the Contractor had prior written approval of the cost from the Ministry before commencing those services.

### Changes in Route(s) and rates per kilometre

#### *Failure to provide Services*

180. No payment will be made to the Contractor on account of Route Fixed Price or Route Variable Price in respect of any part of the Services which are not provided on a given Route by the Contractor solely or substantially due to Vehicle or Driver unavailability, or any other matter within the reasonable control of the Contractor. If the Services are not provided for this reason then:
- 180.1. For each day the Services are not provided on a given Daily Route the monthly payment will be reduced by the aggregate of:



- (a) The Daily Route Fixed Price for that Route divided by the number of School Days in the relevant School Year; and
- (b) The Daily Route Variable Price multiplied by the number of kilometres run per School Day on which the Services were not provided.

The daily reduction will be prorated for any part days the Services are not provided.

180.2. For each return trip the Services are not provided on a given Technology Route they will be deemed not to have run for the purpose of calculating the monthly payment.

*Proportional adjustment procedure ("Global Rate Adjustment")*

- 181. Quarterly in each calendar year the Ministry will adjust each Group Fixed Price (if any), Route Fixed Price and Route Variable Price (as specified in Schedule 6 – Pricing Schedule) as set out in clause 182 below ("Adjustment").
- 182. The Ministry will use the New Zealand Transport Agency indexation indices and processes for diesel buses (as set out in the New Zealand Transport Agency Procurement Manual) to calculate any fluctuation of input costs.
- 183. The adjustments, whether positive or negative, will be applied quarterly in arrears and will be back dated to the commencement of the quarter being reviewed.

*Factors outside Contractor's control*

- 184. Where the Contractor's costs increase as a result of exceptional external factors beyond the Contractor's control, a rate adjustment can be requested by the Contractor and may be granted at the discretion of the Ministry.

*Additional days run in School Year*

- 185. Additional days run due to shared Daily Routes for Schools which open on different dates must be approved by the Ministry prior to such days. These additional days will be paid at the same Route Variable Price for actual distance run on such additional days, and there shall be no additional payment made in respect of the Route Fixed Price.

*Changes to Eligible Student passenger numbers*

- 186. Where the number of Eligible Student passengers on a given Daily Route exceeds whichever of the following applies:
  - a. 75, where the passengers are in years 0 – 6;
  - b. 50, where the passengers are in years 7 – 13;
  - c. A pro-rated number based on the numbers of passengers which are in each year group; or
  - d. A lower number where the Ministry agrees, at its discretion, that a smaller Vehicle must be used due to safety or other reasons,

on a regular basis the Contractor shall promptly notify the Ministry. Upon receiving the Contractor's notice, the Ministry may (but shall not be obliged to):

- a. Add run-back kilometres to the Route;
- b. Split the Route into two Routes; or
- c. allow the Contractor to carry all Eligible Student passengers, subject to sufficient Vehicle capacity (seated and standing) being available, until further notice by the Ministry.



187. Where the number of Eligible Student passengers on a given Technology Route return trip exceeds 50 (or a lower number where the Ministry agrees, at its discretion, that a smaller Vehicle must be used due to safety or other reasons) on a regular basis the Contractor shall promptly notify the Ministry. Upon receiving the Contractor's notice, the Ministry may (but shall not be obliged to):
- a. Pay for an additional return trip; or
  - b. Allow the Contractor to carry all Eligible Student passengers, subject to sufficient Vehicle capacity (seated and standing) being available, until further notice by the Ministry.
188. Where the number of Eligible Student passengers for all Daily Routes in a given Group or all Technology Routes in a given Group increases by more than 10% above the Initial Passenger Numbers for that Route type in a Group (as shown in Schedule 6 - Pricing Schedule), the Contractor may request a rate adjustment from the Ministry for the Route type that has exceeded the threshold. Provided the Contractor demonstrates to the Ministry that the increase in Eligible Student passengers has resulted in additional costs to the Contractor which are not compensated for through the pricing mechanism in this Contract, the Ministry will enter into good faith discussions with the Contractor in relation to the Contractor's request and shall act reasonably at all times, but the Ministry's agreement to any rate adjustment may be given at the Ministry's discretion.
189. The Ministry will not be obligated to change Route(s), prices, or in the case of Technology Routes pay for additional return trips if approached by the Contractor where the request is due to a change in Eligible Student passenger numbers and it is not accounted for by clauses 186, 187 and 188.



## Schedule 5 – Statement as to LPSV age

[Delete the statements which do not apply prior to signing. Statement to match that warranted in the Tender.]

### **OPTION A**

No further commitment to LPSV age has been made by the Contractor.

### **OPTION B**

From 1 January 2023 the Contractor will ensure that LPSV ages are less than 23 years.

### **OPTION C**

From 1 January 2023 the Contractor will ensure that all LPSVs used in:

- (a) Providing the Services are less than 23 years; and
- (b) Each Group shall at all times have an average age that is less than a maximum average age of 15 years. When calculating average age of LPSVs in a Service Fleet for the purposes of this clause a Vehicle may only be assigned to one Daily Route.

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## Schedule 6 – Pricing Schedule

[Drafting note: This form of Pricing Schedule to apply to Tender 2 only]

(A separate schedule is to be completed for each Group)

### Group Details

Group name	
Region	

### Daily Routes

Route number	Route name	Head School	Schools serviced	Daily Kilometres		Initial passenger numbers	
				AM	PM	Years 0 to 6	Years 7 to 13

### Technology Routes

Route number	Schools attending technology	Technology provider	Day of Technology	Tech class start/finish	Frequency	Return trips required to transport passengers	Return trip kilometres	Initial passenger numbers

### Pricing

Price component	Basis	Rates
Group Fixed Price	\$ per annum	
<b>Daily Routes</b>		
Daily Route Fixed Price	\$ per annum	
Daily Route Variable Price	\$ per Route km	
<b>Technology Routes</b>		
Technology Route Fixed Price	\$ per Technology Route per return trip	
Technology Route Variable Price	\$ per Route km	

In respect of any new Routes added to this Group, the Route Fixed Price and Route Variable Price rates listed above will apply.



**Schedule 7 – Tender**

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