

**Standard conditions of contract for
the provision of bus services under
contract to South Yorkshire
Passenger Transport Executive
(SYLTE)**

June 2014

CONDITIONS OF CONTRACT FOR BUS SERVICES

Applicable from June 2014

INTRODUCTION

These are the South Yorkshire Passenger Transport Executive (SYPTTE) standard conditions of contract for bus services.

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CONDITIONS OF CONTRACT

1. DEFINITIONS

1.1 In these Conditions except where the context otherwise requires the following expressions shall have the meanings given below :-

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

“Authorised Officer” means SYPTE’s representative as is nominated from time to time by SYPTE.

“Authority” means the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority. Where reference is made to the Authority, this includes reference to sub-committees of the Combined Authority, specifically (but not limited to) it’s Transport Committee.

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

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

“Concessionary Fares Scheme” means the Scheme established

by the Authority for the provision of concessionary fares to certain categories of the travelling public as amended from time to time.

“Contactless Smartcard”

means an electronic device conforming to the Customer Media specification of the relevant ITSO specification and certified as such by ITSO Limited

“Contract”

means these Conditions of Contract together with the Letter of Award, the Specification, the Invitation to Tender, the Method Statement and any other documentation expressly incorporated into the Contract by the Letter of Award and any subsequent changes made by agreement.

“Contractor”

means the person to whom the Contract is awarded and where appropriate will include any employee, agent or sub-contractor of the Contractor.

“Contract Manager”

means the person nominated from time to time by the Contractor to manage the Contract.

“Contract Period”	means the period specified in the Letter of Award.
“Contract Price”	means the amount specified in the Letter of Award being the total value of payments to be made under the Contract less any initial capital paid to the Contractor (covered by a supplemental agreement e.g. any grant payable towards the purchase cost of vehicles).
“CPT”	means Confederation of Passenger Transport
“Data Analysis System”	means the software used by SYPTE to analyse the receipt of passenger and revenue information from the Contractor, as amended from time to time.
“Designated Service Change Date”	means a date agreed between the Operators and SYPTE from time to time as a date on which Service revisions should take place such dates normally occurring 3 times a year as agreed with CPT, but may be less frequent in the case of services covered by a Voluntary Bus Partnership area.
“Disclosure and Barring Services	means a check carried out under

(DBS) Checks	S73 of the protection of Freedoms Act 2012 to comply with the duty to check if a person is barred.
“Enhanced Disclosure Certificate”	means a certificate issued in accordance with Part V of the Police Act 1997
“ETM”	means electronic Ticket Machine, including a device capable of reading Contactless Smartcards and correctly processing the full range of concessionary products and all smart multi-operator Ticket Products and certified as such by ITSO Limited
“HOPS” (Host Operator Processing System)	Means a software system complying to the relevant version of the ITSO specification for a HOPS/AMS and certified as such by ITSO Limited.
“Invitation to Tender”	means the documents issued by SYPTE inviting the Contractor to submit a tender.
“ISAM”	means an ITSO Secure Access Module is a contact micro-chip profiled according to the ITSO specification which controls the security of the smartcard scheme and specifies the Ticket Product

recognition capabilities of the electronic equipment in which it is installed. Each ISAM must be associated with one and only one HOPS

“ITSO Licenced Operator”

Means a legal or natural person who holds a license from ITSO Limited for the purposes of operating an ITSO compliant smart card scheme, which include issuing Ticket Products, collecting and forwarding records of Ticket Product use and registering and managing ISAMs

“Letter of Award”

means the letter sent by SYPTE awarding the Contract to the Contractor.

“Lost Mileage Deductions”

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

“Method Statement”

means the document supplied by the Contractor supporting the Contractors tender for the Contract describing amongst other matters the Contractors

proposed method of operation including details of the vehicles to be used on the Contract.

“Minimum Cost Contract”

means a contract where SYPTE takes the revenue risk and no Passenger Revenue is retained by the Contractor as indicated in the Letter of Award.

“Minimum Subsidy Contract”

means a contract where the Contractor takes the revenue risk.

“Passenger Revenue”

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

“Passenger Revenue/Performance Return”

means the four-weekly statement which the Contractor is required to submit setting out the number of passengers carried, the fares collected (Passenger Revenue),

any instances of non-operation and such other information as may reasonably be required by the Authorised Officer.

“Performance Deductions” means deductions to be made from the Period Contract Payment in accordance with clause 9.

“Period Contract Payment” means the amount due to the Contractor (before any deductions or adjustments are made) for any Accounting Period.

“Product Owner” means the legal or natural person by or on behalf of whom the Ticket Product has been registered with ITSO Limited

“Real Time Information System” means the System operated in South and West Yorkshire for the provision of information by real time.

“CPI” means the Consumer Price Index published by the Office for National Statistics.

“SAFE Partnership” means the partnership between SYPTE, Operators, South Yorkshire Police and others which has responsibility for promoting safety on public

transport. It is responsible for driving initiatives which seek to achieve a reduction in unacceptable behaviour and criminal damage by passengers on public transport and associated infrastructure.

“Service” and “Services”

means the public transport service(s) which the Contractor is required to provide in accordance with the Contract.

“Specification”

means the Vehicle Specification incorporated into the Contract in accordance with the Letter of Award.

“SYPTTE”

means the South Yorkshire Passenger Transport Executive.

“Ticketing Equipment”

means any equipment and/or software either of the Contractor or SYPTTE used to issue tickets, record Passenger Revenue, record the use of passes and all forms of prepaid travel, provide real time information and/or any other information.

“Ticket Product”

A ticket or entitlement encoded onto a Contactless Smartcard which has been registered with

ITSO Limited by or on behalf of the Product Owner and has been made available to the contractor either on his own part as a ITSO Licensed Operator or on his behalf by an ITSO Licensed Operator

“Vehicles” means the vehicles used to provide the Services.

“Working Days” means Monday to Friday inclusive except any Bank Holidays.

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

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

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

2. CONTRACTOR’S OBLIGATIONS

General

2.1 Where sufficient notice has been given, the Contractor must deposit a registration for the Services with the Authorised Officer, 63 days before

the commencement date of the Service; this must be consistent with the registration deposited with the Traffic Commissioner at 56 days.

- 2.2 SYPTE will apply a Type A fixed penalty as defined in clause 9, for each registration which does not comply with clause 2.1.
- 2.3 The Contractor will at all times during the Contract Period provide the Services to the standard required by the Contract.
- 2.4 The Contractor will warrant that it has obtained and will retain all licences, approvals, registrations, permits, insurances and any other matters legally required for the provision of the Services.
- 2.5 The Contractor will at all times exercise all skill, care and diligence in providing the Services.

TICKETING AND FARES

- 2.6 The Contractor will at all times participate in the Concessionary Fares Scheme and allow travel for qualifying passengers at the concessionary fare applicable at the time of travel. No claim for reimbursement under the Concessionary Fares Scheme shall be made for a Contract awarded on a Minimum Cost Contract basis.
- 2.7 Where SYPTE stipulates the fares to be charged by the Contractor then until such time as SYPTE notifies the Contractor of a variation the Contractor shall apply those fares.
- 2.8 Fare levels:
 - (a) The initial fares to be charged by the Contractor for operating the Services may be stipulated by SYPTE in the Invitation to Tender and confirmed in the Letter of Award. These fares will normally be based on the

prevailing commercial fares at the time and no other fares may be charged unless agreed in writing by the Authorised Officer.

(b) The fares referred to in clause 2.8 (a) may be increased with the prior written consent of the Authorised Officer. For the purpose of this clause 2.8 (b), and without prejudice to the generality of this clause, it shall be reasonable to withhold such consent if:-

- i) Any proposed percentage revision to the fares is, in the reasonable opinion of the Authorised Officer, in excess of the percentage increase in the operating costs incurred by the Contractor for the period since the relevant fares were set or last increased; or
- ii) Fares may be revised once during the initial twelve months of the Contract to bring them into line with other fare revisions; thereafter, a maximum of one fare revision, on or after the anniversary of the initial revision date, is permitted. Any additional increase will only be allowed where the Contractor has demonstrated to the satisfaction of the Authorised Officer that exceptional cost increases outside their reasonable control have occurred.
- iii) The Contractor has not also proposed a general increase in respect of its fares on its commercial operations or such proposed general increase is lower in percentage terms than the proposal for the Services.
- iv) Any request for consent to increase the fares shall be made in writing at least 28 days before the proposed increase is to take effect. No increase to the fares shall be introduced without the Authorised Officer's written consent. If the Authorised Officer fails to respond within 21 days then consent will be deemed to have been given. Following express or deemed approval being given the Contractor is obliged to use the remaining 7 days to

publicise the fare change to customers through both on and off bus means.

- (c) The Contractor will use reasonable endeavours to ensure that all passengers are charged the correct fare for the journey. For the avoidance of doubt charging an increased fare before any consent under clause 2.8 (b) above has been obtained will be deemed to be charging the incorrect fare and the Contractor will be responsible for refunding any excess to customers where applicable.
- (d) The Contractor shall provide the Authorised Officer with a revised fare table for the Services prior to the coming into effect of any approved fare change under clause 2.8 (b). Fares information must be made available on request to passengers. This shall include all relevant multi operator ticket options, approved for use by Operators, where sold on the bus.
- (e) The Contractor will use reasonable endeavours to ensure that all passengers are sold the most financially advantageous ticket for their travel purposes at the point of boarding (e.g. single operator day tickets/multi operator ticket options, where sold on the bus).

2.9 The Contractor shall at all times while providing the Services accept valid tickets sold off the bus but may refuse travel to passengers who wilfully will not pay a fare or do not have a valid pass or permit, but having due regard to customer safety. When deciding whether to refuse travel the Contractor should have regard to any national or local guidance issued in respect of refusing travel on last buses, during inclement weather and with regards to specific groups of passengers e.g. children, the disabled or the elderly. Nothing in this clause 2.9 confers any obligation on the Contractor to carry the passenger where to do so would mean that the vehicle capacity was exceeded nor does any prepaid or other ticket confer any priority in respect of the right to travel.

- 2.10 A record must be made of all passengers carried, with those who pay a fare issued with a ticket showing the value of the fare and category of passenger.
- 2.11 If required by SYPTE the Contractor will use the ticketing electronic data analysis system provided or any alternative system approved by SYPTE.
- 2.12 The Contractor shall:
- be an ITSO Licensed Operator or hold a contract with an ITSO Licensed Operator through which the contractor obtains services which enable him to participate in ITSO-compliant smart ticketing schemes;
 - have ETMs installed and operational on his vehicles which are compliant to the current version of the ITSO specification, and are connected to a HOPS which is configured to forward Ticket Product usage records to the Product Owner's HOPS and in turn provide reports to SYPTE;
 - ensure that his ETMs are configured and be able to process all ENCTS and other Ticket Products including all multi operator ticket products issued by SYPTE and/or TravelMaster from time to time encoded onto any Contactless Smartcard according to the rules established by the Product Owner
 - For the avoidance of doubt, Contractors may additionally use other electronic media in addition to a Contactless Smartcard.

THE CARE AND CARRIAGE OF CUSTOMERS AND THEIR BELONGINGS

- 2.13 The Contractor shall take reasonable steps to ensure that the comfort and safety of passengers is prioritised. This includes taking all

reasonable steps to enforce smoking restrictions, and prevent excessive noise and the eating of hot food.

2.14 Customer Complaints – Contractors are required to work within the requirements of the SYPTE prevailing Customer Charter [<http://www.sypte.co.uk/corporate.aspx?id=2712&terms=customer%20>] charter, and are required to report in summary to SYPTE, all customer comments received and actions taken. Such reports shall be provided at the frequency stipulated by the Authorised Officer and copies of the original complaint and the reply shall be provided.

2.15 Luggage, including folding bicycles (which must be contained in a suitable bag to avoid soiling of passenger clothing, other luggage or the vehicle) must be accommodated on the vehicle if there is suitable space for it to be stored and for the passenger to stow and remove the items. For the avoidance of doubt the driver is not required to assist passengers in such stowage or removal and may refuse carriage of the bicycle if in his reasonable opinion there is no suitable space available at the time of travel or the bag offers inadequate protection or is likely to cause soiling.

Please note that certain contracts make special provision for the carriage of rigid bicycles and these special conditions are determined in the contract documentation and take precedence over the above Clause 2.20.

2.16 On all contracts (unless otherwise specified), spaces must be made available for all manual and motorised/electric wheelchairs within the dimensions of the reference wheelchair A, subject to the vehicle in section 3 being compliant with the PSV accessibility regulations 2000 , All scooters should be accepted providing the user is in possession of a CPT scooter permit Such users must be allowed to use the bus if there is space available and in the reasonable opinion of the driver the vehicle has been positioned safely at the kerb to enable the use of the

ramp (fixed or portable) so as to allow safe access. For the avoidance of doubt, drivers may refuse to carry large prams in unfolded form or at all if suitable safe space or luggage racks which do not impede other passengers are not available at the time of carriage. At all times wheelchairs and scooters have priority to use the designated space and any prams occupying this area will need to be moved – either by folding the pram or, if this is not possible, the passenger(s) with the pram will have to leave the vehicle.

- 2.17 If a passenger has been banned from using buses, whether generally or specifically those of the Contractor, (either by court order or the individual Contractor) then no obligation arises for the Contractor to carry that individual under this contract.

THE OPERATION OF SERVICES

- 2.18 Without prejudice to SYPTE's rights under Clause 9 (Default of the Contractor) the Contractor shall forthwith notify SYPTE if it becomes aware that it will be unable to operate a Service or part thereof. Such notification must be made by telephone to the Authorised Officer at the earliest opportunity and confirmed in writing (email communication is acceptable). Calls must be made to the Authorised Officer during normal Monday to Friday office hours (Monday to Friday 0830 – 1630) and at the earliest opportunity. For incidents out of office hours the operator must notify SY Traveline and then follow this up by contacting the Authorised Officer on the next business day. Contractors are required to leave a contact number with the Authorised Officer and Traveline which can be accessed at times when the contractor is operating services on behalf of SYPTE. This number will not be made available by SYPTE to any other person
- 2.19 Under no circumstances will the Contractor make any variation or change to the Services without the express written approval of the

Authorised Officer. Where outside activities occur which forces an adjustment to route or timetable then the Contractor may give notice that he cannot maintain the current published timetable or route on a regular basis. Conditional upon it being shown that the adjustment was justified, then no performance deduction associated with the adjustment will be made until the earlier of the cause of the adjustment ceasing and/or parties agreeing a new timetable or route and this is registered with the Traffic Commissioner

2.20 The Contractor shall advise the Authorised Officer of any regular problems experienced in complying with the specified route or timetable. In the event of the Contractor reporting such problems to SYPTE, SYPTE will co-operate with the Contractor to agree any changes required and shall agree to their implementation as soon as possible, normally at the next available service change date within registration constraints. Consent for any such change will not be unreasonably withheld. Where the Contractor is obliged to operate the Services to a timetable provided/stipulated by SYPTE no Performance Deductions shall be imposed for late departures from any registered timing points or any other specified timing point for the first and second Accounting Periods if the Contractor has served written notice upon the Authorised Officer prior to the Commencement Date stating that in his opinion the timetable is unachievable. If such notice is given by the Contractor the parties shall use their reasonable endeavours to agree an acceptable timetable. In the event that such agreement is not achieved prior to the end of the second Accounting Period SYPTE's right to levy Performance Deductions is restored and either party may insofar as the dispute relates to the reasonableness of the timetable refer the matter for dispute resolution in accordance with clause 8.

2.21 Except for circumstances beyond the Contractor's reasonable control the Contractor will at all times use the designated stands within bus stations and interchanges, and designated bus stops along the route of

the Service, subject to any changes which may be notified from time to time.

2.22 The Contractor shall at all times operate the level of service specified for the appropriate day of the week with the following exceptions (only):

- No services are required to operate on Christmas Day, Boxing Day or New Years Day unless required in a specific contract.
- The specified Sunday service will be provided on Easter Monday, May Day Bank Holiday Monday, Spring Bank Holiday Monday and August Bank Holiday Monday, or any other designated bank holiday (excluding Good Friday when Saturday services are required unless otherwise advised).
- On Good Friday, Saturday services are required unless the Contractor gives notice in writing to the Authorised Officer no later than 56 days in advance request that a different level of service from a standard Friday service is to be provided. The Authorised Officer (acting reasonably) shall consider such a request and shall within 28 days of receipt of the request notify the Contractor of their decision which shall be binding.
- The specified Sunday service will also be provided on any day which is designated as a Bank Holiday in lieu of 1st January, 25th December or 26th December when these days do not fall on a weekday.
- Payments will be adjusted to reflect any variation in the number of days of operation caused by granting of any additional bank or other public holiday.

2.23 Contractors must show destination displays as specified, indicating at least the service number and final destination together at all times –

these must be illuminated in hours of darkness and during periods of poor light due to adverse weather. Where displays are temporarily unable to be shown, a service number and destination board with lettering at least 200mm high must be displayed at the front of the vehicle. All defective destination displays should be repaired within 7 working days of the problem being reported, subject to the availability of parts.

- 2.24 To maintain full and unobstructed visibility out of windows for passengers, Contractors must ensure that at least 75% of the front passenger and all side windows are clear, this precludes the use of contra-vision and similar material covering a greater percentage of the window area (Note - there are no restrictions on rear windows).
- 2.25 The Contractor may be requested to be a member of the SAFE (Supporting a Friendly Environment) Partnership and Working Group and in any case is expected to report any incidents to this group, and attend appropriate meetings if requested.

3. VEHICLES

- 3.1 In providing the Services the Contractor shall only operate Vehicles that meet or exceed the qualitative assurances given in the Method Statement and comply with the Specification.
- 3.2 Without prejudice to 3.1 above any Vehicle used in providing the Services will meet all the requirements of all relevant Acts of Parliament, Statutory Instruments, Orders or Regulations from time to time in force.
- 3.3 The Contractor will keep all Vehicles and associated equipment used to provide the Services in good and serviceable repair and in such condition both mechanically and in external appearance as is

commensurate with the proper performance by the Contractor of his obligations under the Contract.

- 3.4 All Vehicles used for the provision of the Services shall on a daily basis be cleaned internally and excess litter shall be regularly removed as required throughout the operational day where practical. Externally they shall be cleaned as required to ensure that they are presented at the start of service with all exterior panels and glazing free of streaks, grime and ingrained dirt.
- 3.5 All Vehicles will be equipped with heaters which must be used as appropriate.
- 3.6 The Contractor will at all reasonable times with appropriate notice and subject to the Contractor's obligations to the Traffic Commissioner to operate its services permit the Authorised Officer access to any premises, Vehicles or equipment used in connection with the provision of the Services. The Authorised Officer (acting reasonably) shall be entitled to serve upon the Contractor a notice in writing requiring the Contractor to put any of Vehicles into such condition (including cleanliness) as is reasonably required for the proper performance of the Services. The Contractor shall forthwith upon receipt of such notice cause all necessary works to be carried out in order to comply with such notice.
- 3.7 Without prejudice to the generality of clause 3.6 SYPTTE shall have the right to inspect and audit (or to procure the inspection and audit of) the Contractor's systems of maintenance and repair.
- 3.8 The Contractor shall ensure that it has an adequate number of Vehicles available as non-availability of any of the Vehicles will not be deemed an acceptable reason for failure to provide the Services save for exceptional circumstances.

- 3.9 The contractor must operate Vehicles which provide, as a minimum, the seating capacity specified in the Contract, and shall notify the Authorised Officer if the capacity is regularly found to be inadequate for any journey within the Contract, giving full details of the problem. With the prior agreement of the Authorised Officer smaller capacity Vehicles may be used on certain journeys provided that they offer sufficient seating capacity for all passengers who may be reasonably expected to travel.
- 3.10 Without prior agreement from the Authorised Officer the Contractor will not use any open-top, vintage or similar vehicle in the performance of the Services.
- 3.11 The Contractor shall display and maintain on its Vehicles used under the contract any notices or leaflets (where holders exist or are provided) as reasonably required by SYPTE at no additional cost to SYPTE, including if required an indication that a specific journey is operated under contract to SYPTE. This shall include displaying at least 2 standard sized cove cards (on each deck or equivalent where no cove exists and space is available) as provided by SYPTE and may relate to other services, promotions and travel related messages of SYPTE, but shall not relate to advertising for any 3rd party products.
- 3.12 Upon request from SYPTE the Contractor shall ensure that SYPTE's monitoring staff (including third party contractors working on behalf of SYPTE) are carried on any Vehicles operating a Service and allowed to conduct relevant surveys on such Vehicles. At all times such staff shall comply with all regulations covering the conveyance of passengers (including any maximum to be carried) and shall at all times comply with the reasonable instructions of the driver in relation to the operation of the vehicle or the service.
- 3.13 If a contracted journey is confirmed as having failed to operate then SYPTE reserves the right to reimburse passengers for any reasonable

out of pocket expenses relating to local transport fares incurred and deduct these amounts from the next Period Contract Payment. This will not apply if the reason for the failure was outside the reasonable control of the Contractor. Passengers will be expected to use the public transport network to the maximum extent reasonably possible in mitigation of the shortcoming, where this is not possible reimbursement will not exceed the costs of using a local taxi.

- 3.14 Contractors shall supply on a quarterly basis, a list of Vehicles that are likely to be used on tendered services:- the list should confirm details of seating capacity, engine type (e.g. Euro VI), and whether the bus is low floor with an appropriate accessibility certificate if required,
- 3.15 All Vehicles used under this Contract will be fitted with Real Time Information System equipment.

4. LICENCES, REGISTRATIONS, ETC.

- 4.1 If at any time any insurance, licence, approval, registration or other permission required to provide the Services is revoked, removed, restricted, suspended or amended or if the Contractor or any sub-contractor shall have any action taken, or be called to public inquiry, by any competent agency or body including without prejudice to the generality the Police, the Traffic Commissioner, the Health and Safety Executive and VOSA, then the Contractor shall forthwith notify the Authorised Officer by telephone and confirm this in writing.
- 4.2 If as a consequence of any matter referred to in 4.1 above the Contractor may no longer lawfully operate the Services or any part thereof then the Authorised Officer must be notified forthwith and the Services or the relevant parts thereof (as appropriate) shall be suspended forthwith and the Traffic Commissioner notified accordingly. Without prejudice to SYPTE's rights under clauses 16 and 17 (Termination/Recovery of Sums Due) if the Contractor's licence,

approval, registration or permission is restored SYPTE may by written notice require the Services to be recommenced immediately. SYPTE may at any time while the Services or any part thereof are suspended terminate the Contract or part thereof in accordance with clause 16 (Termination).

- 4.3 The Contractor shall copy to SYPTE all relevant correspondence with/from the Traffic Commissioner or any other competent agency or body relating to any licence, approval, registration or permission lawfully required to operate the Services being removed, revoked, restricted, suspended or amended and keep the Authorised Officer fully and promptly informed.

5. APPLICATION OF APPENDICES

- 5.1 In respect of extensions to the Contract Period the provisions of Appendix 5 shall apply where the Letter of Award specifies that they shall apply.
- 5.2 The provisions of Appendix 3 (School Services) shall apply to the Contract where the Letter of Award specifies that they shall apply.
- 5.3 The provisions of Appendix 6 (Disclosure and Barring Services (DBS) Checks) shall apply where the Letter of Award specified that they shall apply.

6. CONTRACTOR'S EMPLOYEES

- 6.1 The Contractor shall appoint a Contract Manager to act on his behalf for all purposes connected with the Contract and shall promptly notify the Authorised Officer of such appointment and any change thereto. Any notice, information, instruction, request, or other communication given or made to the Contract Manager by SYPTE shall be deemed to have been given or made to the Contractor. The service of any such

notice shall comply with the provisions of Clause 20 (Service of Notices).

- 6.2 The Contractor shall at all times during the Contract Period employ sufficient, qualified and adequately trained drivers and other employees to ensure the proper performance of the Contract. All such drivers shall have sufficient command of English to be able to offer fares advice (clause 2.8 (d) & (e)) and to respond to requests or instructions.
- 6.3 No employee of the Contractor will in connection with the Services solicit or accept any gift or gratuity from a passenger. Recognition for exceptional performance or customer service may however be rewarded through the Contractors own recognition/reward scheme.
- 6.4 SYPTE reserves the right to require removal of any employee used by the Contractor in performance of the Services, who in the reasonable opinion of the Authorised Officer:-
- (i) is not performing in compliance with the Contract
 - (ii) is guilty of serious or repeated misconduct and/or negligence
 - (iii) is acting in a manner detrimental to SYPTE's interests.
 - (iv) is not fit to perform the Services
 - (v) is deemed to be an undue risk to passengers and/or other road users
 - (vi) is not assisting or is having a detrimental impact on one or more of the persons who have a protected characteristic defined by the Equality Act 2010 (as amended)

(vii) is the subject of proven customer complaints, either of a single serious nature, or through repeated poor service.

6.5 The right contained in 6.4 above shall not be exercised arbitrarily, vexatiously or capriciously by the Authorised Officer

6.6 The Contractor will replace any employee removed in accordance with 6.4 above with a properly qualified and trained replacement in such time as is reasonable in the circumstances to the Authorised Officer at no cost to SYPTTE.

6.7 Drivers are expected to be smartly attired, to wear a uniform if supplied and not wear any clothing, hats or badges (or similar) displaying political, sexual/sexist, racial, religious, ageist, gender, or sporting allegiances (e.g. replica football shirts) or otherwise offensive material.

6.8 Drivers must comply fully with the law with regard to mobile phones. When in service, no other personal listening devices, including hands-free models, personal stereos, radios, MP3 players, i-pods, computer games/DVDs etc must be used.

For the avoidance of doubt then this Clause will not apply:

- if the vehicle is 'laying over' between journeys and is not available for passenger boarding or
- if the driver pulls in to the kerb and parks in a safe location with the handbrake applied to receive ,respond or convey a message from their Depot

7. STATUTORY COMPLIANCE

7.1 The Contractor shall carry out all of its obligations so as to comply with all relevant laws (whether such are mandatory or permissible) and with

the requirements of the common law, all acts of Parliament, statutory instruments, regulations and orders from time to time in force.

8. DISPUTE RESOLUTION

- 8.1 Where any dispute arises between the parties in connection with the Contract which cannot be resolved by the Authorised Officer and the Contract Manager (who shall both co-operate in good faith to resolve the dispute), either party may by written notice request that a Director (or his senior nominee) of each party meet in good faith to attempt to resolve the dispute without recourse to legal proceedings. Where such a request is made the meeting must take place within 10 working days of the date the written request is made.
- 8.2 If the dispute is not resolved as a result of such meeting, either party may (at such meeting or within 5 Working Days of its conclusion) propose to the other in writing that structured negotiations be entered into with the assistance of a neutral adviser or mediator ("Neutral Adviser").
- 8.3 If the parties are unable to agree on a Neutral Adviser or if that person is unable or unwilling to act, either party may apply to the President of the Law Society in Sheffield to appoint a Neutral Adviser within 5 Working Days from the date of the proposal to appoint a Neutral Adviser or within 5 Working Days of notice to either party that he or she is unable or unwilling to act.
- 8.4 The parties shall as soon as possible meet with the Neutral Adviser in order to agree a programme for the exchanging of any relevant information and the structure to be adopted for the negotiations.
- 8.5 The Neutral Adviser shall produce recommendations based upon a review of information provided by the parties.

- 8.6 If the parties accept the Neutral Adviser's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be recorded in writing and, once signed by their representatives, shall be binding on the parties. The parties shall bear their own costs in connection with this clause 8 but the costs of the Neutral Adviser shall be borne as the Neutral Adviser directs.
- 8.7 Unless concluded by the written binding agreement referred to in clause 8.6, all negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings .
- 8.8 If the parties fail to reach agreement within 10 Working Days of the Neutral Adviser's recommendations then any dispute between them may be referred to the courts unless within such period or a further period of 5 Working Days the parties agree to refer the matter to arbitration to an arbitrator whose method of appointment is agreed between them.
- 8.9 Nothing in clause 8 shall operate so as to require any party to follow the dispute resolution procedure where in its reasonable opinion it considers that any legal rights that it may have would be prejudiced by delay including the possible loss of availability of interim relief.

9. DEFAULT OF THE CONTRACTOR

- 9.1 SYPTE will monitor the performance of the Contractor under the Contract.
- 9.2 Subject to clause 9.3 below on each occasion that SYPTE determines or the Contractor declares on his Passenger Revenue/Performance Return to the effect that the Services or any part thereof have either not been undertaken or have been carried out inadequately or otherwise not in accordance with the requirements of the Contract and

any instructions issued pursuant thereto, SYPTE may do either or both of the following:-

- (i) Deduct from the Period Contract Payment Performance the following amounts in respect of every failure or default –

Category of Default (as set out in Part A of Appendix 1)	
TYPE A	The lower of £34 (as at the Commencement Date] or 5% of Period Contract Payment
TYPE B	The lower of £17 (as at the Commencement Date] or 5% of Period Contract Payment

The specified amount above will increase in line with CPI and rounded up to the nearest whole pound sterling.

at each year anniversary of the date these conditions came into force on 16 June 2014

PROVIDED THAT where the Contract relates to more than one Service the Performance Deduction for any default shall be based upon the Contractor's pro rata price for the Service in default (ignoring any discounts given) and not upon the Contract Price. In the event that the Contractor has only submitted a combined price for more than one Service then the Performance Deduction shall be such proportion as the Authorised Officer shall (acting reasonably) deem reasonable in the circumstances.

- (ii) Give written notice to the Contractor setting out in general terms the matters giving rise to such notice and containing a reminder to the Contractor of the implications of such notice. Any such notice shall state on the face of it that it is a "Warning Notice" and shall be signed by the Secretary (or their nominee) to

SYPTE. Guidance in respect of when the issue of a Warning Notice would be appropriate is given in Part B of Appendix 1.

9.3 SYPTE shall not exercise the power given in clause 9.2 if having had regard to the circumstances SYPTE (acting reasonably) determines that the default occurred for reasons beyond the Operators reasonable control.

9.4 In the event of the Contractor either:-

- (i) incurring Performance Deductions in any three consecutive Accounting Periods equivalent to 10% or more of the Period Contract Payment for those Accounting Periods; or
- (ii) incurring Performance Deductions in any twelve month period equivalent to 10% or more of the Contract Price for that period; or
- (iii) committing a breach of any of the obligations under the Contract.

then SYPTE may at any time within three months of such event (without prejudice to any other right or remedy available to it) do any one or more of the following:

- (a) terminate the Contract (in which case the provisions of clauses 16.5 to 16.7 inclusive shall apply equally); or
- (b) without terminating the Contract provide or procure the Services or any relevant part thereof in accordance with the provisions of clause 10 (Substituted Performance); or
- (c) without terminating the whole of the Contract terminate the Contract in respect of the relevant part of the Services only

(whereupon a corresponding reduction in the Contract Price payable to the Contractor shall be made as if such termination was a change in accordance with clause 15) and thereafter itself provide or procure such relevant part of the Services.

- 9.5 SYPTE may charge the cost of any part of the Services provided by it or by a third party under this clause 9 to the Contractor in accordance with Clause 10 (Substituted Performance).
- 9.6 The remedies of SYPTE under this clause may be applied in respect of any one or more default by the Contractor.
- 9.7 In respect of Performance Deductions for late departures from any registered timing point or any other specified timing point, operation off route or non-operation then before any Performance Deductions are made the Contractor shall, upon their request, be given the opportunity to provide an explanation/justification to the Authorised Officer who may acting reasonably at his sole discretion waive the Performance Deductions or any part thereof.
- 9.8 SYPTE will only use information obtained from the Contractors participation in the Real Time Information System for the purposes of monitoring Contract compliance and for making Performance Deductions (except to the extent that such information may be used to verify a complaint)
- 9.9 Except to the extent that the information obtained from Real Time Information is used for monitoring Contractor performance under the Contract, information shall be used in accordance with any other agreement between the parties in so far as it relates to such information.

10. SUBSTITUTED PERFORMANCE

10.1 In accordance with Clause 9.4(b) if without good reason in the opinion of the Authorised Officer the Contractor for whatever reason regularly fails to perform the Services in whole or in part strictly in accordance with the terms of the Contract, or in performing the Services there is an unacceptable level of deficient Service, then without prejudice to any other remedy available to SYPTE the Authorised Officer may make alternative arrangements to provide and perform such of the Services which the Contractor fails to perform or performs deficiently. The costs (together with a to cover SYPTE's administrative costs and overheads) shall be payable by the Contractor to SYPTE on demand as a debt.

11. DATA PROVISION/AUDIT

11.1 Not later than 6 Working Days after the end of the relevant Accounting Period the Contractor shall submit to SYPTE the Passenger Revenue/Performance Return for that period. Payment by SYPTE of the Period Contract Payment for the corresponding period shall be conditional upon proper receipt of the Passenger Revenue/Performance Return and the provision of the data collected by the Data Analysis system within the specified time period.

11.2 The Passenger Revenue/Performance Return shall be made on the pro-forma annexed hereto as Appendix 4 (as amended from time to time or as agreed) and shall (unless agreed otherwise) be sent electronically to SYPTE to the e-mail address notified from time to time to the Contractor or by disk/memory card.

11.3 In addition to the Passenger Revenue/Performance Return SYPTE may require that the Contractor provide and make available to SYPTE as soon as practical any passenger, revenue, timekeeping, or ticket data extracted from the Ticketing Equipment in agreed format All data

supporting the information provided in the Passenger Revenue/Performance Return must be retained by the Contractor for a period of 12 months from the date of submission of the relevant return.

- 11.4 SYPTE may use any data provided by the Contractor for any purpose connected with the provision of the Services, including, without prejudice to the generality of this clause, to audit the Passenger Revenue/Performance Return.

12. PAYMENT

- 12.1 No payment will be made to the Contractor until the Commencement Date and any costs incurred by the Contractor prior to the Commencement Date shall be deemed to have been included in the Contract Price.

- 12.2 Provided the Contractor shall have performed the Services in accordance with the Contract SYPTE shall pay the Contractor the Period Contract Payments in accordance with this clause 12.

- 12.3 The Lost Mileage Deductions for each Accounting Period shall be calculated as follows:-

$$[A \div B] \times C$$

Where A = Period Contract Payment

B = total miles to be operated in the relevant Accounting Period

C = mileage not operated (or deemed not to have operated) in the relevant Accounting Period.

- 12.4 The Period Contract Payment for any Accounting Period shall be equal to the sum of the Contract Price divided by the number of days of operation in the Contract Period multiplied by the number of days of operation in the Accounting Period.

- 12.5 The total of all the Performance Deductions and the Lost Mileage Deductions incurred for each Accounting Period shall be made from the next or any subsequent Period Contract Payment. In the case of the Performance Deductions and Lost Mileage Deductions to be made in respect of the last Accounting Period of the Contract these shall, at the discretion of SYPTE be paid by the Contractor to SYPTE or set off against other amounts owed by SYPTE to the Contractor under any other contract with the Contractor.
- 12.6 If the Passenger Revenue/Performance Return is not submitted and/or the information from the Data Analysis system is not received in accordance with clause 11.1 above the relevant Period Contract Payment may be withheld until the payment date next after the submission is received (provided it is received within the timescales stipulated in clause 11.1). No interest shall be payable by SYPTE in such circumstances. If SYPTE has been unable to process a properly received Passenger Revenue/Performance Return it shall pay the Period Contract Payment to the Contractor but it reserves the right to deduct any amounts that would have been properly deducted had the return been processed from the next or any subsequent payment.
- 12.7 Subject to Clause 12.6 above for each Accounting Period the payment of the Period Contract Payment (less Passenger Revenue for a Minimum Cost Contract and less any other deductions (which may properly be made under this contract or by Order of a Court) shall be made within 20 Working Days of the last day of that Accounting Period into the nominated bank account of the Contractor. Where the letter of Award so stipulates, it will be a condition of payment that the Contractor has issued a properly constituted VAT invoice for the monies due.
- 12.8 Any money due or payable under the Contract shall, if not paid when due, bear interest from the date due until the date paid at the rate of

2% above the base rate from time to time of Royal Bank of Scotland PLC. Such interest shall be paid on demand by the Contractor.

13. INDEXATION

13.1 The Contract Price expressed as an annual figure will increase on each anniversary of the Commencement Date by a percentage equal to the percentage increase in the Consumer Price Index (CPI) for the 12 month period ending on the date 6 months after the Commencement Date and on each anniversary of that date thereafter. Should the CPI figure be negative, no decrease in payment will be made unless CPI is greater than -5%.

14. INDEMNITY AND INSURANCE

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

14.2 If SYPTE receive any notice, demand, letter or other documents concerning any claim from which it appears that SYPTE is or may become entitled to an indemnity under clause 14.1, then SYPTE shall notify the Contractor as soon as reasonably practicable and in any

event within five working days and shall supply a copy of the relevant documents to the Contractor and the following provisions shall apply:-

14.2.1 where and so long as it appears that SYPTE is or may become entitled to an indemnity from the Contractor in respect of the claim, the Contractor shall be entitled to resist the claim in the name of SYPTE and shall have the conduct of any defence of the claim and of any incidental appeals or negotiations and SYPTE shall give the Contractor at the Contractors expenses all reasonable co-operation, access and assistance for the purpose of dealing with the claim;

14.2.2 the Contractor shall keep SYPTE fully informed in relation to the claim and shall consult SYPTE as to the conduct of any defence to the claim to the extent that it is reasonable to do so;

14.2.3 SYPTE shall be free to pay or settle any claim on such terms as they may in its absolute discretion think fit and without prejudice to its rights and remedies under this Agreement in the following circumstances (but otherwise not without the prior consent of the Contractor, such consent not to be unreasonably withheld or delayed):

- (i) if within 21 days after the said notice from SYPTE under this clause 14.2 the Contractor fails to notify SYPTE in writing of its intention to assume the conduct of the claim;
or
- (ii) if the Contractor fails to comply in any material respect with the provisions of clause 14.2.2

14.3 Without prejudice to its liability to indemnify SYPTE under this clause 14 the Contractor shall, at its own expense, arrange and maintain

throughout the Contract Period the following insurances (“the Insurances”):

14.3.1 public liability in the sum of not less than £10,000,000 (ten million pounds) per incident;

14.3.2 employers’ liability as may be required from time to time under the provisions of the Employers Liability (Compulsory Insurance) Act 1969; and

14.3.3 motor vehicles liability (as required under the Road Traffic Act 1988 or any subsequent legislation or statutory requirements) and in the sum appropriate to reflect their use as Public Service Vehicles carrying up to the maximum authorised capacity of the Vehicle or such other insurance/deposit scheme which satisfies the Contractors legal responsibility with an insurer (or insurers) authorised to underwrite such risks in the United Kingdom.

14.4 The Contractor shall ensure that the Insurances cover the Contractors legal liability (including liability assumed under the Contract) which may arise out of or in the course of or by reason of the performance or non-performance of the Contract.

14.5 At any time during the Contract Period the Contractor shall on request from the Authorised Officer provide proof to the reasonable satisfaction of the Authorised Officer that the Insurances have been effected and are in force.

15. CHANGE PROCEDURE

15.1 SYPTE and the Contractor acknowledge and agree that from time to time during the Contract Period SYPTE may require the Services provided under the Contract to be changed.

- 15.2 The Authorised Officer will discuss with the Contractor any Change proposed. If the parties agree the changes and any financial implications of such Change then the Change shall be documented as detailed in 15.7 below.
- 15.3 SYPTE and the Contractor acknowledge and agree that if the level of taxation or duty (other than Value Added Tax) relating to any element of cost incurred by the Contractor in delivering the Services is altered by Her Majesty's Government after submission of the Contractor's tender then:
- (a) either party may seek to make a change to either the Contract Price or the fares referred to in clause 2.9 in accordance with this clause 15;
 - (b) the parties will negotiate in good faith to reach an agreement to reflect the Change such that the Contractor shall make no gain nor suffer loss in providing the Services as a result of the tax changes;
 - (c) the Change shall be effective no later than the date the taxation changes are implemented by the Government.
- 15.4 Where SYPTE and the Contractor are unable to agree the proposed change in accordance with 15.3 above the Authorised Officer shall, if SYPTE wish to proceed with a Change, issue a Change Control Notice ("CCN") to the Contractor in the form set out in Appendix 2.
- 15.5 The Contractor shall give proper consideration to the CCN and if agreed shall sign the same. If the Contractor does not accept the CCN it shall within 5 Working Days of its receipt respond in writing to SYPTE to that effect setting out the reasons.

- 15.6 If the CCN is not agreed then the parties shall use all reasonable endeavours to meet within 5 Working Days of receipt of the Contractors response under clause 15.5 to discuss the proposed change and the reasons for non acceptance. If agreement is not reached at the meeting then SYPTE may at its sole discretion at any time thereafter refer the matter for consideration in accordance with the provisions of clause 8. The decision of the Neutral Adviser shall be binding upon the parties.
- 15.7 If the parties agree or the Neutral Adviser proposes that fares be increased to cover the additional costs falling to the operator and this is demonstrated over three subsequent periods after implementation not to increase revenue sufficiently to offset the additional cost (within a margin of 10%) then the Contractor may give twelve weeks notice to terminate the contract unless SYPTE is willing to sanction a further fare increase : however if revenue increases by more than 10% of what was originally considered to be a reasonable amount then SYPTE reserves the right to reduce the fares or, if this is refused for SYPTE to give 12 weeks notice of termination.
- 15.8 When any change is proceeded with, the Contractor and SYPTE shall agree the date from which the Change will become effective subject to the requirements of registration. The agreement shall be recorded in a letter issued by SYPTE and signed by the Authorised Officer and countersigned by the Contract Manager.

16. ANTI-BRIBERY AND CORRUPTION/TERMINATION

16.1 The Contractor shall in connection with this Agreement:

- 16.1.1 comply with all applicable anti-bribery and anti-corruption legislation including, without limitation, the Bribery Act 2010 and any applicable European Union Directives.

- 16.1.2 throughout the term of this Contract maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with all applicable anti-bribery and anti-corruption legislation and European Union Directives. Adequate procedures shall be determined in accordance with section 7 (2) of the Bribery Act 2010 (and any guidance issues under section 9 of the Act).
- 16.1.3 use all reasonable endeavours to ensure that all persons associated with the contractor (as defined by section 8 of the Bribery Act 2010) including subcontractors and supplier comply with clause 16.1.1 and 16.1.2 above.
- 16.1.4 Not do anything which may contravene SYPTe's Code of Conduct, the current version of which is available for inspection at www.sypte.co.uk under the Freedom of Information Publication Scheme.
- 16.2 Any breach of Clause 16.1 by the Contractor shall entitle SYPTe to terminate the Agreement and recover from the Contractor the amount of any loss resulting from such termination.
- 16.3 If the Contractor:
- (i) commits a breach of any of its obligations under the Contract and in the case of such a breach which is capable of remedy fails to remedy the same within 28 days of notification of the breach by SYPTe (and in which SYPTe expresses its intention to exercise its rights under this sub-clause);
 - (ii) becomes bankrupt or makes a composition or arrangement with its creditors, or has a proposal in respect of its company for voluntary arrangement for a composition of debts, or scheme or

arrangement approved in accordance with the Insolvency Act 1986;

- (iii) has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver;
- (iv) has a winding up order made, or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
- (v) has a provisional liquidator receiver or manager of its business or undertaking duly appointed;
- (vi) has an administrative receiver, as defined in the Insolvency Act 1986 appointed;
- (vii) has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge;
- (viii) is in circumstances which entitle the Court or a creditor to appoint, or have appointed a receiver, a manager or administrative receiver, or which entitle the Court to make a winding-up order;

then in any such circumstances SYPTTE may, without prejudice to any other accrued rights or remedies under the Contract terminate the Contract by notice in writing having immediate effect.

16.4 Subject to Clause 16.3 SYPTTE may give notice to terminate the Contract by not less than 10 weeks written notice expiring on any Designated Service Change Date (or in respect of school services the end of a school term) without limitation, in either of the following circumstances:-

- (i) The Authority or other funding source make insufficient finance available to SYPTE for revenue support of the Services (or part thereof);
- (ii) the provision of the Services (or part thereof) is or will no longer be required.

16.5 Without prejudice to SYPTE's rights under clause 16.2 prior to terminating the Contract in accordance with 16.2 SYPTE shall consult with the Contractor to seek its views about the proposed termination.

16.6 If the Contract is terminated as provided in Clause 16.1 or 16.2 and is not reinstated, SYPTE shall:-

- (i) cease to be under any obligation to make further payment until any costs, loss and/or damage resulting from or arising out of the termination of the Contract have been calculated and, provided such calculation shows a sum or sums due to the Contractor;
- (ii) be entitled to provide itself or procure and pay other persons to provide and complete the provision of the Services or any part thereof;
- (iii) be entitled to deduct from any sum or sums which would but for Clause 16.5 (i) have been due from SYPTE to the Contractor under the Contract or any other Contract or be entitled to recover the same from the Contractor as a debt any loss or damage to SYPTE resulting from or arising out of the termination of the Contract. Such loss or damage shall include the reasonable cost to SYPTE of the time spent by its officers in terminating the Contract and in making alternative

arrangements for the provision of the Services or any part thereof;

- (iv) when the total cost, loss and/or damage resulting from or arising out of the termination of the Contract has been calculated and deducted so far as practicable from any sum or sums which would but for clause 16.5 (i) have been due to the Contractor, any balance shown as due to SYPTE shall be recoverable as a debt, or alternatively SYPTE subject to clause 17 (Recovery of Sums Due) shall pay to the Contractor any balance shown as due to the Contractor.

16.7 The rights of SYPTE under this clause 16 are in addition to and without prejudice to any other rights SYPTE may have.

16.8 If the Contract is terminated under clause 16.3 the Contractor shall be entitled to receive from SYPTE any sum or sums due in respect of providing the Services up to the time of termination of the Contract.

16.9 Except where SYPTE reasonably believes that the decline in passenger revenue is caused by the inadequate performance of the services by the contractor, the Contractor may give notice to terminate a Minimum Subsidy Contract by not less than 20 weeks written notice, expiring on a Designated Service Change Date, subject to the additional constraints of any voluntary partnership agreement between the parties in place, if the revenue received is reduced by more than 20% for three consecutive Accounting Periods when compared to the average for the first six Accounting Periods covered by the contract.

- (a) If an event occurs which adversely affects the patronage figures in respect of the Service such that the number of passengers carried on the Services is reduced by more than 20% compared to the passenger figures carried for the immediately preceding Accounting Period then upon application by the Contractor the

Authorised Officer (acting reasonably) will determine whether the period of 20 weeks referred to in clause 16.8 should be reduced and if so shall determine a reasonable notice period and notify the same to the Contractor. The Authorised Officer shall make such determination and notify the Contractor within 14 days of the Contractors application.

- (b) In such event the Contractor and Authorised Officer will seek to negotiate a change to the contract in good faith prior to SYPTE seeking a replacement contract via tender.

16.10 Notice of termination

- (a) The Contractor may give notice to terminate the Contract by not less than 10 weeks written notice [expiring on a Designated Service Change Date], subject to the additional constraints of any voluntary partnership agreement between the parties in place, where:
 - (i) an increase in fares has been implemented by the Contractor in accordance with these Conditions to offset any losses suffered by the Contractor under clause 15.3; and
 - (ii) the Data Analysis System demonstrates, over three subsequent Accounting Periods, that such increase in fares does not offset the said losses by 90% or more; and
 - (iii) SYPTE will not agree to a further increase in fares, increase of the Contract Price or reduction in mileage to offset the losses.

- (b) SYPTE may give notice to terminate the Contract by not less than 12 weeks written notice [expiring on a Designated Service Change Date] where:
 - (i) an increase in fares has been implemented by the Contractor in accordance with these Conditions to offset any losses suffered by the Contractor under clause 15.2; and
 - (ii) the Data Analysis System demonstrates, over three subsequent Accounting Periods, that such increase in fares offsets the said losses by 110% or more; and
 - (iii) the Contractor refuses to agree to reduce the fares, adjust the Contract Price or revise the mileage as requested by SYPTE to offset the gain to the Contractor

16.11 If the option to extend in Appendix 5 is exercised by SYPTE then for the purpose of clause 16.8 above the period of notice required to terminate shall be reduced to 10 weeks and the reduction in revenue received shall be reduced to 10% for three consecutive Accounting Periods.

17. RECOVERY OF SUMS DUE TO SYPTE

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

18. ALIENATION

18.1 The Contract is personal to the Contractor who shall not without the prior express written consent of SYPTE (such consent not to be unreasonably withheld or delayed) assign, novate or otherwise dispose in whole or in part of its rights hereunder nor assign sub-contract or otherwise delegate in whole or in part any of its obligations hereunder (except in cases of temporary emergency where SYPTE shall be informed as soon as is practical in the circumstances). Approval by SYPTE of any sub-contract shall not relieve the Contractor of any of its obligations hereunder.

19. TUPE

19.1 The Contractor acknowledges and agrees that prior to the expiry or termination of the Contract it shall use all reasonable endeavours to identify and comply with any obligations which may arise out of the services being undertaken by another operator following retender or termination under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") and it shall comply with the requirements of Regulation 11 of TUPE prior to such expiry or, if the period of any notice permits, termination.

19.2 At any time during the 52 week period before the expiry of or during any period of notice terminating the Contract or at any time after expiry or termination of the Contract SYPTE may require the Contractor to provide to SYPTE (prior to any other operator or operators notified by SYPTE) such information as is reasonably required by SYPTE or such other operators relevant to the potential liabilities of any new operator arising under TUPE including but not limited to information on the following:-

- (i) Any information required under Regulation 11 of TUPE;

- (ii) the names of employees operating the Services, their salaries and other conditions of employment, ages and length of service;
- (iii) the method of organisation of the employees operating the Services and documentary evidence relating to such organisation;
- (iv) the proposals for consultation with affected employees; and
- (v) details of collective agreements and union recognition agreements

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

19.3 The Contractor shall provide SYPTE with the name and address of a person within its organisation to whom all queries and requests for information under this clause 19 shall be addressed in the first instance.

20. SERVICE OF NOTICES

20.1 Any demand notice or other communication required to be given hereunder shall be sufficiently served if served on the Contractor's Manager as identified in Clause 6.1 or if unincorporated on the proprietor or any partner and in respect of SYPTE if served on the Authorised Officer by first class post.

20.2 Any document which may be served on the Contractor by SYPTE shall be sent to the registered office or last known address of the Contractor.

20.3 Any document which may be served by the Contractor on SYPTE or the Authorised Officer shall be sent to the Authorised Officer at South Yorkshire Passenger Transport Executive, 11 Broad Street West, Sheffield, S1 2BQ.

20.4 Any notice shall be deemed to have been received by the addressee on the second Working Day after the date of posting.

21. GENERAL

Law and Jurisdiction

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

Contracts (Rights of Third Parties) Act 1999

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

Human Rights Act (1998)

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

Discrimination

- 21.4 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010, or any other legislation which prohibits discrimination of any kind by an employer or provider of services to the public.
- 21.5 The Contractor shall take all reasonable steps to secure that all servants, employees, agents or sub-contractors of the Contractor employed in the provision of the Services do not unlawfully discriminate as set out in clause 21.4.
- 21.6 The Contractor shall indemnify and keep indemnified the SYPTE against all claims, costs awards and fees arising from or relating to any claims under the Equality Act 2010, or any other legislation as aforesaid brought against SYPTE by any employees of the Contractor.

Data Protection Act 1998

- 21.7 The Contractor shall comply in all respects with the provisions of the Data Protection Act 1998 and will indemnify SYPTE against all actions, costs, expenses, claims, proceedings and demands which may be brought against SYPTE for breach of statutory duty under the Act howsoever arising.

22. FREEDOM OF INFORMATION

- 22.1 SYPTE is a public body for the purpose of the Freedom of Information Act 2000 ("the Act") and is required to comply with the obligations and duties imposed by the act.
- 22.2 In the event that SYPTE receives a request for information under the Act contained in this agreement it will use its best endeavours to consult with the Contractor before such information is released,

however such consultation cannot override SYPTE's duties under the Act.

22.3 Each party acknowledges and agrees that certain information/data may potentially for the purposes of the Act, constitute:

- exempt information pursuant to section 41 of the Act which is provided to the SYPTE in confidence and that disclosure of the Contractor Information/data would constitute a breach of confidence actionable by the Contractor; and/or
- exempt information pursuant to section 43 of the Act in that it constitutes either a trade secret of the Contractor and/or information which if disclosed to the public would prejudice the commercial interests of the Contractor;
- and insofar as either Clauses 22.1 or 22.2 (or both) apply, then SYPTE with the reasonable assistance of the Contractor, shall use all reasonable endeavours to justify the non-disclosure of such information upon such grounds.
- In the event that, notwithstanding the provisions of this clause 22.3 SYPTE is bound by the Act to disclose any Contractor Information/Data in response to a Request for Information SYPTE shall comply with clause 22.3.

APPENDIX 1

PART A - CATEGORIES OF PERFORMANCE DEDUCTIONS

TYPE OF DEFAULT	RELEVANT CLAUSE	CATEGORY
<i>CONTRACT MANAGEMENT ISSUES</i>		
Unauthorised subcontracting	18.1	A
Failure to report relevant correspondence with any competent agency or body, e.g., VOSA, Police	4.3	A
Failure to advise of regular time-keeping or scheduling problems.	2.14	B
Failure to advise of regular capacity problems	3.9	B
Failure to respond to customer complaints as specified in the Executives Customer	2.25	A
Operation of vehicle which does not accord to the specification	2.24 and 3.1	A
Failure to provide Contract Performance Return on time	11.1	A for delays in excess of 5 days
Failure to provide information from the Data Analysis System on time	2.7 and 12.6	A for longer delays in excess of 5 Days
Unauthorised change to the services	2.13	A
Failure to keep vehicle in required state of cleanliness	3.4	B
Failure to make data available for inspection	11.3	A
Failure to provide registration details in time	2.1 and 2.2	A
<i>DRIVER RESPONSIBILITIES</i>		
Service operating outside the standards defined in the Traffic Commissioners 'Practice Directive No.4 - Standards for Local Bus Services'. Or any subsequent changes	2.3 and 7.1	A
Failure to observe bus stop (requires verification)	2.17	B
Use of incorrect stand at Bus Station/Interchanges (if available)	2.17	A
Failure to carry passenger due to lack of change	2.14	B
No ticket issued to a fare paying passenger except where electronic ticketing conditions apply	2.16	A*
Incorrect ticket issued	2.16	B*

TYPE OF DEFAULT	RELEVANT CLAUSE	CATEGORY
<i>DRIVER RESPONSIBILITIES continued</i>		
Valid travel pass not accepted for travel	2.10	A
Invalid travel pass accepted for travel	2.10	B *
Non-operation of journey	2.3	A
Use of driver who is not qualified or inadequately trained or not registered with the ISA – Clause 5.3	6.2	A
Failure to follow specified route	2.3	A
Driver wearing unsuitable clothing	6.7	B
<i>DRIVER BEHAVIOUR ISSUES</i>		
		A
Driver rude or abusive to passengers (requires verification)	6.4(iii)	A
Driver smoking	6.4	A
Driver soliciting gift/gratuity from passenger	6.3	B
Driver using mobile phone or radio kit whilst driving in contravene of clause 6.8	6.8	A
Refusal to use disabled ramp	2.21	A
Refusal to accept an approved wheelchair or Pram where space permits	2.21	A

*Applies only to Minimum Cost Contracts

PART B GUIDELINES FOR ISSUE OF WARNING NOTICES

1. Warning Notices are to be issued to the Contractor when in the opinion of the Authorised Officer performance in one or more particular default categories has reached unacceptable levels or the Services are consistently or regularly being provided to an unacceptable standard.
2. Except for serious breaches Warning Notices should only be issued after previous written requests highlighting the areas of default or failure have not resulted in improvement and after the Contractor has been given an opportunity to explain the reason for default or failure.
3. There is no fixed minimum amount of Performance Deductions awarded that trigger the issue of a Warning Notice, but the level of Performance Deductions awarded will inform any decision to issue a Warning Notice.
4. Contractors may appeal against warnings they feel have been incorrectly issued. Such appeals should be made to the Authorised Officer.
5. If Agreement is not reached in accordance with Clause 4 above in this Appendix then the terms of Clause 8 of the Contract shall apply.

APPENDIX 2

“CCN”

Change Control Notice

Contract Ref No:

Name of Contractor

Details of Change required:

Reasons for Change:

Impact of Change:

Implementation Date required:

Financial Implications:

Originator:

Response: Accept/Reject Reason for Rejection

Signed

Date Issued.....

Signed

Name..... Date.....

APPENDIX 3

“SCHOOL SERVICES”

Additional Conditions applicable if the Letter of Award specifies that Appendix 3 applies:-

1. If requested in writing by the Authorised Officer the Contractor shall allow access to the Vehicles to an official escort whose identity will be notified to the Contract Manager by the Authorised Officer for the purpose of supervising school children travelling on the Services.
2. If required in the Specification the Vehicles will be fitted with CCTV.
3. If required in the Specification the Vehicles will have the specified number of seats fitted with seat belts.
4. There is no obligation to carry any escort to any location other than the start or finish of the journey.
5. The Contractor will use his reasonable endeavours to meet requests from the Authorised Officer to vary the timing of the Services to accommodate any changes to the start or end time of a particular school day. Any additional costs will be met by SYPTE.
6. Clause 2.11 (data analysis system) and Clause 2.12 (ETMS) will apply unless the Letter of Award stipulates otherwise.

APPENDIX 4

“PASSENGER REVENUE/PERFORMANCE REPORT”



CONTRACT PERFORMANCE STATEMENT
PART 1: PASSENGER AND REVENUE STATEMENT (MIN. COST CONTRACTS ONLY)

Operator : _____ Contract Ref : _____
 Period No : _____ Period Start : / / Period End : / /

Day	Date	Passengers paying no fare				Passengers Paying Concessionary Fare			Pax Paying Full Fare	Total Pax	Total Cash	COMMENTS
		Zero fare pass	Travel Master	Under 5's	Blind Pass	Child	Elderly	Disabled				
Sun												(ie, school closed, public holiday etc)
Mon												
Tues												
Wed												
Thurs												
Fri												
Sat												
Wk 1 Sub Total												
Sun												
Mon												
Tues												
Wed												
Thurs												
Fri												
Sat												
Wk 2 Sub Total												
Sun												
Mon												
Tues												
Wed												
Thurs												
Fri												
Sat												
Wk 3 Sub Total												
Sun												
Mon												
Tues												
Wed												
Thurs												
Fri												
Sat												
Wk 4 Sub Total												
<small>Only to be used in periods covering more than 28 days</small>												
Sun												
Mon												
Tues												
Wed												
Thurs												
Fri												
Sat												
Wk 5 Sub Total												
Period Total												

Daily, weekly and period total figures must be given separately for each contract.
 Return white and yellow copies to management accounts SYPTE, retain pink copy for your records.

APPENDIX 5

OPTION TO EXTEND THE CONTRACT PERIOD

1. Where it is so stipulated in the Letter of Award the provisions of this Appendix 5 shall apply.
2. SYPTE may at any time prior to the date six months before the expiry of the Contract Period offer to extend the Contract Period by a period of up to two years by giving the Contractor written notice of such extension specifying the period of the extension. The contractor may accept or decline this offer.
3. If notice is given in accordance with 2 above the Contract Period shall be read and construed as the Contract Period as extended. The provisions of the Contract shall apply equally to the extended period including without prejudice to the generality of this clause the provisions of clause 13 (Indexation).
4. Where the provisions of Appendix 5 (Option to Extend Contract Period) apply then in respect of any extended period the increase in the Contract Price shall be the percentage increase calculated in accordance with clause 13.1 plus two percent (2%). If CPI has decreased the 2% increase will still be added and no negative percentage will apply unless CPI is greater than -7%

APPENDIX 6

Disclosure & Barring (DBS) Services

Where it is so stipulated in the Invitation to Tender and Letter of Award the provisions of this Appendix 6 shall apply.

1. Except in emergency situations (and in any event for not more than [2] days) no driver shall be used in the performance of the Contract unless that driver has provided an Enhanced Disclosure Certificate to the Contractor.
2. During the period of the Contract the Contractor must ensure that they become aware of any matter or conviction relating to any driver that may be relevant to the suitability of a driver to work on the Contract or that the driver has a Relevant Conviction the Contractor shall forthwith remove the driver from the Contract and notify the Authorised Officer of the facts pertaining to the driver's removal. In such circumstances the driver shall not be reinstated to the Contract without the written approval of the Authorised Officer.
3. The obtaining of an Enhanced Disclosure Certificate shall be the Contractor's responsibility.

In this Appendix " Relevant Conviction" means a conviction disclosed on a Enhanced Disclosure Certificate that relates to a conviction for any of the following:-

- i. child abuse/crimes against children;
- ii. crimes of a sexual nature
- iii. theft/burglary/dishonesty
- iv. bodily harm