



Education

**ELIGIBLE SERVICE PROVIDER LIST
CONTRACT FOR THE PROVISION OF
ASSISTED SCHOOL TRAVEL SERVICES
TO THE ASSISTED SCHOOL TRAVEL PROGRAM
(2019 – 2021)**

AGREEMENT

AGREEMENT made this day of201...

BETWEEN

**The State of New South Wales through its Department of Education
("the Department")**

(ABN 40 300 173 822)

AND

.....

"The Contractor"

(ABN: _____)

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This Agreement dated

BETWEEN

The Department of Education as described in Item 1 of Schedule 1 hereto ("the Department");

AND

The Contractor as described in Item 2 of Schedule 1 hereto ("the Contractor").

BACKGROUND

- A. The Department (then known as Department of Education and Training), issued Request for Tender No. DETP1028 on 4 November 2010 (the RFT) to create an Eligible Service Providers List contract for the provision of Transport Services for the Department's Assisted School Travel Program (the Services)
- B. The Contractor agrees to provide, and the Department to purchase, the Services as detailed in, and in accordance with, the terms of this Agreement.

PART D FORM OF AGREEMENT

1 DEFINITIONS

"**Agreement**" means this document and includes:

- (a) the Schedules and Annexures that are incorporated into this Agreement directly or by reference, (as amended from time to time in accordance with the terms of this Agreement), and
- (b) any other documents incorporated in and forming part of the Agreement;

"**Assisted School Travel Program**" or "**ASTP**" or "**the Program**" means the Department's Assisted School Travel Program for the provision of transport to selected students to and from school;

"**Assisted School Travel Unit**" means the Assisted School Travel Unit within the Department which is responsible for the management of the Assisted School Travel Program;

"**Assisted Travel Support Officer**" means a person engaged by the Department to provide additional supervision or support for students accessing the Service;

"**Assisted Travel Support Officer Allowance**" means an allowance payable to the Contractor equal to 15% of the daily remuneration for student travel and may be payable on Run/s where an Assisted Travel Support Officer has been allocated subject to certain criteria; (refer to section 14.2).

"**Business Days**" means a day which banks are generally open for normal business in Sydney and excludes Saturdays, Sundays and public holidays;

"**Commencement Date**" means the date specified in Item 3 of Schedule 1 to this Agreement, or for additional Run/s allocated, the date that the Run/s were accepted by the Contractor;

"**Contractor**" / "**Eligible Service Provider**" or "**ESP**" means the organisation or individuals who by the Agreement undertakes to provide or procure the provision of the Services required by the Agreement and, where the Contractor is an individual or partners, the expression shall include the personal representatives of that individual or of the partners as the case may be and the expression shall also include any person to whom the benefit may be assigned by the Contractor with the consent of the Department;

"Department of Education", "Department" or "the Department" means the NSW Department of Education;

"Designated Vehicle" means the vehicle approved by the Department for use by the Contractor in providing the Service/s;

"Driver" means a person holding a current driver licence and driving a Designated Vehicle in providing the Service including relief drivers;

"GST" is a goods and services tax and has the same meaning as in the GST Law;

"GST Law" means a *Tax System (Goods and Services Tax) Act 1999* (Cth), related legislation and any delegated legislation made pursuant to such legislation;

"Loaded Kilometre Rate" means an all-inclusive rate which includes all costs associated with performing the Service and shall commence at collection of the first student and cease at the drop-off of the last student;

"Personnel" means its employee agent, officer or contractor. A reference to the Contractor's Personnel does not include the Department. For the Contractor a reference to personnel includes its Subcontractors (including, where relevant, taxi drivers, Bailee's of taxis) and includes all Drivers;

"RMS" means Roads and Maritime Services (formerly the Roads and Traffic Authority of New South Wales);

"Recipient Created Tax Invoice (RCTI)" means a recipient created tax invoice as defined in the Goods and Services Tax (GST) legislation;

"Reportable Conduct" means grounds in accordance with NSW Child Protection Legislation to report allegations of any assault, neglect or ill-treatment of a child to the NSW Ombudsman, and in some cases to the NSW Police, the Department of Family and Community Services (FACS) and the Office of the Children's Guardian (OCG), as detailed in Schedule 3 of this Agreement;

"Run/s" means a route for the Service to be provided by a selected Contractor whether for one student or a group of students travelling together in one Designated Vehicle or Designated Vehicles to a specified locality or localities, generally to or from school or other destination nominated in writing by the Department

"Run Card" means a Run Card specifying any Run or Runs allocated to the Contractor from time to time, generally in the format of Schedule 2 and commonly (although not in all cases) for a period from the date of allocation of a Run until the end of the school year in which a Run is allocated.

"Service/s" means transportation of students and/or Assisted Travel Support Officers as provided for in this Agreement and as is the subject of a Run Card from time to time;

"Service Period" means the period commencing one hour before any part of the Service is due to be provided and ending one hour after any part of the Service is due to be provided;

"Special Conditions" means the special conditions, if any, set out in Schedule 4;

"Student" means a student eligible and approved to receive transport assistance under the Program.

"Subcontractor" means a person engaged by the Contractor in any capacity whatsoever, either directly or through another person, to provide any part or all of the Services and who is not an employee of the Contractor;

"Term" means the term of this Agreement as detailed in Schedule 1, Item 3

"WHS & R" means work, health, safety and rehabilitation

1.1 Interpretation in this Agreement unless explicitly stated to the contrary:

- (a) clause headings are for reference only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) where a word or expression is given a particular meaning, other grammatical forms of that word or expression have a corresponding meaning;
- (d) 'person' includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to an organisation or instrumentality, whether public or private, is a reference to that organisation or instrumentality includes a reference to its successor or replacement body;
- (f) a reference to a 'business day' is a weekday where banks are open for business in the State of New South Wales;
- (g) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally; and on the part of two or more persons binds them jointly and severally; and
- (i) a reference to a person includes the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
- (h) this or another document includes any variation or replacement of it;
- (i) a law includes regulations and other instruments under it and amendments or replacements of any of them;
- (j) a thing includes the whole and each part of it;
- (k) a date includes that date;
- (l) a group of persons includes all of them collectively, any two or more of them collectively or jointly and each of them individually; and
- (m) the president of a body or authority includes any person acting in that capacity;
- (n) a reference to a clause is a reference to a clause in the body of this Agreement, a reference to a schedule is a reference to a schedule to this Agreement and a reference to a paragraph is a reference to a paragraph in a schedule to this Agreement.

2. NATURE OF THE AGREEMENT BETWEEN THE DEPARTMENT AND THE CONTRACTOR

- 2.1 This Agreement sets out the Department's requirements for the delivery of assisted transport services to its Assisted School Travel Program (the Program) as detailed in, and in accordance with this Agreement for Run/s allocated in accordance with clauses 6 and 7 and Schedule 2. It is in the nature of a standing offer contract under which the Contractor is to provide such Services as may be required by the Department from time to time in connection with the Program.
- 2.2 This Agreement is conditional upon the Contractor meeting and continuing to meet the requirements of clause 3 – *Documentation to be provided by Contractor*. Should the Contractor fail to meet the requirements of clause 3, the Department may terminate this Agreement under Clause 26.2.
- 2.3 This Agreement constitutes the entire agreement between the Parties. It supersedes any prior arrangements, contracts, representations or undertakings
- 2.4 No notification or amendment of any clause of this Agreement will be valid except in writing signed by both Parties, except in relation to:
 - 2.4.1 variations to clauses 6 and 7 and Schedule 2 (Run/s allocation); or
 - 2.4.2 variations to the Term of the Agreement resulting from the Department exercising its extension options; which variations shall be notified in writing by the Department to the Contractor.
- 2.5 No Assurance of Orders and Non-Exclusive Supply
 - 2.5.1 This Agreement does not:

- 2.5.1.1 imply that the Contractor will receive any orders for the Services,
 - 2.5.1.2 imply that the Contractor is the exclusive provider of the Services to the Department;
or
 - 2.5.1.3 oblige the Department to allocate any Run or Runs for the Services to the Contractor;
 - 2.5.1.4 guarantee any period of engagement of the Contractor to the provision of the Service.
- 2.5.2 The Contractor acknowledges that the Department may, from time to time, in its discretion, appoint other suppliers under an agreement to supply the Services and that the Contractor will make no objection to such appointment.

3. DOCUMENTATION TO BE PROVIDED BY CONTRACTOR

The Contractor shall provide the following documentation to the Department upon accepting the terms of this Agreement:

- 3.1.1 For all Designated Vehicles, including relief vehicles, to be used in the provision of the Service, true and correct copies of:
 - 3.1.1.1 certificate of registration or renewal of registration" in respect of the Designated Vehicle/s appropriate to the Designated Vehicle and consistent with RMS requirements; and
 - 3.1.1.2 evidence of comprehensive business insurance (taxi insurance should be as per the Special Conditions at Schedule 4 to this document).
 - 3.1.1.3 A RMS Consent to Vehicle Check form completed and signed by the registered owner of the designated vehicle; and
 - 3.1.1.4 where appropriate, engineering certificates required under clause 10.
- 3.1.2 For all Drivers, including relief Drivers, to be utilised in the provision of the Service, true and correct copies of: -
 - 3.1.2.1 a RMS Consent to Driver Licence Checks forms signed by all drivers;
 - 3.1.2.2. all child related employment documentation as detailed in clause 12; and
 - 3.1.2.3 a Medical Assessment Certificate in accordance with 11.3.
- 3.1.3 Other documentation – true and correct copies of:
 - 3.1.3.1 Evidence of the current workers compensation policy referred to in clause 22.1;
 - 3.1.3.2 Certificate of currency for the public liability insurance policy referred to in clause 22.1. and
 - 3.1.3.3 Deed of Agreement to receive Recipient Created Tax Invoices.
- 3.2 Within seven (7) days of any date on which any of the documentation nominated in clause 3.1 above is due for renewal, the Contractor shall provide to the Department true and correct copies of documents evidencing such renewal.
- 3.3 Failure to provide the documentation required in accordance with clause 3.1.1 or 3.1.2 may result in the Agreement being terminated in accordance with clause 26.2.
- 3.4 Failure to update documentation in accordance with clause 3.2 may result in termination of the Agreement in accordance with clause 26.2.
- 3.5 Confirmation of English language skills of all Drivers.

4. TERM & ACKNOWLEDGEMENT

- 4.1 The Agreement commences on the Commencement Date stipulated at Schedule 1, Item 3 and, unless sooner terminated, remains in force for the Term stipulated at Schedule 1, Item 3.
- 4.2 The Term of the contract is dependent on the implementation of the National Disability Insurance Scheme (NDIS) and any extension to the Term of this Agreement can be terminated under conditions of Clause 26.1 should the NDIS replace services.
- 4.3 The Contractor acknowledges that the Service relates to conveyance of students with disability on the understanding that student conveyance needs can be subject to change at minimal notice. Details of the students to be conveyed are provided to the Contractor under separate cover in the form of the Run Card as provided for in Schedule 2. The Contractor will be advised of changes as and when needs arise. The Department reserves the right to arrange the transport of students with disability by the most effective means available. The Service is subject to review, rationalisation and reorganisation.
- 4.4 The Contractor will provide the Service in relation to a particular group of students within a locality or travelling to a locality or localities (a "Run" or Runs) allocated to it by the Department from time to time in accordance with clause 6.
- 4.5 If, after the date of this Agreement, the Department offers an additional Run or Runs to the Contractor, and the Contractor accepts the offer or offers in writing or commences provision of the Service for any such allocated Run the additional Run or Runs will be deemed to be included in the Schedule to this Agreement and the terms and conditions of this Agreement will apply equally to the additional Run or Runs except that a reference to "the date of this Agreement" shall be interpreted as a reference to the date or dates of the acceptance of the offer or offers.
- 4.6 Where this Agreement applies to more than one Run:
- 4.6.1 termination under subclause 26.2 of this Agreement shall apply to the Runs specified in the notice of termination issued under that clause; and
- 4.6.2 termination under subclause 26.2 of this Agreement shall apply to all of the Runs (unless otherwise specified in the notice of termination), it being expressly acknowledged by the Contractor that, for the purposes of subclause 26.2 the Department may terminate this Agreement with such termination applying to all Runs notwithstanding that the relevant breach or breaches of a term or terms of this Agreement may relate to less than all of the Runs, including in relation to only one Run

5. PROVISION OF SERVICES

- 5.1 The Contractor acknowledges and accepts that the Agreement covers the Services in relation to those Run/s specified in Schedule 2, as amended from time to time in accordance with the requirements of clause 6, during the Term of the Agreement.
- 5.2 The Contractor shall establish immediately, at no additional cost to the Department, all necessary facilities for the effective conduct and management of all aspects of the Agreement.
- 5.3 The Contractor shall provide and manage the full Service within the Run/s allocated to it and ensure that Students spend the minimum time necessary travelling to and from school.
- 5.3.1 Management of the contracted Run/s shall include but not be limited to: -
- 5.3.1.1 management of all Drivers and Subcontractors utilised under the Agreement on the Run/s, including engagement which is subject to approval by the Department, termination, entitlements, Workers Compensation coverage, payment for work performed and training as required by the Department;
- 5.3.1.2 meeting all expenses associated with providing the Services including all vehicle running costs, payment of tolls, modification to vehicles, remuneration of Drivers and provision of restraint systems;

- 5.3.1.3 ensuring compliance of all Drivers and Subcontractors utilised in providing the Service under the Contract, including compliance with the Department's policies and procedures;
- 5.3.1.4 ensuring compliance of all Designated Vehicles utilised in providing the Service under the Contract, including compliance with the Department's policies and procedures and the requirements of Transport for NSW including RMS;
- 5.3.1.5 ensuring compliance with all Agreement requirements in respect of the contracted Run/s;
- 5.3.1.6 communication with the Department, schools, students and parents/carers, including responding to enquiries and complaints in a timely manner;
- 5.3.1.7 receiving payment based on a Recipient Tax Created Invoice each month for each contracted Run,
- 5.3.1.8 providing remuneration to all Drivers and Subcontractors utilised in providing the Service on contracted Run/s under the Agreement and certifying this remuneration to the Department as and when requested; and
- 5.3.1.9 management of, and meeting all expenses associated with, all training requirements for the Contractor's Personnel.

6. RUN ALLOCATION AND REALLOCATION

- 6.1 The Department shall be responsible for the allocation of all Run/s in its absolute discretion. In allocating Runs to ESPs, the Department will take into consideration the assessed Run capacity of the ESP and the number of Runs already approved and in operation by that ESP before Run allocations are finalised.
- 6.2 Students and Assisted Travel Support Officers shall be transported to school/other educational institutions and returned to their homes or other nominated location/s by the shortest practicable route, i.e., the minimum distance necessary to transport students and Assisted Travel Support Officers to and from their destination.
- 6.3 The pick-up and drop-off times for each student and Assisted Travel Support Officer are to be arranged in accordance with the minimum distance necessary to transport students and Assisted Travel Support Officers to and from their destinations to ensure that all students and Assisted Travel Support Officers spend the minimum time necessary in transit and arrive at their destinations at the agreed times.
- 6.4 The Department will provide the Contractor with a Run Card for each allocated Run.
- 6.5 The Run Card will include the details of all Students to be transported, including pick-up addresses, destination and Assisted Travel Support Officer requirements.
- 6.6 The Contractor will provide the Service in relation to a particular group of Students within a locality or travelling to a locality or localities (a Run), or in relation to several Runs in strict accordance with the Department's Run Card as specified in Schedule 2 to this Agreement.
- 6.7 The Contractor shall comply with all the requirements as stated on the Run Card.
- 6.8 Under no circumstances are Runs to be combined, students delivered to unauthorised addresses, unauthorised passengers to travel in the Designated Vehicle or the Run Card altered.
- 6.9 Private arrangements with parents or schools to vary travel patterns, routes or times are not permitted and pick-up and drop-off times are not to be altered to meet the individual needs of schools, parents or carers without prior approval from the Department's Assisted School

Travel Program.

- 6.10 Prior to the commencement of a new school year, or when a new Run is allocated or variations to an existing Run made, the Contractor shall contact the parent/carer of each student on the Run to advise pick-up and drop-off times, the name of the Driver, including his/her contact information and the details of the Designated Vehicle to be utilised in providing the Service.

7. VARIATION OF ALLOCATED RUN/S

- 7.1 The Contractor acknowledges and accepts that assisted school travel Runs are continually subject to review, rationalisation and re-organisation and that the Department reserves the right to vary Run/s allocation nominated at Schedule 2 to increase efficiencies or meet the operational needs of the Department. Such variation may include: -
- 7.1.1 variation of the details of individual students to be transported on a Run;
- 7.1.2 variation of transport address that requires the Contractor to transport students to respite and after-school care facilities;
- 7.1.3 the requirement for an Assisted Travel Support Officer to support an identified Student's travel;
- 7.1.4 increase or decrease in number of Students to be transported on a Run;
- 7.1.5 increase or decrease in the number of Runs to be provided by the Contractor;
- 7.1.6 consolidation of Runs; and
- 7.1.7 cancellation of allocated Runs.
- 7.2 In these circumstances, with the exception of a cancelled Run, a new Run Card will be issued to the Contractor.
- 7.3 The Contractor acknowledges and accepts that no compensation will be payable to the Contractor in the event that such variation results in decreased payments being made to the Contractor or discontinuation of payments when a Run is terminated.
- 7.4 If after the Commencement Date of this Agreement, the Department offers the Contractor additional Run/s, and the Contractor accepts the offer/s in writing, the additional Run/s shall be deemed to be included in Schedule 2, and the terms and conditions of this Agreement shall apply equally to the additional Run/s except that a reference to Date of Acceptance shall be interpreted as a reference to the date/s of acceptance of the offer by the Contractor, and the Term shall be interpreted as a reference to the Date of Acceptance to the end of that school year.
- 7.5 Subject to clause 7.4, the terms and conditions of this Agreement shall apply to each Run as if there was a separate agreement in relation to each Run, for example, the Contractor shall receive a separate *Recipient Tax Created Invoice* (under clauses 15 and 17) in respect of each Run specifying, on the Form, the Department's reference number for that Run
- 7.6 Where this Agreement applies to more than one Run:
- 7.6.1 termination under clause 26.1 of this Agreement shall apply to the Run/s specified in the Notice of Termination issued under that clause; and
- 7.6.2 termination under clause 26.2 of this Agreement shall apply to all of the Runs (unless otherwise specified in the Notice of Termination) from time to time held by the Contractor, it being expressly acknowledged by the Contractor that, for the purposes of clause 26.2, the Department may terminate this Agreement with such termination applying to all Runs notwithstanding that the relevant breach or breaches of a term or terms of this Agreement may relate to less than all of the Runs, including in relation to only one Run.

7.7 The Contractor shall notify the Department of any adverse traffic conditions or any other factor that require departure from the shortest or approved route to avoid any possible misunderstanding.

8. AVAILABILITY

8.1 The Contractor and its Drivers shall be available for transportation generally between the periods of 7.00 am – 9.30 am and 2.30 pm – 5.00 pm. Other activities may occur at different times during the day for which transportation will be required.

8.2 Schools and parents will be required to notify the Contractor immediately they are aware of the absence of a student for any reason, e.g., illness, family holiday etc.

8.3 The Contractor shall notify the Department of any absences in any period by providing details of such absences on the relevant Payment Claim Form.

9. COMMUNICATION

9.1 The Contractor must have access to and regularly monitor internet and email facilities to facilitate speedy and efficient written communication between the Contractor and the Department.

9.2 The Contractor shall ensure that its Drivers are contactable by mobile telephone during any period commencing one hour before any part of the Service is due to be provided and ending one hour after any part of the Service is due to be provided ("the Service Period"). The Contractor must be contactable between 6.00 a.m. and 6.00 p.m. Monday to Friday by mobile telephone.

9.3 If the Contractor is a taxi operator, the Contractor may satisfy the requirements of clause 9.2 above by being contactable by telephone during the Service Period.

9.4 The Department may be contacted by telephone on 1300 338 278, in writing by email on contractors.astp@det.nsw.edu.au or by letter to Locked Bag 7009, Wollongong East NSW 2520.

9.5 The Contractor must ensure that all relevant Drivers have adequate English language skills sufficient to the carrying out of obligations under this Agreement. In the event of any complaint to the Department of any Driver not having adequate English language skills the Contractor must, at its own cost, have the English language skills of such Driver tested in a method from time to time approved by the Department. If the relevant Driver fails any such English language skills test that driver must not be used further in connection with this Agreement.

10. VEHICLES

10.1 General

10.1.1 All vehicles utilised in providing the Service must be of a standard that is acceptable to the Department, RMS, students and parents, and maintained to ensure the safety of Drivers, passengers and the public.

10.1.2 The Contractor shall ensure at all times throughout the Term of the Agreement that all vehicles, including relief vehicles utilised in providing the Service:

10.1.2.1 are approved by the Department as the Designated Vehicle; and

10.1.2.2 are less than 15 years old, except where a written exemption has been provided by the Department; and

10.1.2.3 are maintained in hygienic, safe and good working order to the satisfaction of the Department and in accordance with the requirements of Transport for NSW and

Roads Maritime Services (RMS); and

- 10.1.2.4 have current appropriate "business use" registration, if required by RMS, in the State or Territory where the vehicle is garaged; and
 - 10.1.2.5 have locking devices fitted to external doors; and
 - 10.1.2.6 are cleaned and checked at least weekly to ensure the interior, exterior and fittings are clean, undamaged and in good repair. Any damaged fittings are to be repaired immediately; and
 - 10.1.2.7 are fitted with restraints, including child restraint systems where applicable, that comply with Australian Standards and Design Rules; and
 - 10.1.2.8 are fitted with an air conditioning system that is fully operational and regularly maintained;
 - 10.1.2.9 are covered by a current "business use" comprehensive insurance which covers damage caused by all Drivers utilising the Designated Vehicle in the provision of the Service (taxi insurance should be as per the Special Conditions at Schedule 4 to this document): and
 - 10.1.2.10 where appropriate, compliance with requirements of the law relating to taxis, buses and hire cars additionally to that generally provided for in this Agreement.
- 10.1.3 All sedans utilised in providing the Services shall have a minimum of 4 doors.
- 10.1.4 All vehicles utilised in providing the Service shall be fitted with seatbelts. Retrofitting of seat belts are to be in accordance with relevant standards. Where retrofitting of seat belts has occurred, one copy of the Engineering Certificate provided with retrofitting is to be kept with the vehicle and one copy is to be provided to the Department, prior to commencement of the Service.
Refer to the Vehicle Inspectors Bulletin 49 and 50 available at www.rms.nsw.gov.au or local RMS office.

10.2 Wheelchair Vehicles

- 10.2.1 For all wheelchair vehicles, the Contractor shall submit to the Department a current Engineering Certificate from a RMS recognised engineering signatory.
Refer RMS website www.rms.nsw.gov.au or local RMS office to obtain contact the details for Engineering Signatories

10.3 Wheelchair Restraint System and Wheelchair Occupancy Restraints

- 10.3.1 In accordance with RMS requirements, all wheelchair restraint systems **MUST** include occupant restraints and be used and fitted in accordance with Australian Standard AS/NZS 10542.1 Technical Systems & Aids for Disabled or Handicapped persons-wheelchair tie down and Occupant system-restraint systems requirements and test methods for all systems or such other standards issued in replacement of the above from time to time. Instructions for use on the restraint system **MUST** be clearly displayed in a prominent position within the vehicle.

10.4 Wheelchair Lift Mechanism

- 10.4.1 In accordance with RMS requirements, wheelchair lifts and ramps **MUST** have a current Engineering Certificate from a RMS recognised engineering signatory and a copy is to be kept with the vehicle. Hoist or lift mechanisms must not obstruct any passenger access and egress and must satisfy current Australian/New Zealand Standard AS/NZS.3856.2: Hoist and ramps for people with disabilities – vehicle mounted.

10.5 Modification to Vehicles

10.5.1 In accordance with RMS requirements, any modification to vehicles, for example, additional seats, changing seating arrangements, must be in accordance with the relevant Australian Design Rule and relevant Australian Standards and certified by RMS recognised engineering signatory. One copy is to be kept with the vehicle and one copy is to be provided to the Department prior to the commencement of the Service.

10.6 Warning System for Buses

10.6.1 In accordance with Clause 25 of the *Road Transport (General) Regulation 2013* all vehicles with a seating capacity of 12 seats (bus) or more, including the Driver seat, used to convey students to and from school must be fitted with appropriate warning signs, refer to the Technical Specification 142 available at www.rms.nsw.gov.au or local RMS office.

10.7 Vehicle Age

10.7.1 Except where written exemption is provided by the Department, all vehicles, other than taxis, utilised in providing the Service shall not be more than 15 years old.

10.7.2 Prior to a vehicle utilised in providing the Service reaching 15 years of age, the Contractor must update the vehicle and provide to the Department full details of the updated vehicle.

10.7.3 Failure to meet the requirements of clauses 10.7.1 and 10.7.2. may result in termination of the Run/s involved in accordance with clause 26.2.

10.8 Display of Driver Licence

10.8.1 The Contractor must ensure that all vehicles utilised in providing the Service are fitted with a device suitable for holding the Driver Licence card.

10.8.2 The Driver Licence shall be placed in the device and be on display at all times whilst providing the Service.

10.8.3 Upon request, the Driver Licence shall be provided to school staff, parents or carers for closer examination.

10.9 Relief Vehicles

10.9.1 So as to maintain the provision of the Service at all times, the Contractor must, at no additional cost to the Department, arrange for the provision of a relief vehicle in the event of a breakdown of a Designated Vehicle or some other occurrence which prevents the use of the Designated Vehicle.

10.9.2 Prior to the use of any relief vehicle, the Contractor must advise the Department and the affected parents/carers and school(s) of the intention to use the relief vehicle.

10.9.3 Vehicle requirements stated in this clause 10 shall also apply to any relief vehicle utilised under the Agreement.

10.9.4 The Contractor shall make every effort to minimise change of Drivers and vehicles on allocated Run/s.

10.9.5 Should changes to Drivers and vehicles be necessary, the Contractor shall inform the Department, schools and parents/carers of the change, prior to the commencement of any change.

11. PERSONNEL

11.1 General

- 11.1.1 Without prejudice to the operation of clauses 2.2 and 3 of this Agreement, the Contractor shall ensure that all Personnel, including relief Personnel, utilised in the provision of the Service have submitted all necessary documentation and have passed all necessary screening and assessments required under clause 12 of the Agreement and have been approved, in writing, by the Department, and such approval remains current.
- 11.1.2 No Personnel, including relief Personnel and Assisted Travel Support Officers, shall be utilised in the provision of the Service unless approval, in writing, for the use of such Personnel has been received from the Department.
- 11.1.3 The Contractor shall advise the Department in writing within twenty-four (24) hours of a charge or conviction (in relation to any criminal, traffic or any other offence) of any Personnel utilised by the Contractor in the provision of the Service.
- 11.1.4 The Contractor shall ensure that all Personnel, including relief Personnel and as designated by * Assisted Travel Support Officers utilised in provision of the Service:
- 11.1.4.1 are made aware of the requirements of the Agreement and their responsibilities whilst providing the Service; and
 - 11.1.4.2 *do not smoke in school grounds or in the Designated Vehicle; and
 - 11.1.4.3 *are not under the influence of alcohol or any other substance or drug that would impair the performance of the Personnel in providing the Service; and
 - 11.1.4.4 *do not administer corporal punishment to a student, but must report inappropriate student behaviour to the Department and the school principal; and
 - 11.1.4.5 have been approved and authorised in writing by the Department to provide the Service following the satisfactory completion of the Working With Children Check and the National Police Check ; and
 - 11.1.4.6 have English language skills sufficient to enable oral communication with Students, parents/carers and school staff, taking into consideration the special behavioural and medical needs of Students with disabilities; and
 - 11.1.4.7 are aware of information provided by the Department and parents regarding the physical and psychological wellbeing of the Student; and
 - 11.1.4.8 undertake any training required by the Department.
- 11.1.5 Should any Assisted Travel Support Officer fail to comply with the requirements of clause 11.1.4., the Contractor shall report such non-compliance to the Department immediately it occurs.
- 11.1.6 The Contractor and all persons engaged by the contractor must be aware of the Department of Education's *Code of Conduct* and act in line with the conduct described in it. Conduct that would be assessed as being a serious breach of the contract may result in the contract being terminated. The *Code of Conduct* is available on the Department's website <https://education.nsw.gov.au/policy-library/policies/code-of-conduct-policy>.

11.2 Driver's Requirements

- 11.2.1 It is the Contractor's responsibility to recruit and employ, or subcontract, suitably qualified Drivers to ensure that all Drivers, including relief Drivers, utilised in providing the Service through the Contractor:
- 11.2.1.1 hold a current Full Unrestricted Driver Licence for the Designated Vehicle type being driven and any other authorisation that may be required to drive that Designated Vehicle; and
 - 11.2.1.2 have undertaken a full medical assessment in accordance with the requirements of clause 11.3; and
 - 11.2.1.3 are of good character; and
 - 11.2.1.4 have a good driving record and have provided a RMS Consent to Driver Licence Checks forms signed by all Drivers prior to commencing the Service; and
 - 11.2.1.5 meet availability requirements under clause 8; and
 - 11.2.1.6 meet communication requirements under clause 9; and
 - 11.2.1.7 use any restraints that are deemed necessary in the appropriate manner; and
 - 11.2.1.8 are aware of and comply with the Contractor's obligations and Driver requirements in providing the Services; and
 - 11.2.1.9 have English language skills that meet the requirements of clause 9.5 of this Agreement
 - 11.2.1.10 no Driver is used in respect of the Service until the Department has given written approval following completion of the Working With Children Check.
- 11.2.2 Drivers that hold a Provisional 1 or 2 Licence cannot, under any circumstances, be utilised in the provision of the Services to the Department.

11.3 Medical Assessment

- 11.3.1 All Drivers and relief Driver must complete a medical assessment. The health professional is to complete the Department's *Medical Assessment Certificate* that on completion is to be forwarded by the Contractor to the Department, prior to commencing the Service.
- 11.3.2 Drivers must undergo checks and provide a *Medical Assessment Certificate annually* if requested by the Department or required by the health professional.
- 11.3.3 Failure to meet the requirements of clause 11.3.1 and 11.3.2 may result in termination of the Agreement in accordance with clause 26.2.

11.4 Relief Driver/s

- 11.4.1 The Contractor acknowledges that the Department expects that as far as possible the same person would drive a vehicle throughout a school year so as to promote stability and regularity in the provision of the Service.
- 11.4.2 Notwithstanding clause 11.4.1, the Contractor shall, at no additional cost to the Department, engage a Department approved replacement Driver to undertake the Service in the event of the permanent, short or long-term absence of the Driver previously engaged so as to maintain provision of the Service at all times.

11.5 Assisted Travel Support Officers

- 11.5.1 Assisted Travel Support Officers are engaged separately by the Department to support students who have been identified by schools as requiring additional support during transit due to behavioural or medical needs.
- 11.5.2 It is the Contractor's responsibility and the Assisted School Travel Programs in consultation with the school principal to identify a suitably qualified person to provide the Assisted Travel Support Officer service. The allocation of a Run that requires an Assisted Travel Support Officer is subject to the Contractor's confirmation that an Assisted Travel Support Officer will be available to provide the Service.
- 11.5.3 The Assisted Travel Support Officer cannot commence work until the Department has given written approval following their obtaining a clear Working With Children Check.
- 11.5.4 The Assisted Travel Support Officer shall be collected and returned by the Driver to mutually agreed pick-up and drop-off points. The Contractor is encouraged to work with the Assisted Travel Support Officer to reach agreement on the "points" as the Run must not commence without the Assisted Travel Support Officer on board to support the identified student's travel. In circumstances where an agreement cannot be reached and the Run is delayed from commencing by more than one day the Department reserves the right to re-allocate the Run.
- 11.5.5 The relevant school will provide the Assisted Travel Support Officer with a behaviour support or health care plan specific to the needs of the identified student and provide support in the implementation of the plan. The Assisted Travel Support Officer must be seated beside or adjacent to the student or students or in accordance with the behaviour support or health care plan for whom Assisted Travel Support Officer service/s have been approved.
- 11.5.6 Assisted Travel Support Officers must not administer medication without written approval from the Department. Assisted Travel Support Officers will be required to participate in appropriate training as coordinated by the school.
- 11.5.7 The Contractor must certify on the Assisted Travel Support Officer's claim form, for each day that the Assisted Travel Support Officer works, the time and date the Assisted Travel Support Officer services commenced, and the time the Assisted Travel Support Officer services ceased.

12. STUDENT SAFETY AND WELFARE

12.1 Child Related Employment

- 12.1.1 The Contractor shall ensure that it and its Personnel, prior to providing any Service under the Agreement, have successfully completed all requirements, including a "Working With Children Check" and been approved in writing by the Department. It is the Contractor's responsibility to ensure that it or its Personnel have:
 - 12.1.1.1 signed and provided to the Department an Applicant declaration and Consent form and
 - 12.1.1.2 provided to the Department 100 points of certified ID for each Personnel;
and
 - 12.1.1.3 provided to the Department a *Medical Assessment Certificate* as required under clause 11.3; and
 - 12.1.1.4 received cleared status in writing from the Department following a national criminal record check, a check on all relevant apprehended violence orders and a check on relevant employment proceedings.

- 12.1.2 The Contractor and its Personnel may be required to complete and lodge the documentation listed in 12.1.1, and pass a "Working With Children Check" annually, and shall comply with any such requests made by the Department, within seven days of the request.
- 12.1.3 If the Contractor and its Personnel do not pass the initial "Working With Children Check" or do not pass any subsequent annual "Working With Children Check", it and its Personnel cannot and must not be engaged, or continue to be engaged, to provide the Service for the Department.
- 12.1.4 Any approval given in respect of Personnel to be utilised for the Services may be revoked at any time by the Department.
- 12.1.5 The Contractor must not commence any Service until the Department has advised that the Driver of the Designated Vehicle and the Assisted Travel Support Officer have received all the necessary clearances.

12.2 Child Protection

- 12.2.1 The Department of Education has a responsibility to provide a safe environment for children and young people. All parties involved in the Assisted School Travel Program need to exercise the highest levels of responsibility in protecting children and young people from harm. Contractors need to ensure that it and its Personnel:
 - 12.2.1.1 are aware of specific instructions on appropriate conduct as detailed at Schedule 3;
 - 12.2.1.2 are aware of their obligations towards children and young people related to the specific role they have in the Assisted School Travel Program; and
 - 12.2.1.3 report concerns about suspected risk of harm to children and young people to the school principal and the Department.

12.3 Student Travel

- 12.3.1 To ensure the health, well-being and safety of students, a student should not travel for an excessive period of time. The maximum travel time permitted is 90 minutes on each one-way trip unless an exemption in writing has been given to the Contractor by the Department.
- 12.3.2 Contractors and their Drivers and Assisted Travel Support Officers have a direct responsibility under child protection legislation to ensure that Students are not placed at risk.
- 12.3.3 The Contractor shall ensure that Drivers will:
 - 12.3.3.1 ensure that when picking up, transporting and delivering students, students' safety is monitored closely; and
 - 12.3.3.2 ensure that pick up and alighting points do not require the students to cross any roads; and
 - 12.3.3.3 not leave the immediate vicinity of their vehicle if students are on board, subject to the presence of an Assisted Travel Support Officer. Even under these circumstances, Drivers should only leave the vicinity of their vehicle in an emergency; and
 - 12.3.3.4 not make any unauthorised stops when transporting Students to or from school, particularly at the request of Students. Drop-off and pick-up points can only be authorised by the Department staff; and
 - 12.3.3.5 not allow any unauthorised persons to travel in the Designated Vehicle while Students are being conveyed to or from school; and
 - 12.3.3.6 not use the Designated Vehicle to undertake any other business while it is being used to provide the Services; and

- 12.3.3.7 not come into any unnecessary physical contact with Students; and
 - 12.3.3.8 ensure that under no circumstances are students to be left unattended and the Department's procedures detailed in clause 12.4 are followed if there is no parent/carer present; and
 - 12.3.3.9 be aware of information provided by the Department and parents regarding the physical and psychological wellbeing of the Student; and
 - 12.3.3.10 use any restraints that are deemed necessary and required under RMS regulations; and
 - 12.3.3.11 not administer medication without written approval from the Department.
- 12.3.4 The Contractor must ensure that any required special lifting equipment is available and in working order.

12.4 Parent Absences

- 12.4.1 The Department requires that parents/carers are present when the student is picked-up in the morning and when the Driver returns students home after school, unless there are prior arrangements for another responsible and appropriate adult to accept responsibility for the Student.
- 12.4.2 The Contractor acknowledges that emergencies may occur which prevent a parent/carer from being able to make alternative arrangements.
- 12.4.3 If the Driver cannot deliver the Students to a responsible and appropriate person, the Driver is required to:
 - 12.4.3.1 check records to ensure that the parent/carer has not made alternative arrangements;
 - 12.4.3.2 contact the Department on telephone 1300 338 278 and wait while the Department attempts to contact the parents/carer or emergency carer;
 - 12.4.3.3 if unsuccessful the Driver will be advised to drive the remaining Students in the vehicle home and then return to the original address; and
 - 12.4.3.4 contact the Department and advise of status and wait for further instructions.
- 12.5 Under no circumstances are Students to be left with persons other than: the student's parent/carer; a responsible and appropriate person who has agreed to accept responsibility for the Student by prior arrangement; or a person who, as a consequence of his or her professional office or duties, is a responsible and appropriate person.

13. NOTIFICATION OF ACCIDENTS OCCURRING DURING PROVISION OF SERVICE

- 13.1 The Contractor shall notify the Department by telephone, then follow-up in writing by email, details of any accident occurring during the provision of the Service.

14. REMUNERATION

- 14.1 For student travel, the Department will pay the Contractor in accordance with the schedule of rates at item 4 of Schedule 1 to this Agreement (subject to annual variation).
- 14.2 For Runs with an Assisted Travel Support Officer that require more than an additional 5 kilometres to be covered to the point of picking up the first eligible student, the Department will pay an additional allowance equivalent to 15% of the amount payable to the ESP for the loaded kilometres travelled.

15. INVOICING

- 15.1 The Contractor shall be entitled to invoice the Department on a monthly basis for Services provided under the Agreement in the form of a Recipient Created Tax Invoice (see clause 17.6) for each allocated Run.
- 15.2 Unless the Parties otherwise agree in writing, the Contractor shall forward a Payment Claim Form (in lieu of a valid Tax invoice) to the Department for each Run at the end of each month. The Form shall be complete, unaltered and be stamped and signed by the school principal or delegate, and must be submitted to the Department for payment within 14 days of the end of each calendar month during which the Service was provided.
- 15.3 The Assisted School Travel Program will provide an online payment system providing Contractors with an alternative payment claim process, overriding the conditions stated in clause 15.2. The terms of use for the online payment system will be made available via the Department's website: <https://education.nsw.gov.au/public-schools/astp>
- 15.4 The Department shall not be required to pay the Contractor in relation to student travel unless the relevant school has certified on the Form that all the students, in respect of whom the claim for payment is made by the Contractor, were scheduled for transport to and from school on the day or days claimed by the Contractor.
- 15.5 Subject to the provisions of this Agreement (including without limitation clauses 15.4, 15.7, 15.8, 16 and 26) and unless otherwise agreed by the Parties, the Department shall pay the Contractor for the number of kilometres as stated on the Form at the applicable Loaded Kilometre Rate plus any Assisted Travel Support Officer allowance payable within twenty-eight (28) days of the date of receipt of the Payment Claim Form. It should be noted that the Department regards the timely payment of transport services as a high priority.
- 15.6 Payment to the Contractor shall be by way of direct deposit into the Contractor's nominated bank account.
- 15.7 Should the Contractor refuse or fail to carry out the instructions or requirements of the Department in accordance with this Agreement, the Department may suspend all payments to the Contractor without penalty until such instructions or requirements have been complied with by the Contractor.
- 15.8 The Department shall withhold from any sums due to the Contractor such sum/s as the Department is obliged to withhold under any relevant taxation or other legislation.

16. PAYMENT RELATING TO VARIATIONS TO TRAVEL/NON OPERATION OF SERVICE

- 16.1 Payments will be made for the agreed loaded kilometres in the claimed pay period on the basis of the mapped distance for each Run as advised/agreed with the Department. Payments will not be adjusted for temporary Student absences. However, payments or the ongoing requirement for Services will be adjusted where the Student/s are absent for extended periods i.e. the Student/s continues to be absent in the following pay period or where permanent variations to travel arrangements result in Students travelling reduced days or distances.

- Note:
- 1. Private arrangements with parents or schools to vary travel patterns, routes or times are not permitted.*
 - 2. Schools and parents will be required to notify the Contractor immediately they are aware of the temporary absence of a Student for any reason, e.g., illness, family holiday etc.*
 - 3. Schools and parents will be required to notify ASTP if the Student will be absent for an extended period of time.*
 - 4. The Contractor shall notify the Department of any temporary Student absences in any period by providing details of such absences on the relevant payment claim form.*
 - 5. The Department will monitor Student absences in conjunction with schools and Contractors to determine whether changes to transport arrangements are necessary.*

6. Where the Student absence is deemed by the Department to be of a permanent nature the Contractor will be advised of the change to the Run and the applicable payment rate and a replacement Run card will be issued.

7. For any temporary Student absence where an Assisted Travel Support Officer is engaged the payment of any applicable Assisted Travel Support Officer allowance will only be made in the instance/s where the Assisted Travel Support Officer travelled.

16.2 No payment will be made when:

16.2.1 the Contractor does not operate for reasons which are regarded as normal commercial risks, e.g., mechanical breakdown, industrial action, accident, failure of Driver to report for duty, unavailability of fuel or spares and the like; or

16.2.2 variations occur to travel arrangements unless prior written approval is obtained from the Department or the Department agrees that the variation is unforeseen and unavoidable.

16.3 If the Department considers that any payment made to the Contractor has not been based on a distance that is the shortest practicable distance, then the Contractor shall be required to repay any such discrepancies.

16.4 When the Contractor attempts to provide the Service and is prevented from doing so by natural hazards, e.g. bushfires, payment is to be made only for any portion of the Service actually performed.

Note: To avoid any possible misunderstanding the Contractor shall notify the Department as soon as the Driver/Contractor becomes aware of any adverse traffic conditions or any other factor that require departure from the shortest or approved route.

17. TAXES AND GST

17.1 Subject to the provisions of this clause, all taxes, duties and charges imposed or levied in Australia or overseas in connection with the performance of this Agreement will be borne by the Contractor

17.2 If there is any abolition or reduction of any tax, duty, excise or statutory charge associated with the GST, or any change in the GST, the Consideration (within the meaning of the GST Law) payable for the Service must be varied so that the Contractor's net dollar margin for the Service remains the same.

17.3 To ensure that no Pay As You Go (PAYG) withholding applies, the Contractor must have an Australian Business Number (ABN).

17.4 During the Term of the Agreement, the Contractor shall notify the Department and provide details of any change in GST registration status, within 14 days of the change occurring.

17.5 Payments made to GST registered Contractors will include the GST component. It is the Contractor's responsibility to forward the GST component to the Australian Taxation Office (ATO).

17.6 The Department and the Contractor (if registered for GST) agree to enter into this written Recipient Created Tax Invoice (RCTI) agreement. The Department and the GST registered Contractor agree that the Department will issue RCTIs to the Contractor within 28 days of determining the value of the supplies specified in this Agreement. The Contractor will not issue tax invoices in respect of these supplies.

17.7 The Department and the Contractor (if not registered for GST) agree that the Contractor will issue an invoice to the Department for the supplies specified in this Agreement.

18. PRICE BASIS

- 18.1 Payments will be calculated based on the vehicle category and the total distance travelled daily as set out in the Schedule of rates at item 4 of Schedule 1 to this Agreement for loaded kilometres. Distance travelled will be calculated by the shortest practicable route between the Student's homes and their school/s.
- 18.2 The Schedule of rates shall be subject to annual review by the Department.
- 18.3 The annual review shall take account of the previous twelve (12) months (as at the 30 September) CPI as published by the Australian Bureau of Statistics for Sydney, and related industry cost increase, e.g. fuel, insurance. The Department shall then determine an appropriate percentage increase to apply to all contractors each year. Such increase shall be not less than the previous twelve (12) months (as at 30 September) CPI as published by the Australian Bureau of Statistics for Sydney.

19. WORK HEALTH, SAFETY AND REHABILITATION

- 19.1 The Contractor warrants that it will comply with all its obligations under the following Acts and instruments in the performance of the Agreement: -
- 19.1.1 *Work Health and Safety Act 2011* (NSW); any regulations made under that Act; and
- 19.1.2 Any relevant Codes of Practice made under that Act.
- 19.1.3 The Contractor shall ensure that the Contractor's Subcontractors will comply with the Work Health, and Safety requirements listed in clause 19.1 in the performance of the Agreement.

20. TRAINING

- 20.1 During the Term of the Agreement, the Department may require the Contractor and/or its Personnel to undertake training to ensure the safety of the Contractor, its Subcontractors, Drivers, Assisted Travel Support Officers and Students and to improve the quality of Services provided under the Agreement.
- 20.2 Training may include, but shall not be limited to:
- child protection training;
 - how to restrain wheelchairs and their occupants;
 - operation of hoists and ramps; or
 - specialised training in relation to the identified needs of Student/s being transported.
- 20.3 The Contractor shall ensure that all Personnel required to undertake training shall comply with the requirements of the Department.
- 20.4 Costs associated with training of the Contractor or its Personnel shall be met by the Contractor.

21. EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION

- 21.1 The Contractor warrants that it is aware of and shall comply with the requirements of the Department's policies on Equal Employment Opportunity and Anti-Discrimination during the performance of the Service.

22. MINIMUM INSURANCE REQUIREMENTS

- 22.1 The Contractor must hold and maintain and must ensure that all employees, Personnel, and Subcontractors utilised in the provision of the Services are beneficiaries under or otherwise hold and maintain the following insurances for the Term, or for such other period as may be specifically required by this Agreement for the particular policy:
- 22.1.1 public liability insurance to the value of at least the amount of twenty (20) million dollars in respect of each claim; and

- 22.1.2 (where using employees) workers compensation insurance in accordance with applicable legislation for all the Contractor's and Subcontractor's employees; and
 - 22.1.3 "business use" compulsory third party (personal injury) insurance policy in respect of the Designated Vehicle/s; and
 - 22.1.4 "business use" comprehensive motor vehicle insurance policy in respect of the Designated Vehicle/s, which covers damage cause by all Drivers utilising the Designated Vehicle. (taxi insurance should be as per the Special Conditions at Schedule 4 to this document).
- 22.2 All policies of insurance must be effected with an insurer acceptable to the Department.
- 22.3 Within 7 days after the Commencement Date and then within 7 days of the anniversary of the renewal date for each policy, for every year for which the Contractor is required to maintain the policy under this Agreement, the Contractor must produce documentary evidence to the Department that the insurance required under this Agreement is current and in effect.
- 22.4 If the Contractor fails to comply with this clause 22, the Department may terminate the Agreement in accordance with clause 26.2.
- 22.5 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.

23. INDEMNITY BY THE CONTRACTOR

- 23.1 The Department accepts no liability for injuries suffered by students, Assisted Travel Support Officers, Personnel or any other person, during the provision of the Service.

The Contractor will be liable in respect of and indemnifies and shall keep indemnified the Department, the NSW Government, their officers, employees and agents against any claim, loss or expense or damages (including a claim or demand, loss or expense or damages arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (together "the loss") as a result of any act or omission of the Contractor or its Personnel in performing the Services and the Contractor hereby agrees to release and discharge the Department from any actions, proceedings, claims or demands which, but for this provision, might be brought against or upon the Department. The amount of all claims, damages, costs and expenses which may be paid, suffered or incurred by the Department, the NSW Government, their officers, employees and agents in respect of any such loss, damage or injury shall be made good at the Contractor's expense and may (in the first instance) be deducted from any monies due or becoming due to the Contractor with any balance being sued for as a debt.

24. PAYMENT OF WAGES AND ALLOWANCES

- 24.1 The Contractor must ensure that all Personnel employed or engaged by it in connection with the Services are paid wages and allowances of every kind required to be paid by or under any relevant award, the determination or order made under legislation in force in New South Wales or by or under any workplace agreement that is in force in New South Wales and that all such persons are employed under the conditions contained in any such award, judgment, order or workplace agreement.
- 24.2 Notwithstanding any other provision of this Agreement, payment of the Contractor's invoices is conditional upon the Contractor giving the Department, on request, a statement to the effect that in respect of work undertaken by its Personnel and Subcontractors pursuant to this Agreement:
- (a) no remuneration or other benefits are due and owing by the Contractor to its Personnel (including deemed workers under any legislation); and

- (b) no payroll tax is due and owing by the Contractor; and
- (c) there are no unpaid workers compensation insurance premiums due.

- 24.3 The statement referred to in 24.2 will also cover the Contractor's obligations in relation to employees of subcontractors in accordance with the various requirements of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where Subcontractors are engaged during the contract period.
- 24.4 The Department is not liable for any of the Contractor's employee "on-costs", including wages, salaries, holiday pay or allowances, sick pay, workers' compensation, superannuation, PAYG tax, payroll tax, fringe benefits tax, training levy or any other tax or levy voluntarily undertaken by or imposed (either by statute or otherwise) on the Contractor.
- 24.5 The Contractor indemnifies the Department against any loss or liability (including statutory liability of the Contractor or any Subcontractor for unpaid remuneration or other benefits, workers compensation insurance premiums, workers compensation liability, superannuation liability and unpaid pay-roll tax) directly or indirectly arising from breach of this clause or failure to pay the foregoing when due.

25. ASSIGNMENT AND SUBCONTRACTING

- 25.1 The rights and obligations of the Contractor under this Agreement may not be assigned in whole or in part and/or this Agreement may not be novated without the prior written consent of the Department. It is not the current intention of the Department to allow assignment of the Agreement.
- 25.2 The Contractor, whose name and ABN is detailed at Item 2, Schedule 1 is the organisation approved and contracted to provide the Service. A change of ABN throughout the Term of the Agreement will be treated as "assignment" in accordance with clause 26.1, and may result in Termination of this Agreement.
- 25.3 The rights and obligations of the Department under this Agreement may be assigned to another NSW Government department, without the consent of the Contractor.
- 25.4 The Department recognises that the Contractor may need to utilise the services of Subcontractor(s) and or in the case of taxis, Bailee drivers in order to provide the Service. In such cases, it will be an express condition of this Agreement that, for all purposes, the Subcontractor(s) will be regarded as Personnel of the Contractor.
- 25.5 The Contractor must not subcontract the performance of any of its obligations under this Agreement, the delivery of the Services nor use the services of a Subcontractor without first obtaining the prior written consent of the Department, which may be subject to any conditions which the Department, in its absolute discretion, may impose.
- 25.6 The Contractor must not subcontract to more than one level in providing the Service under the Agreement, that is, the Contractor's Subcontractor must not subcontract.
- 25.7 Without limiting subclause 25.5, it is a condition of the Department's approval under subclause 25.5 that the Contractor ensures the Subcontractor is fully aware of and complies with all of the Contractor's obligations under the Agreement.
- 25.8 A consent under this clause does not relieve the Contractor from its liabilities or obligations under the Agreement.
- 25.9 Regardless of any consent given, the Contractor will be responsible for ensuring the suitability of any Subcontractor and that the Subcontractor meets the requirements of this Agreement.
- 25.10 The Department may withdraw its consent to a Subcontractor if in its reasonable opinion the Subcontractor is not meeting the requirements of the Agreement. The Department will notify the Contractor in writing that its consent is withdrawn and the Contractor will immediately terminate its arrangement with the Subcontractor.

- 25.11 The Department is not liable for any damages or consequential loss or loss of profits of the Contractor or any Subcontractor associated with the Department's failure to grant consent under clause 25.5 or the withdrawal of the Department's consent under clause 25.10.
- 25.12 The Department will not be under any obligation to make payment for any monies due by the Contractor to any Subcontractor.
- 25.13 The Contractor is liable for any acts or omissions of any Subcontractor or any employee or agent of the Subcontractor as fully as if they were the acts or omissions of the Contractor and indemnifies and releases the Department from any liability or loss resulting from the acts or omissions of any Subcontractor.
- 25.14 This clause will not merge on the completion or earlier termination of this Agreement.
- 25.15 The Contractor will ensure that a Subcontractor is aware of and complies with all the terms and conditions of this Agreement relevant to the Services being provided by the Subcontractor.
- 25.16 The Contractor is required to obtain and retain a statement from its subcontractors in respect of compliance with the various requirements of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where Subcontractors are engaged during the contract period. By signing the statement Subcontractors declare that they have paid workers compensation insurance premiums, payroll tax and all remuneration payable to their employees. Such a statement is to be in the form of the "Subcontractor's Statement" available from the State Insurance Regulatory Authority website www.sira.nsw.gov.au

26. TERMINATION AND SUSPENSION

26.1 Termination for Convenience

- 26.1.1 The Parties acknowledge that there is no guaranteed Term for any allocated Run/s under the Agreement or that any Run(s) will be allocated to the Contractor.
- 26.1.2 Either Party may without reason terminate this Agreement or any part thereof by giving not less than 20 Business Days written notice to the other Party.
- 26.1.3 Subject to clauses 15.3, 15.6, 15.7, 16 and 24, upon termination the Department shall pay to the Contractor the remuneration (as set out in clause 14) for Services carried out up to the Date of Termination, including payment for any Services provided by the Contractor in the period between the date of the notice and the date that the termination becomes effective, but the Department shall not be liable to pay any additional fees, charges, expenses or costs.

26.2 Termination for Cause

- 26.2.1 Without prejudice to its rights at common law, the Department may immediately terminate this Agreement, in whole or in part, by written notice to the Contractor ("Notice of Termination for Cause"):
- 26.2.1.1 where the Contractor makes or is found to have made any statement, represents any fact, or information, makes or is found to have made any other representation or provides material in response to the Request for Tender or call for expression of interest which is false, untrue, or incorrect in a way which materially affects the Agreement; or
- 26.2.1.2 where legal or licensing proceedings are commenced by the Australian Competition Consumer Commission, RMS, Transport for NSW, Australian Prudential Regulation Authority, Australian Securities Investment Commission, the Independent Commission Against Corruption, their successors or similar investigative or other body against the Contractor, any employee, authorised Subcontractor or Bailee alleging corrupt conduct, collusive tendering or breach of any relevant Law; or

- 26.2.1.3 where the Contractor, any employee, authorised Subcontractor or Bailee commits a breach of one or more terms of the Agreement; or
- 26.2.1.4 where the Contractor, any employee, authorised subcontractor or Bailee assigns its rights and/or obligations, or novates this Agreement or subcontracts the Agreement except in accordance with this Agreement; or
- 26.2.1.5 in the case of the Contractor's insolvency or bankrupt; or
- 26.2.1.6 if the Contractor abandons or refuses to proceed with any of the Services after having commenced the same; or
- 26.2.1.7 if the Contractor or any of its Personnel or any employee, authorised subcontractor or Bailee otherwise fails to comply with the provisions of this Agreement; or
- 26.2.1.8 where the Contractor or any of its Personnel or any employee, authorised subcontractor or Bailee is charged with a serious criminal or motor traffic offence or allegations of Reportable Conduct have been made against a Driver (refer Schedule 3 "What is Reportable Conduct?"); or
- 26.2.1.9 where the Contractor or any of its Personnel or any employee, authorised subcontractor or Bailee fail to pass any "Working With Children Check"; or
- 26.2.1.10 where there is a substantial change in control of the Contractor to which the Department has not given prior written consent; or
- 26.2.1.11 where there is a change in the affairs or reputation of the Contractor which in the reasonable opinion of the Department causes a deterioration in the nature or quality of the relationship with the Contractor or the affiliation it involves; or
- 26.2.1.12 where there is a finding adverse to the Contractor or any employee, authorised subcontractor or Bailee under clause 28.3 of this Agreement; or
- 26.2.1.13 where the Contractor at any time fails to provide any of the documentation required under clause 3; or
- 26.2.1.14 where any Driver is found not to have English language skills as required under clauses 9.5 and 11.2.1; or
- 26.2.1.15 where a performance evaluation of the Contractor under clause 28 is unacceptable to the Department.
- 26.2.2 If the Department terminates the Agreement or any part of the Agreement under clause 26.2.1, then the Contractor shall have no claim whatsoever against the Department in respect of such termination and shall be entitled only to payment of any outstanding invoices as at the date the notice of termination was given, except to the extent any invoice is the subject of a dispute which is yet to be finalised.
- 26.2.3 The Department may, if it considers circumstances so require and without prejudice to any other rights (particularly under clauses 6 and 7) the Department may terminate this Agreement in respect of one or more Runs.

26.3 Suspension and Termination of Services of Drivers and Assisted Travel Support Officers

- 26.3.1 In addition to the Department's rights under clause 26.2, the Department may give the Contractor a written notice requiring the Contractor to suspend or terminate the Services of one or more of its Driver/s from the date set out in the notice if the Driver has breached, is in breach of or is likely to breach this Agreement, including serious criminal or repeated traffic offences; or allegations of Reportable Conduct have been made against a Driver (Refer

Schedule 3 "What is Reportable Conduct?") or is not performing the Services in a diligent or competent manner.

- 26.3.2 If the matter is subject to an inquiry the Contractor may appoint a different Driver to continue the Service while the result of the inquiry is pending, providing the appointed Driver has met the requirements of the Agreement and is approved by the Department.
- 26.3.3 In circumstances where allegations are made against an Assisted Travel Support Officer the Department will advise the Contractor and the Assisted Travel Support Officer of the suspension. The Student designated for support by the Assisted Travel Support Officer cannot continue to travel on the Run until a relief Assisted Travel Support Officer and been identified and received all the necessary clearances from the Department.
- 26.3.4 Following receipt of advice from appropriate authorities, the Contractor shall be informed immediately as to whether the suspension is to be lifted or the Driver's/Assisted Travel Support Officer's approval status is revoked.
- 26.3.5 The Department shall not in any circumstances be liable for any consequential loss or loss of profits suffered by the Contractor as a result of the suspension or termination of any Services, Drivers or Assisted Travel Support Officers by the Department.

27. SET-OFF/MONEY RECOVERABLE BY THE DEPARTMENT

- 27.1 The Department may deduct from amounts which may be payable or which may become payable to the Contractor, any amount due from the Contractor to the Department in connection with the supply of the Service.
- 27.2 Without limiting clause 27.1, any damages, costs and expenses recoverable by the Department from the Contractor in consequence of the Contractor's breach of the Agreement may be deducted from money then due to the Contractor under the Agreement. If that money is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to the Department and may be:
- (a) set off against any other money due to the Contractor by the Department under this or any other Agreement between the Department and the Contractor; or
 - (b) recovered from the Contractor by the Department in an appropriate court.
- 27.3 Nothing in this clause will affect the right of the Department to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.

28. PERFORMANCE EVALUATION

- 28.1 The Department reserves the right to monitor and evaluate the performance of the Contractor as required, throughout the Term of the Agreement, to ensure a high quality of Service is provided.
- 28.2 Such evaluation may include consultation with School departments, parents and other interested parties.
- 28.3 If such evaluations indicate that the Contractor's service provision is substandard, poses a risk to students' safety or results in continual complaints from parents or schools the Department may terminate any or all Run/s in accordance with clause 26.2, limit future Run allocations or reduce the assessed level of Run capacity of the contractor.

29. EXCHANGE OF INFORMATION BETWEEN GOVERNMENT AGENCIES

- 29.1 The Contractor authorises the Department and its employees and agents to make available to NSW Government departments or agencies information concerning the Contractor, including any information provided by the Contractor to the Department and any Information relating to the Contractor's performance under the Agreement, or the Contractor's financial position.

- 29.2 The Contractor acknowledges that Information about the Contractor from any source including any substantiated reports of unsatisfactory performance, may be taken into account by NSW Government agencies in considering whether or not to offer the Contractor future opportunities for NSW Government work.
- 29.3 The Department regards the provision of Information about the Contractor to any New South Wales Government department or agency as privileged within section 24 of the *Defamation Act 2005*.
- 29.4 The Contractor releases and indemnifies the Department and the State of New South Wales from any claim in respect of any matter arising out of the provision of Information of or about the Contractor. Without limiting the above, the Contractor releases the Department and the State of New South Wales from any claim it may have for any loss to the Contractor arising out of the provision of Information relating to the use of such Information by the recipient of the Information.

30. ENTRY TO OFFICIAL ESTABLISHMENTS

- 30.1 All Personnel entering official establishments, including schools, are required to be approved and conform with the regulations regarding security and discipline within the area as may be laid down by the Department, Authority or school concerned.

31. DAMAGE TO PROPERTY

- 31.1 If, in the performance of the Contractor's obligations herein, the Contractor or any Personnel, Subcontractor, servant or agent of the Contractor by any act or omission damages or causes to be damaged any property of the Department or the NSW Government, then the Contractor shall pay the costs of repairing and making good such damage and the amount of any consequential losses, costs or expenses which may be suffered or incurred by reason of such property having been so damaged.
- 31.2 If a student's behaviour results in damage to the Designated Vehicle the Contractor may negotiate with the parent/carer for compensation. The Department is not liable for any damage to vehicles arising from the Services performed under this Agreement.

32. ACCESS TO CONTRACTOR'S PREMISES

- 32.1 During the Agreement Term, the Contractor shall at all times during ordinary working hours (i.e. Monday to Friday, 9:00am to 5:00pm) permit or arrange for the Department and its representatives (including but not limited to the Department's Representative) or agents to have reasonable access as required to the Contractor's and its Subcontractor's premises, Designated Vehicles, Personnel, systems, documents and records to inspect, audit and review the processes and methods of the Contractor to ensure compliance with this Agreement.

33. WAIVER

- 33.1 A waiver in respect of a breach of a term of this Agreement by the other party shall not be taken to be a waiver in respect of any other breach. The failure of either party to enforce a term of this Agreement will not be interpreted as a waiver of that term.

34. APPLICABLE LAW

- 34.1 This Agreement is governed by the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales.

35. NO AGENCY/NO EMPLOYMENT/NO PARTNERSHIP

- 35.1 The Contractor agrees that the Contractor will not be taken to be, nor will it represent that it is, the employee, partner, officer and/or agent of the Department.

This Agreement is executed on

201_

Execution by the Department:

Signed for and on behalf of **THE NSW**)
DEPARTMENT OF EDUCATION by)
but not so)
as to incur personal liability in the)
presence of:)

.....
(insert name of witness)

.....
(insert name of signatory)

.....
(signature of witness)

.....
(signature of signatory)

Execution by the Contractor

Signed for and on behalf of)
)
)
.....)
(insert name of Organisation as per the Agreement details))

ABN:)
(insert Organisation A.B.N.))

by)
(insert name of signatory))

.....
(signature of signatory)

in the presence)
of.....)
(insert name of witness not a party to this Agreement))

.....
(signature of witness)

SCHEDULE 1 – AGREEMENT DETAILS

This Schedule forms part of the Agreement between the Department and the Contractor.

Item 1 THE STATE OF NSW, IT'S DEPARTMENT OF EDUCATION

Name: New South Wales Department of Education

ABN: 40 300 173 822

Address 105 Phillip Street, Parramatta NSW 2015

Item 2 CONTRACTOR

Name: [The Department will insert name of company or individual on award of Agreement]

ABN: [The Department will insert A.B.N on award of Agreement]

Address: [The Department will insert street address on award of Agreement]

Item 3 TERM

(Clause 3)

Commencement Date: 1 January 2019

Term: From the Commencement Date until end of school term 2, 2021

Extension Options: None

The term of a Run is, subject to clause 26, from date of grant until date of end of school year in which Run is granted.

Item 4 PRICE DETAILS

Loaded Kilometre Rate: The Department will insert the Schedule of Run Rates on award of Agreement.

SCHEDULE 2 – ALLOCATED RUN/S DETAILS

[The Department will insert Run Card details on award of Agreement]

SCHEDULE 3 – REPORTABLE CONDUCT

What is Reportable Conduct?

The NSW Child Protection Legislation states grounds for reporting allegations of any assault, neglect or ill-treatment of a child to the NSW Ombudsman, and in some cases to the NSW Police, the Department of Family and Community Services (FACS) and the Commission for Children and Young People (CCYP).

An allegation of reportable conduct involving an employee, contractor or its personnel, is a very serious matter and must be handled with a high degree of sensitivity and confidentiality.

Assisted School Travel Drivers', Assisted Travel Support Officers', Contractors or employees of Contractors behaviour that may result in a notification and may also be criminal acts includes:

- having sexual relations with students
- possessing, computer downloading or distributing child pornography
- deliberately exposing a student to the sexual behaviour of others including pornography
- conversing about sexual matters including telling jokes of a sexual nature
- making sexually suggestive remarks, actions or obscene gestures
- touching student passengers inappropriately including repeated and **unnecessary** touching of students on the back, shoulders, arms and legs (exception may be with wheelchair students who require lifts in and out of the vehicle and assisting disabled student passengers with seat belts)
- using unnecessary force to make physical contact with a student as a prompt for a verbal instruction or to force compliance
- engaging in any conversations with passengers that may be considered inappropriate. This includes swearing and questioning children about aspects of their home life
- Shouting angrily at students to intimidate them
- making contact, either by telephone, in writing or in person, with a student outside of travelling times
- commenting to or about students on the basis of disability, gender, sexuality, cultural or racial stereotypes
- removing a student from the vehicle during the journey or hitting them as a disciplinary measure
- threatening students with physical punishment
- humiliating a student as an example to other students
- giving gifts of any kind to students, including lollies and drinks unless directed by principal
- giving alcohol or drugs to students or encouraging or condoning the use of alcohol or drugs by students
- consuming alcohol or being affected by alcohol while performing duties as a Driver or an Assisted Travel Support Officer
- not delivering students to an approved supervised address attended by a responsible adult
- not ensuring the safety of students while entering, travelling in and exiting from the vehicle.

Some conduct is considered reasonable when the purpose is to provide behaviour management or to support the health care needs of students in accordance with an approved behaviour management or health care management plan and following appropriate training.

Assisted School Travel Drivers and Assisted Travel Support Officers should:

- **seek assistance** with regards to support for student's **behaviour** from the student's school or the Assisted School Travel Program (ASTP). Any behaviour that affects the safety and wellbeing of other students and staff must be reported to the principal and the ASTP.
- **ask** the student, their parent or carer or the school what assistance the **student with a disability** needs. Each student will have individual needs, just like everyone else. Some may experience difficulties in learning new information, understanding complex instructions and expressing and understanding language. It is important at all times to treat the Student with the same respect as you would others.

Who will report?

A principal, parent or someone in the community can make a notification about a transport Driver's or Assisted Travel Support Officer's behaviour with a student in their care.

The notification can be made to the principal or directly to the Department of Family and Community Services (FACS).

When an allegation concerning a Department employee, contractor or its personnel, is of a child protection nature, the principal must notify FACS and/or the police and must also notify Employee Performance and Conduct Unit (EPAC) within one working day.

What may happen following a notification of reportable conduct?

Sometimes the complaints are relatively minor and not child protection matters and can often be resolved in the workplace by the supervisor using complaints and/or performance improvement processes. Where there are concerns about **suspected risk of harm to a child** related to actions of a Departmental employee, contractor or its personnel, the additional action may result in:

a) A notification to the Department of Family and Community Services (FACS) and/or NSW Police.

This may result in a police investigation and criminal charges.

b) A notification to DET Employee Performance and Conduct Unit (EPAC)

EPAC has procedures that are guided by legislation, for responding to allegations of a child protection nature against employees, contractors and its employees, and includes:

A Risk Assessment

EPAC may assess the risks and take action to ensure a student's safety. The employee, contractor or its employees, may be transferred to alternative duties or suspended from duty during the investigation.

An Investigation

EPAC Investigators gather, record and analyse evidence. The student and any witnesses may be interviewed by professionals. The allegation is presented in writing to the employee/contractor. The employee/contractor is given 14 days to respond either in writing or at an interview.

Reporting

EPAC will then determine which allegations must be reported to the NSW Ombudsman and which matters require a report to the Commission for Children and Young People (CCYP). This may affect future applications for child related employment/engagements. Refer to www.kidsguardian.nsw.gov.au/

The Decision

The employee/contractor is advised in writing of the outcome.

Taking Action

The Director, Assisted School Travel Program is informed of actions to be taken. These actions may include termination of contracts and services or restricted access to Departmental sites.

What support is available?

During an investigation of an allegation of reportable conduct an employee, contractor or its personnel, can seek support and welfare advice through their Staff Support Officer (if available) or the Employee Performance and Conduct Unit (EPAC) Senior Counsellors Ph: 02 9266 8070.

Other information and contacts

Contact resources for matters relating to child protection and reportable conduct are as follows:

NSW DEPARTMENT OF FAMILY and COMMUNITY SERVICES

FACS Helpline 132 111

www.facs.nsw.gov.au

NSW POLICE

Police Assistance Line 131 444

www.police.nsw.gov.au

DEPARTMENT OF EDUCATION

<https://education.nsw.gov.au/policy-library>

Guidelines for the Management of Conduct and Performance 2006, Section 7
Responding to Allegations against Employees in the Area of Child Protection 2004 Section 7

SCHEDULE 4 – SPECIAL CONDITIONS – TAXIS

- SC1 These special conditions relate to taxis and other public passenger vehicles as so described under the *Passenger Transport Act 2014*, where such vehicles are to be used to provide services which are the subject of this Agreement with the Department of Education Assisted School Travel Program (the Program).
- SC1.1 The Contractor acknowledges that it is the Department's understanding that the Services under the Program performed using taxis are not considered to be 'taxi cab services' for the purposes of the Regulations to the *Passenger Transport Act 2014* so far as maximum fares are concerned but does not rely upon the Department's view in entering into this Agreement.
- SC1.2 Payments to Eligible Service Providers who use taxis to provide assisted school travel services will be determined in accordance with the Department's schedule of rates as approved from time to time. The Contractor acknowledges that it is the Department's understanding that the Department and taxi operators are not bound by price fare schedules applicable to 'taxi cab services' for the provision of Services under this Program but does not rely upon the Department's view in entering into this Agreement.
- SC1.3 The Contractor must ensure that, at all times, the Services are provided in accordance with the requirements of the law relating to taxis additional to those generally provided for in this Agreement.
- SC1.4 All taxis and other public passenger vehicles utilised in providing the Service shall comply with the requirements of the *Passenger Transport Act 2014* in respect of:
1. vehicle age, registration, inspection and licencing requirements;
 2. operator accreditation requirements;
 3. vehicle authorisation requirements;
 4. conditions (other than for fares) prescribed in Regulations under the *Passenger Transport Act 2014*;
 5. any additional conditions as may be imposed from time to time for the purposes of accreditation or authorisation under the *Passenger Transport Act 2014*.
- SC1.5 Insurances for taxis used in the provision of Services to the Assisted School Travel Program are, as a minimum, to be in accordance with the requirements of the Regulation under the *Passenger Transport Act 2014*. Where comprehensive motor vehicle insurance is not in effect for taxis used in the provision of the Services, the Department shall not be liable for any loss incurred by the Contractor in respect of damage to the taxi arising from the provision of Services under this Agreement. The Contractor agrees to indemnify the Department in respect of any such claims.
- SC1.6 Where this Agreement is between the Department and an Operator or Taxi Network, the taxi Operator(s) or Taxi Network(s) must ensure bailor operators and Bailee drivers comply in all respects with the provisions of this Agreement, they being regarded as subcontractors for the purposes of this Agreement. The Contractor must ensure compliance with the provisions of the Agreement by its subcontractors, including any bailor operators and/or Bailee drivers, in the delivery of Services for the Program.
- SC1.7 Contractors that are Taxi Networks shall implement any necessary operational provisions to ensure that Services are at all times delivered in accordance with the requirements for this Agreement, most specifically in relation to requirements relating to the use of only screened and cleared Drivers for the provision of Services for this Program, that the ASTP is advised of the drivers nominated to undertake the Service on a run by run basis and processes to ensure that as far as possible the same person would provide the service throughout a school year so as to promote stability and regularity in the provision of the Services.