



**CONTRACT FOR THE PROVISION OF
ASSISTED SCHOOL TRAVEL SERVICES
TO THE ASSISTED SCHOOL TRAVEL PROGRAM
(1 January 2024 – 31 December 2024)**

Table of contents

1.	DEFINITIONS AND INTERPRETATION	1
1.1	Definitions	1
1.2	Interpretation	5
2.	TERM	6
2.1	Term	6
2.2	Further Term	6
2.3	Maximum Term	6
3.	NATURE OF AGREEMENT FOR THE PROVISION OF SERVICES	6
3.1	Provision of Services	6
3.2	Changes to Services	6
3.3	No assurance of offers and non-exclusive supply	8
4.	CONTRACTOR OBLIGATIONS	8
4.1	General obligations	8
4.2	Routes and minimum travel time	9
4.3	Child Protection	9
4.4	Student Travel	10
4.5	Parents	11
4.5A	Schools	12
4.6	Availability	13
4.7	Communications	13
4.8	Work, health and safety	13
4.9	Notification of accidents occurring during the provision of the Services	14
4.10	Entry into Schools and other Sites	14
4.11	Student absences	14
5.	PERSONNEL AND ASSISTED TRAVEL SUPPORT OFFICERS	15
5.1	General requirements for Personnel and Assisted Travel Support Officers	15
5.2	Working With Children and National Police Checks	15
5.3	Additional requirements for Drivers	16
5.4	Replacement of Drivers	17
5.5	Language skills of Drivers	17
5.6	Payment of wages, etc	18
6.	DESIGNATED VEHICLES	18
6.1	General obligations regarding Designated Vehicles	18
6.2	Additional requirements for wheelchair accessible Designated Vehicles	20
6.3	Replacement of Designated Vehicles	20
6.4	Registration Documents	21
7.	ASSISTED TRAVEL SUPPORT OFFICERS	21
8.	FEES	22
8.1	Determination of Fees	22
8.2	Variations to Fees	22
8.3	CPI adjustments	23
9.	INVOICING	23
10.	TAXES AND GST	24

11. TRAINING	24
11.1 Requirement to undertake training	24
11.2 General training	25
11.3 Driver and Personnel training	25
11.4 Evidence of Driver training	25
11.5 Compliance by Personnel	25
11.6 Department's costs	25
12. COMPLIANCE WITH POLICIES	25
12.1 Government policy	25
12.2 Aboriginal and Torres Strait Islander peoples' participation	26
12.3 Modern Slavery	26
12.4 Small and Medium Enterprises participation	27
13. INSURANCE REQUIREMENTS	27
13.1 Insurances of the Contractor	27
13.2 Subcontractor insurances	27
13.3 Acceptable insurers	28
13.4 Evidence of insurance	28
14. INDEMNITY, LIMITATION OF LIABILITY AND DAMAGE TO PROPERTY	28
14.1 Indemnity	28
14.2 Limitation of liability of the Department	28
14.3 Damage to property	28
15. ASSIGNMENT, CHANGE IN CONTROL AND SUBCONTRACTING	28
15.1 Assignment, novation etc	28
15.2 Change in Control	29
15.3 Subcontracting	29
16. TERMINATION AND SUSPENSION	30
16.1 Termination for Convenience by either party	30
16.2 Termination for Cause by Department	30
16.3 Termination on death of Contractor	31
16.4 Suspension and Termination of Personnel	32
16.5 Survival of rights on termination	32
17. RECOVERY BY THE DEPARTMENT	33
18. PERFORMANCE EVALUATION, CONTRACT MANAGEMENT PLAN AND SERVICE LEVELS	33
18.1 Performance evaluation	33
18.2 Contract Management Plan and meetings with the Department	33
18.3 Service Levels	33
19. EXCHANGE OF INFORMATION BETWEEN GOVERNMENT AGENCIES	34
20. PERSONAL INFORMATION	34
20.1 Protection and use of Personal Information	34
20.2 No recording	35
20.3 No limitation	35
21. PUBLIC DISCLOSURE	35
22. ACCESS TO CONTRACTOR'S PREMISES	35
23. ENTIRE AGREEMENT	35

24. VARIATIONS	35
25. WAIVER	36
26. SEVERABILITY	36
27. APPLICABLE LAW	36
28. NO AGENCY, EMPLOYMENT OR PARTNERSHIP	36
29. NOTICES	36
SCHEDULE 1 – AGREEMENT DETAILS	38
SCHEDULE 2 – REPORTABLE CONDUCT	39
SCHEDULE 3 – CONTRACT MANAGEMENT PLAN	42

This Agreement dated

PARTIES

Department

The Crown in right of the State of New South Wales (NSW) acting through the Department of Education ABN 40 300 173 822 (Department)

AND

Contractor

The person described in Item 2 of Schedule 1 (Contractor)

BACKGROUND

- A. The Department provides the Assisted School Travel Program which assists in meeting the needs of eligible students with disability by providing free specialised transport to and from school where parents are unable to provide or arrange transport for the student either fully or in part.
- B. The Department has appointed the Contractor to provide, and the Contractor has agreed to provide, the Services in connection with the Assisted School Travel Program in accordance with the terms of this Agreement.

The parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise expressly requires:

Aboriginal Business means a business that has at least 50 per cent Aboriginal ownership and that is recognised through an appropriate organisation, such as Supply Nation, the NSW Indigenous Chamber of Commerce (NSWICC) or the Office of the Registrar of Indigenous Corporations (ORIC), as set out in the NSW Government Aboriginal Procurement Policy.

Agreement means this document and includes the Schedules to this document.

Assessing Fitness to Drive means the Austroads publication "Assessing fitness to drive for commercial and private vehicle drivers", available here: <https://austroads.com.au/publications/assessing-fitness-to-drive/ap-g56>, as updated from time to time.

Assisted School Travel Program means the Department's Assisted School Travel Program for the provision of transport to selected students to and from school.

Assisted Travel Support Officer means a person engaged by the Department (where required) to provide additional supervision or support for any Student accessing the Services.

ASTP Online for Contractors means the online portal made available by the Department for use by Contractors to submit payment claims, access run cards, view routes and other details.

Business Day means a day other than a Saturday, Sunday or gazetted public holiday in NSW.

Change in Control means, in respect of the Contractor, the occurrence of any circumstances or events following which the Contractor, who was not so controlled before, is controlled by another person, alone or together with any Related Body Corporate and includes a change of a direct holding of at least 25% of the voting shares in the Contractor or a holding company of the Contractor.

Child Protection Laws means the Child Protection (Working with Children) Act 2012 (NSW), Child Protection (Working with Children) Regulation 2013 (NSW), the Children (Education and Care Services) National Law (NSW), the Children and Young Persons (Care and Protection) Act 1998 (NSW), the Children and Young Persons (Care and Protection) Regulation 2022 (NSW) and all related laws concerning child protection.

Code of Conduct means the Department's Code of Conduct, as amended from time to time and available at <https://education.nsw.gov.au/policy-library/policies/pd-2004-0020>.

Commencement Date has the meaning given in Item 4 of Schedule 1.

Contract Management Plan means the contract management plan in Schedule 3.

Contractor means person described in Item 2 of Schedule 1.

Corporations Act means the Corporations Act 2001 (Cth).

Department means the Crown in right of the State of NSW acting through the Department of Education (ABN 40 300 173 822).

Designated Vehicle means a vehicle designated by the Contractor for use in providing the Services, including each relief vehicle.

Disability Standards means the *Disability Standards for Accessible Public Transport 2002* (Cth).

Disqualifying Offence means a disqualifying offence as defined by the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW).

Driver means a person who has been designated by the Contractor to drive any Designated Vehicle in providing the Services, including each relief driver. Where the Contractor is an individual, the Contractor may also be a Driver.

Driver Application means the driver application form and declaration, in the form as nominated by the Department from time to time.

Expiry Date has the meaning given in Item 5 of Schedule 1.

Fees means the amounts payable by the Department to the Contractor for the provision of the Services.

Further Term has the meaning given in clause 2.2.

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.

Incident Notification Form means the Contractor Incident Notification Form made available by the Department from time to time for the purpose of notifying incidents and available at the Department's website <https://education.nsw.gov.au/content/dam/main-education/public-schools/astp/media/documents/astp-contractor-incident-report.pdf>.

Initial Term means the period commencing on the Commencement Date and ending on the Expiry Date.

Insolvency Event means the occurrence of any one or more of the following events in relation to any person:

- (a) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver, or receiver and manager, be appointed;
- (b) a liquidator or provisional liquidator is appointed to it;
- (c) an administrator is appointed to it under sections 436A, 436B or 436C of the Corporations Act;
- (d) a controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;
- (e) a receiver is appointed to it or any of its assets;
- (f) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (g) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (h) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under law (including under sections 459C(2) or 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (i) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (j) a notice is issued in respect of it under sections 601AA or 601AB of the Corporations Act;
- (k) a writ of execution is levied against it or a material part of its property;
- (l) it ceases to carry on business or threatens to do so; or
- (m) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the events set out in any of the other paragraphs of this definition.

Loaded Kilometre means, in relation to any Run provided as part of the Services at any time, the distance commencing at the point of collection of the first student on that Run at that time and ceasing at the point of drop-off of the last student on that Run at that time. The distance will be calculated on the basis of the shortest practicable route (avoiding tolls) for the applicable Run, as determined by the Department.

Mobile Phone App means the ASTP Mobile App for Drivers as described at <https://education.nsw.gov.au/public-schools/astp/contractors/astp-mobile-app-for-drivers> (as updated from time to time) and available for download from the Apple App Store and Google Play.

National Police Check means a screening check for criminal history referred to as a “National Police Check”, which may be undertaken through the NSW Police Force.

Parent means, in respect of any student, the parent, carer or guardian of that student, as advised to the Department by the school from time to time.

Personal Information has the same meaning as in the PPIPA.

Personnel means, in respect of a party, its employees, agents, officers, contractors and subcontractors. A reference to the Contractor's Personnel does not include the Department and to the Department's Personnel does not include the Contractor. A reference to the Contractor's Personnel includes the Subcontractors and the Drivers.

PPIPA means the Privacy and Personal Information Protection Act 1998 (NSW).

Privacy Laws means:

- (a) the PPIPA; and
- (b) the Health Records and Information Privacy Act 2002 (NSW).

Recipient Created Tax Invoice or **RCTI** means a recipient created tax invoice as defined in the GST Law.

Related Body Corporate has the meaning given to that term in the Corporations Act.

Reportable Conduct has the meaning given in Schedule 2.

Review Date means the date that the Australia Bureau of Statistics releases its March and September quarterly Consumer Price Index Australia update, being the last Wednesday of the calendar month following the relevant quarter (as modified by the Australian Bureau of Statistics).

Run means transportation services under the Assisted School Travel Program for travel on a route by one or more Students within a specified locality or localities, generally between home and school, or between such other destinations determined by the Department.

Run Card means the run card issued to the Provider by the Department which specifies the Run or Runs that are to be provided by the Contractor under this Agreement, as updated from time to time in accordance with this Agreement.

Scheme means the *Prequalification Scheme for the Assisted School Travel Program* (SCM100001) administered by the Department.

School Day means a day that is not a Saturday, Sunday, a gazetted public holiday in NSW weekend, a school holiday (as designated by the Department) or a pupil free day (as designated by the relevant school) in NSW.

Services means the Runs to be provided by the Contractor under this Agreement, as set out in the Run Card.

Service Levels means the service levels and key performance indicators (KPIs) set out in the Contract Management Plan.

Service Period means, in respect of the provision of any of the Services, the period commencing one hour before those Services are due to be provided and ending one hour after delivery of those Services is due to be completed.

Student means a student eligible and approved by the Department to receive any of the Services.

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.

Supplier Code of Conduct means the NSW Government's Supplier Code of Conduct, as amended from time to time and available at <https://info.buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct>.

Term means the Initial Term and any Further Term (as applicable).

TfNSW means Transport for NSW.

WHS Act means the Work Health and Safety Act 2011 (NSW).

Working With Children Check means a screening check referred to as a "Working With Children Check" undertaken through the NSW's Government Office of the Children's Guardian.

1.2 Interpretation

In this Agreement unless expressly stated to the contrary:

- (a) clause headings are for reference only and do not affect the interpretation of this Agreement;
- (b) 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;
- (c) a date includes that date;
- (d) the singular includes the plural and vice versa;
- (e) where a word or expression is given a particular meaning, other grammatical forms of that word or expression have a corresponding meaning;
- (f) person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
- (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;
- (h) a reference to a person or organisation includes (as applicable) the person or organisation's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation), assigns and replacements;
- (i) this or another document includes any variation or replacement of it;
- (j) a law includes regulations and other instruments under it and amendments or replacements of any of them; and
- (k) a thing includes the whole and each part of it.

2. TERM

2.1 Term

This Agreement commences on the Commencement Date and expires on the Expiry Date, unless terminated sooner.

2.2 Further Term

- (a) At least 30 days prior to the end of the current Term, the Department may provide a notice to the Contractor (**Renewal Notice**), asking for the Contractor's consent to renew the Agreement for a further 12 months (**Further Term**), subject to any variations which may be specified in that notice.
- (b) If the Contractor does not provide its consent to renew the Agreement by the date specified in the Review Notice, the Agreement will end on the expiry of the current Term.
- (c) If the Contractor does consent to renew the Agreement by the date specified in the Renewal Notice, then the Agreement will renew for the Further Term, commencing on the expiry of the current Term or the date otherwise specified in the Renewal Notice.
- (d) For clarity, the Department is not obliged to follow the Renewal Notice procedure set out in this clause and the issue or non-issue by the Department of a Renewal Notice is not an indication of whether or not the Department has determined that the Contractor has breached the Contract. The Department does not waive any rights it may have in respect if any such breach.

2.3 Maximum Term

The parties may repeat the process outlined in clause 2.2 on the expiry of each Initial and Further Term (as applicable), provided the maximum aggregate Term must not exceed a period of 10 years (being one Initial Term and nine Further Terms).

3. NATURE OF AGREEMENT FOR THE PROVISION OF SERVICES

3.1 Provision of Services

The Contractor will provide the Services for the Term in accordance with this Agreement.

3.2 Changes to Services

- (a) If, at any time and from time to time after the Commencement Date, the Department offers any additional Run to the Contractor (which offer must include the details of all Students to be transported, pick-up addresses and destinations and Assisted Travel Support Officer requirements), and the Contractor accepts the offer, the additional Run will be deemed to be included in the Run Card and the terms and conditions of this Agreement will apply to the additional Run, except that the additional Run will be required to be provided only for the period of the Term from and including the date of the acceptance by the Contractor of the relevant offer.
- (b) Without limiting clause 3.2(a), the Department may by notice to the Contractor vary the Run Card (other than to increase the number of Runs), including by:
 - (i) varying the details of the Students to be transported on a Run forming part of the Services;

- (ii) varying the details of the transportation addresses for a Run forming part of the Services;
 - (iii) varying the Assisted Travel Support Officer requirements for a Run;
 - (iv) varying the vehicle requirements for a Run;
 - (v) increasing or decreasing the number of Students to be transported in a Run forming part of the Services;
 - (vi) decreasing the number of Runs forming part of the Services or cancelling any of the Runs forming part of the Services; or
 - (vii) consolidating any of the Runs forming part of the Services.
- (c) Where practicable the Department may (but is not required to) issue a new Run Card to the Contractor after any change is made to the Services as contemplated by this clause 3.2 (other than where a Run forming part of the Services is cancelled), in which case that Run Card will be incorporated as part of this Agreement with effect on and from the date the change took effect.
- (d) Other than as expressly provided in this Agreement, the Department will not be liable to pay the Contractor any fees, charges, expenses, costs or other amounts as a result of any variations to the Run Card made in accordance with clause 3.2(b). The Contractor irrevocably and unconditionally releases the Department from any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages or expenses in respect of, arising from or connected in any way with any variations to the Run Card made in accordance with clause 3.2(b).
- (e) The Contractor acknowledges that the Services relate to the conveyance of Students with disability and that Student conveyance needs can change at minimal notice, and the Department reserves the right to arrange the transport of Students by the most effective means available.
- (f) Without limiting the Department's rights under clause 3.2(b), the Contractor acknowledges that the Department may vary the Run Card in response to the Contractor's poor performance of the Services or other breach of its obligations under this Agreement.
- (g) Notwithstanding clause 3.2(d), if the Department:
- (i) exercises its rights under clause 3.2(b)(vi) to cancel a Run (other than as a result of any Contractor performance related issues, as determined by the Department); and
 - (ii) provides the Contractor with less than 20 Business Days' notice of that cancellation;
- then the Contractor will be entitled to payment (on a pro rata basis) for the cancelled Run up to date that would have been 20 Business Days' notice.

For example, if the Department cancels a Run and gives the Contractor only 17 Business Days' notice, the Contractor would be entitled to payment for 3 Business Days.

3.3 No assurance of offers and non-exclusive supply

- (a) This Agreement is in the nature of a standing offer contract under which the Contractor is to provide the Services as may be required by the Department from time to time in accordance with the provisions of this Agreement.
- (b) This Agreement does not:
 - (iii) imply that the Contractor will receive any offers for any Run from the Department other than the Run or Runs specified in the Run Card as at the Commencement Date;
 - (iv) oblige the Department to offer to the Contractor any Run other than the Run or Runs specified in the Run Card as at the Commencement Date; or
 - (v) guarantee any period of engagement of the Contractor for the provision of the Services.
- (c) The Contractor acknowledges that the Department will, from time to time in its absolute discretion, appoint other suppliers to supply services that are equivalent to the Services and that the Contractor will make no objection to any such appointment.

4. CONTRACTOR OBLIGATIONS

4.1 General obligations

The Contractor will:

- (a) comply with all requirements set out in the Run Card;
- (b) provide the Services with reasonable care and skill;
- (c) comply with all laws in the provision of the Services, including where any Designated Vehicle is a taxi, compliance with all laws specifically applicable to taxis;
- (d) act consistently with, and ensure all of its Personnel act consistently with, the Code of Conduct and the Supplier Code of Conduct;
- (e) comply with the Contract Management Plan, provided that in the event of any inconsistency between the Contract Management Plan and the other provisions of this Agreement, the other provisions of this Agreement prevail;
- (f) communicate with the Department, schools, Students and Parents as required to provide the Services, including by responding to enquiries and complaints in a timely manner;
- (g) manage all of its Personnel utilised to provide the Services;
- (h) meet all expenses incurred in providing the Services, including all Designated Vehicle running costs, payment of tolls, any modifications to Designated Vehicles, adoption of new technology (such as the Mobile App) as reasonably required by the Department and remuneration of Personnel; and

- (i) comply with the Department's reasonable directions regarding the performance of the Services.

4.2 Routes and minimum travel time

- (a) The Contractor will provide and manage the Services to ensure Students spend the minimum time necessary travelling in a Designated Vehicle.
- (b) Without limiting clause 4.2(a), in providing the Services the Contractor will:
 - (i) ensure all Students and Assisted Travel Support Officers are transported to their destinations specified in the Run Card by the shortest practicable route;
 - (ii) use all reasonable efforts to minimise the amount of time spent by Students in a Designated Vehicle;
 - (iii) ensure that the maximum travel time (including time spent in the Designated Vehicle while parked or stationary) for each Student is 90 minutes on any one-way trip, unless an exemption in writing has been given to the Contractor by the Department; and
 - (iv) ensure that the pick-up times for each Student and Assisted Travel Support Officer are arranged so that they arrive at their destinations at the times required in the Run Card or as otherwise required in accordance with this Agreement.
- (c) The Contractor will promptly notify the Department of any adverse traffic conditions or any other factors that require departure from any route that would otherwise be required to be taken in accordance with this clause 4.2 in providing any of the Services.
- (a) If for any reason the Contractor:
 - (i) is unable to access Run Card details using an authorised Department application; or
 - (ii) becomes aware that they or a Driver are unable to complete a Run,
they must promptly (or, if the relevant issue impacts a Run on that day, immediately) notify the Department by telephone 1300 338 278 and in writing by email notice to the Department.
- (d) The Contractor acknowledges that it may, acting reasonably, agree with each Assisted Travel Support Officer the pick-up and drop-off points for that Assisted Travel Support Officer, provided the route taken to those locations is the shortest route practicable.

4.3 Child Protection

To discharge its obligations to provide a safe environment for the Students and to protect the Students from harm, the Contractor must:

- (a) comply with, and ensure its Personnel comply with, all requirements of the Child Protection Laws and all policies of the Department relating to child protection that are published on the Department's website or that are otherwise notified to the Contractor in providing the Services;
- (b) be aware of, and ensure its Personnel are aware of and comply with, the specific instructions on appropriate conduct set out in Schedule 2;

- (c) be aware of, and ensure its Personnel are aware of and comply with, their obligations towards children and young people related to the specific role they have in the Assisted School Travel Program; and
- (d) promptly report, and ensure its Personnel promptly report, concerns about suspected risk of harm to any Student to the relevant school principal and the Department.

4.4 Student Travel

Without limiting clause 4.3, the Contractor will ensure that each Driver will:

- (a) on each day the Driver will use a Designated Vehicle to provide any of the Services, undertake a walk-around inspection of that Designated Vehicle to identify any vehicle defects or safety concerns and will not use that Designated Vehicle to provide any of the Services until each identified vehicle defect or safety concern is remedied;
- (b) when picking up, transporting and delivering Students, monitor Students' safety including by checking:
 - (i) on pick up, that Students are properly secured in their seats prior to the Designating Vehicle departing; and
 - (ii) on drop off, that Students have fully exited and are a safe distance from the Designated Vehicle prior to its departure;
- (c) except as otherwise expressly required in accordance with this Agreement, not deliver any Student to an address that is not specified in the Run Card on that journey;
- (d) not require any Student to cross a road to enter a Designated Vehicle or to reach their intended destination when departing from a Designated Vehicle;
- (e) not leave or be more than 3 metres from their Designated Vehicle if any Student is on board, unless an Assisted Travel Support Officer is on board that Designated Vehicle, provided that, even in those circumstances, a Driver should only leave the vicinity of their Designated Vehicle in an emergency;
- (f) not make any unauthorised stops when transporting Students;
- (g) not allow any unauthorised persons to travel in any Designated Vehicle while Students are on board that Designated Vehicle;
- (h) not use the Designated Vehicle to undertake any other business while it is being used to provide the Services;
- (i) not come into any unnecessary physical contact with Students while providing any Services;
- (j) ensure that under no circumstances are Students to be left unattended, including when any Student exits a Designated Vehicle;
- (k) promptly report any inappropriate Student behaviour to the Department and the relevant school principal;
- (l) be made aware of any information provided to the Contractor by the Department, any relevant school or any Parent regarding the physical and psychological wellbeing of Students;

- (m) use any vehicle restraints for Students that are deemed necessary and required by TfNSW regulations;
- (n) not administer medication to any Students without prior approval from the Department; and
- (o) promptly notify the Department if the Driver becomes aware that a Student no longer requires the Services.

4.5 Parents

- (a) The Contractor acknowledges that the Department requires that a Parent is present when each Student is picked-up from their home by a Driver and when a Driver returns each Student to their home (or other location specified in the Run Card), unless a prior arrangement has been made and agreed by the Department for another responsible and appropriate adult to accept responsibility for the Student either at the pick-up or return point.
- (b) On or prior to the Commencement Date or, if later, when a Run is first included in the Services or where a Run forming part of the Services is varied, the Contractor will contact a Parent of each relevant Student to advise pick-up and drop-off times, the name of the Driver who will provide the relevant Run forming part of the Services, including their contact information, and the details of each Designated Vehicle to be utilised in providing the relevant Run.
- (c) If, in providing the Services, a Driver cannot deliver a Student to either a Parent or a responsible and appropriate person approved by the Department, the Driver is required to:
 - (i) check the relevant Run Card and/or Mobile Phone App to determine whether alternative arrangements have been made for the care of the Student;
 - (ii) contact the Department by telephone on 1300 338 278 and wait with the Student while the Department attempts to contact a Parent of the Student (or an alternative responsible and appropriate person);
 - (iii) if the Department is unsuccessful in contacting a Parent of the Student (or an alternative responsible and appropriate person) in accordance with subparagraph (ii) above, the Driver must (unless otherwise directed by the Department under subparagraph (ii) above) drive the remaining Students and any Assisted Travel Support Officers in the Designated Vehicle (if any) to the relevant location or locations required by the Run Card and then return to the original address for the applicable Student, contact the Department and wait for further instructions from the Department.
- (d) The Contractor must ensure that, under no circumstances, does any Driver leave any Student in the care of, or with, any person other than:
 - (i) a Parent of the Student;
 - (ii) a responsible and appropriate person who has agreed to accept responsibility for the Student by prior arrangement approved by the Department; or
 - (iii) a person who, as a consequence of his or her professional office or duties, is a responsible and appropriate person to have the care of the Student and who has been nominated by the Department to the Contractor.

- (e) The Contractor must not, and must not allow any of its Drivers to, agree to private arrangements with any Parent, Student or School to vary travel patterns, routes or times from those specified in the Run Card except with the prior approval of the Department.

4.5A Schools

- (a) The Contractor acknowledges that the Department requires that a responsible adult authorised by a Student's School (such as a teacher or member of the School's support staff) is present when each Student is picked-up from their School by a Driver and when a Driver drops each Student to their School, unless a prior arrangement has been made and agreed by the Department for another responsible and appropriate adult to accept responsibility for the Student either at the pick-up or return point.
- (b) If, in providing the Services, a Driver cannot deliver a Student to either an adult authorised by the Student's School or a responsible and appropriate person approved by the Department, the Driver is required to:
 - (i) check the relevant Run Card and/or Mobile Phone App to determine whether alternative arrangements have been made for the care of the Student;
 - (ii) contact the Department by telephone on 1300 338 278 and wait with the Student while the Department attempts to contact the Student's School (or an alternative responsible and appropriate person);
 - (iii) if the Department is unsuccessful in contacting the Student's School (or an alternative responsible and appropriate person) in accordance with subparagraph (ii) above, the Driver must (unless otherwise directed by the Department under subparagraph (ii) above) drive the remaining Students and any Assisted Travel Support Officers in the Designated Vehicle (if any) to the relevant location or locations required by the Run Card and then return to the original address for the applicable Student, contact the Department and wait for further instructions from the Department.
- (c) The Contractor must ensure that when dropping-off a Student at School, under no circumstances, does any Driver leave any Student in the care of, or with, any person other than:
 - (iv) a Parent of the Student;
 - (v) a responsible adult authorised by a Student's School (such as a teacher or member of the School's support staff);
 - (vi) a responsible and appropriate person who has agreed to accept responsibility for the Student by prior arrangement approved by the Department; or
 - (vii) a person who, as a consequence of his or her professional office or duties, is a responsible and appropriate person to have the care of the Student and who has been nominated by the Department to the Contractor.
- (d) The Contractor must not, and must not allow any of its Drivers to, agree to private arrangements with any Parent, Student or School to vary travel patterns, routes or times from those specified in the Run Card except with the prior approval of the Department.

4.6 Availability

- (a) The Contractor will, and will ensure that its Drivers will, be available for the provision of the Services:
 - (i) generally between the periods of 7.00am to 9.30am and 2.30pm to 5.00pm on each School Day; and
 - (ii) at such other times notified by the Department from time to time.
- (b) The Contractor acknowledges that the Department has requested that Schools and Parents notify the Contractor immediately when they become aware that a Student will not require the Services at a particular time for any reason, for example, as a result of illness, a family holiday or otherwise.

4.7 Communications

- (a) The Contractor must be contactable by the Department between 6.00am and 6.00pm on each Business Day by mobile telephone (including video communications) on the number set out in Schedule 1 or on such other mobile number as may be notified by the Contractor to the Department from time to time during the Term.
- (b) The Contractor must, where made available to it by the Department, use the Mobile Phone App, ASTP Online for Contractors or other online contractor dashboard functionality in relation to the provision of the Services.
- (c) The Contractor will ensure that each Driver:
 - (iii) uses, and ensures the Mobile Phone App is active, at all times that the Driver is providing the Services; and
 - (iv) is contactable by the Department by mobile telephone during each Service Period on the number submitted by the Contractor (details available via ASTP Online for Contractors) for that Driver or on such other mobile numbers as may be notified by the Contractor to the Department from time to time during the Term.
- (d) The Contractor will ensure that it and its Drivers have and maintain access to internet and email facilities to ensure efficient communication between the Contractor, Driver and the Department.

4.8 Work, health and safety

- (a) The Contractor will comply with all its obligations under the following in the performance of its obligations under this Agreement:
 - (i) the WHS Act;
 - (ii) all regulations made under the WHS Act; and
 - (iii) each code of practice made under the WHS Act.
- (b) The Contractor will have in place as at the Commencement Date, and implement during the Term, a safety management system for all Designated Vehicles and the delivery of the Services that, at a minimum:
 - (i) is prepared in a manner similar to and consistent with the requirements of the “9 Step SMS Roadmap” available on the National Heavy Vehicle Regulator website,

here: <https://www.nhvr.gov.au/safety-accreditation-compliance/safety-management-systems> (as updated from time to time); and

- (ii) addresses self-reporting of safety issues, management of incidents and emergencies and the use of first aid.
- (c) The Contractor will ensure that its Personnel will comply with the WHS Act and the other instruments and systems listed in clauses 4.8(a) and 4.8(b) in the performance of their obligations in relation to this Agreement.
- (d) The Contractor must, and must ensure that its Personnel will, comply with all directions of the Department in relation to infection control in relation to the provision of the Services, including by obtaining vaccinations, providing ventilation in Designated Vehicles and through the use of personal protective equipment.
- (e) Without limiting clause 21 or the requirements of the Contract Management Plan, the Contractor agrees that the Department may audit the Contractor's compliance with this clause 4.8 from time to time during the Term, as the Department in its absolute discretion determines. The Contractor will ensure that the Department and its representatives or agents have reasonable access as required to the Contractor's and each Subcontractor's premises, the Designated Vehicles, the Contractor's and each Subcontractor's Personnel, systems, documents and records for the purposes of carrying out each audit in accordance with this clause 4.8(e).

4.9 Notification of accidents occurring during the provision of the Services

- (a) The Contractor must promptly notify the Department by telephone on 1300 338 278, then follow-up by email notice (attaching the Incident Notification Form) within one Business Day, of the details of any accident occurring during the provision of the Services.
- (b) The Contractor acknowledges that notifying the Department under clause 4.9(a) is not a substitute or alternative to calling "000" Triple Zero in the event of an emergency.

4.10 Entry into Schools and other Sites

- (a) The Contractor must ensure that its Personnel, when entering into any School or other premises as authorised by the Department for the purposes of the performance of the Contractor's obligations under this Agreement, comply with all regulations and policies of the proprietor of the premises that are applicable to access to that premises.
- (b) The Contractor must ensure that its Drivers use reasonable endeavours to utilise kerbside parking at all times when completing Student drop-offs and pick-up (as opposed to entering the Designated Vehicle into a private premises), unless otherwise agreed by the Department.

4.11 Student absences

- (c) The Contractor will notify the Department where it does not provide the Services for a Student for any period when it submits a payment claim form for the relevant period in accordance with clause 9.
- (d) The Contractor acknowledges that changes may be made to one or more Runs forming part of the Services in accordance with clause 3.2(b) where any Student absences are considered to be permanent in nature.

5. PERSONNEL AND ASSISTED TRAVEL SUPPORT OFFICERS

5.1 General requirements for Personnel and Assisted Travel Support Officers

- (a) The Contractor must not engage any of its Personnel, including relief Personnel, in the provision of the Services until that Personnel has been approved by the Department. For the avoidance of doubt, no Personnel will be approved by the Department unless a cleared Working With Children Check and cleared National Police Check has been obtained for that Personnel in accordance with clause 5.2.
- (b) The Contractor will ensure that each Personnel, including relief Personnel:
 - (i) are made aware of the requirements of this Agreement and their responsibilities while providing, or assisting in providing, the Services;
 - (ii) do not smoke (including e-cigarettes [vaping]) in school grounds or in or around any Designated Vehicle or any Student;
 - (iii) has a blood alcohol level of 0% at all times that Personnel is providing, or assisting in providing, the Services;
 - (iv) is not under the influence of any other substance or drug that would impair the performance of the Personnel in providing, or assisting in providing, the Services and have a blood drug level for such substances and drugs of 0% at all times that Personnel is providing, or assisting in providing, the Services;
 - (v) treat and communicate with Students respectfully, including by refraining from the use of ableist language or terminology (including in the Contractor's branding and marketing); and
 - (vi) has English language skills sufficient to enable oral communication with Students, Parents and school staff, taking into consideration the special behavioural and medical needs of Students with disability.
- (c) The Contractor will advise the Department in writing:
 - (i) within 24 hours of any charge being made against, or conviction of, any of its Personnel in relation to any criminal, traffic or any other offence; and
 - (ii) within 48 hours of any Driver being found to have failed to comply with clause 5.1(b)(ii), (iii) or (iv) above.
- (d) If any Assisted Travel Support Officer fails to meet the requirements of clause 5.1(b), the Contractor must immediately report such non-compliance to the Department.

5.2 Working With Children and National Police Checks

- (a) The Contractor will ensure that it (if it is an individual) and each of its Personnel who at any time are involved in providing the Services (including for the avoidance of doubt, each Driver and any other Personnel who provide direct support to Drivers or otherwise have direct contact or communication with Students) obtain and provide a cleared Working with Children Check and a cleared National Police Check result:
 - (i) on or prior to the Commencement Date or in the case of any Personnel, if later, on or before the date the relevant Personnel will first be involved in providing the Services;

- (ii) in respect of a Working with Children Check, no less than 30 days prior to the expiry of its existing cleared Working With Children Check;
 - (iii) in respect of its National Police Check, on each 5 year anniversary of the date on which a cleared National Police Check was first required to be obtained for that person in accordance with clause 5.2(a)(i); and
 - (iv) at any other time requested by the Department.
- (b) The Contractor will provide to the Department a copy of each cleared Working With Children Check and each cleared National Police Check required to be obtained in accordance with clause 5.2(a) immediately after it is obtained and will immediately notify the Department if a cleared Working With Children Check or cleared National Police Check is not able to be obtained by it (if it is an individual) or by any of its Personnel.
- (c) If the Contractor or any of its Personnel do not obtain or cease to hold a cleared Working With Children Check or cleared National Police Check at any time as required in accordance with clause 5.2(a) then:
- (i) the Contractor must promptly notify the Department;
 - (ii) the Department may terminate this Agreement in accordance with clause 16.2; and
 - (iii) without limiting its rights under clause 5.2(c)(ii), where any Personnel does not obtain a cleared Working With Children Check or a cleared National Police Check, that Personnel cannot and must not be engaged, or continue to be engaged, to provide any of the Services.

5.3 Additional requirements for Drivers

- (a) Without limiting any other provision of this Agreement, the Contractor must ensure that each Driver who will provide the Services:
- (i) holds a current Australian full (unrestricted) driver licence for each Designated Vehicle type that it is proposed will be driven by that Driver in providing the Services and has held that driver licence for at least 12 months of the 2 year period immediately prior to the proposed commencement as a Driver;
 - (ii) holds each other authorisation that may be required by law to drive each Designated Vehicle type that it is proposed will be driven by that Driver in providing the Services;
 - (iii) has not, at any time, been found guilty of a Disqualifying Offence;
 - (iv) has not, at any time, had their driver licence cancelled or suspended and has not been disqualified from holding a driver licence;
 - (v) meets all of the driver health, medical and fitness requirements of Assessing Fitness to Drive (to be conducted, as a minimum, once every 3 years for Drivers aged 49 or under, and annually for Drivers aged 50 or over, unless otherwise approved by the Department);
 - (vi) are of good character;
 - (vii) if the Driver will drive a wheelchair accessible Designated Vehicle, is competent in loading, unloading and transporting passengers in wheelchairs in that Designated Vehicle;

- (viii) if the Driver will drive a Designated Vehicle fitted or required to be fitted with child seats or other restraints, is competent in using and securing passengers in those restraints in an appropriate manner;
 - (ix) completes, submits and meets all licence, vehicle and other checks specified in, the Department's Driver Application; and
 - (x) has undertaken all training required in accordance with clause 11.3.
- (b) The Contractor must provide such evidence as required by the Department, acting reasonably, that each Driver meets the specifications of clause 5.3(a):
- (i) prior to a Driver first being utilised in providing the Services;
 - (ii) at any other times required by the Department.
- (c) Without limiting clause 5.3(b), where any specification of a Driver referred to in clause 5.3(a) is due for renewal, the Contractor will provide to the Department true and correct copies of the documents evidencing such renewal.
- (d) If, at any time, a Driver does not meet the requirements of clause 5.3(a) then:
- (i) the Department may terminate this Agreement in accordance with clause 16.2; and
 - (ii) without limiting its rights under clause 5.3(d)(i), that Driver cannot and must not be engaged, or continue to be engaged, to provide the Services.
- (e) For the avoidance of doubt, a person that holds a provisional 1 or 2 driver licence cannot, under any circumstances, be a Driver.

5.4 Replacement of Drivers

- (a) The Contractor acknowledges that the Department expects that, as far as practicable, for each separate Run provided as part of the Services, the same Driver would drive a Designated Vehicle throughout a school year so as to promote stability and regularity in the provision of the Services.
- (b) Notwithstanding clause 5.4(a), in the event of the permanent, short or long-term absence of a Driver previously engaged to provide any Run as part of the Services, the Contractor must provide an alternative Driver to provide the relevant Services.
- (c) Prior to the use of any relief Driver as contemplated by clause 5.4(b), the Contractor must advise the Department and the affected Parents and schools of the intention to use the relief Driver and provide to the Department such evidence as the Department requires to demonstrate that the relief Driver complies with the requirements of this Agreement, including for the avoidance of doubt this clause 5.

5.5 Language skills of Drivers

- (a) In the event any complaint is made to the Contractor or the Department that any Driver does not have English language skills meeting the requirements of clause 5.1(b)(vi), the Contractor must promptly have the English language skills of that Driver tested using a method approved by the Department from time to time.
- (b) The Contractor must provide the Department with the results of each such test. If a Driver fails that test, the Contractor must immediately cease using that Driver to provide

any of the Services until such time as the Driver passes the test (and subject to the Driver satisfying all other applicable requirements under this Agreement, including this clause 5).

5.6 Payment of wages, etc

- (a) The Contractor must ensure that all Personnel employed or engaged by it in connection with the Services (including in the case of each Subcontractor, the employees of the Subcontractor) are paid wages and allowances of every kind required to be paid by or under any relevant award, determination or order made under legislation in force in NSW or by or under any workplace agreement that is in force in NSW and that all such persons are employed under the conditions contained in any such award, determination, order or workplace agreement.
- (b) The Department is not liable for any of the Contractor's Personnel related costs, including wages, salaries, other remuneration, holiday pay or allowances, sick pay, workers' compensation, superannuation, pay-as-you-go (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.
- (c) The Contractor indemnifies the Department against any obligation it may have to make any payment for or in respect of wages, salaries, other remuneration, holiday pay or allowances, sick pay, workers' compensation, superannuation, pay-as-you-go (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 where the obligation arises directly or indirectly from any breach by the Contractor of this clause 5.6 or failure by the Contractor to pay any of the amounts referred to in this clause 5.6 when due.

6. DESIGNATED VEHICLES

6.1 General obligations regarding Designated Vehicles

- (a) The Contractor must ensure that each Designated Vehicle is approved by the Department, of a standard that is acceptable to the Department and is repaired and maintained to a standard necessary to ensure the safety of Drivers, passengers and the public.
- (b) The Contractor must ensure that each Designated Vehicle:
 - (i) falls within one of the following categories: sedan (comfortably seats 1-4 passengers excluding the Driver), people mover (seats 5-7 passengers excluding the Driver), mini bus (seats 8-12 passengers excluding the Driver), or wheelchair accessible vehicle 1-3 (accommodates 1-3 passengers in wheelchairs and regular seating, excluding the Driver);
 - (ii) is less than 15 years old (based on the date of manufacture), except where a written exemption has been provided by the Department (at its discretion);
 - (iii) is maintained in hygienic, safe and good working order to the satisfaction of the Department and in accordance with all applicable requirements of TfNSW;
 - (iv) has a current registration appropriate to the Designated Vehicle in the State or Territory where the Designated Vehicle is garaged, which is consistent with TfNSW requirements and, if required by TfNSW, this registration must be a "business use" registration;

- (v) has a TfNSW Consent to Vehicle Check form completed and signed by the registered owner of each Designated Vehicle;
 - (vi) contains a vehicle first aid kit which complies with all applicable requirements for a workplace first aid kit and which includes an EpiPen or equivalent auto-injector that contains epinephrine for the management of serious allergic reactions;
 - (vii) has functioning childproof locking devices fitted to all external doors (unless otherwise agreed in writing by the Department);
 - (viii) is cleaned and checked at least weekly (and otherwise as required in accordance with any infectious control procedures under clause 4.8(d)) to ensure the interior, exterior and fittings are clean, undamaged and in good repair, with any damaged fittings are to be repaired immediately;
 - (ix) is fitted with seat belts and restraints, including child restraint systems where applicable, that comply with Australian Standards, Australian/New Zealand Standards and Design Rules;
 - (x) is fitted with an air conditioning system that is fully operational and regularly maintained;
 - (xi) has a minimum of 4 doors and has a fixed roof;
 - (xii) depending on the nature of the Designated Vehicle, complies with requirements of all laws relating to operation or use of taxis, buses or hire cars;
 - (xiii) is subject to the control and management of the Contractor under a binding agreement;
 - (xiv) is not owned, controlled or used by another contractor who is engaged by the Department for the purposes of the Assisted School Travel Program (unless otherwise agreed in writing by the Department); and
 - (xv) complies with any other reasonable requirements of the Department as notified from time to time.
- (c) The Contractor must ensure that any special lifting equipment required for any Designated Vehicle to provide the Services is available and in working order.
 - (d) The Contractor must ensure each Designated Vehicle undergoes an annual safety check, with the most recent check prior to the Commencement Date to have occurred not earlier than 6 months prior to the Commencement Date. At the request of the Department at any time and from time to time the Contractor will provide to the Department such evidence as it reasonably requests to demonstrate that the Contractor has complied with its obligations under this clause 6.1(c).
 - (e) The Contractor will ensure that all maintenance and repairs, other than basic maintenance and repairs, of Designated Vehicles are carried out by a mechanic with a motor vehicle repair business licence issued by the NSW Office of Fair Trading (or an equivalent licence issued in any other Australian jurisdiction).
 - (f) The Contractor will keep records of all maintenance and repairs undertaken in relation to each Designated Vehicle and will make those records available to the Department on request by the Department.

6.2 Additional requirements for wheelchair accessible Designated Vehicles

- (a) The Contractor must ensure that each wheelchair accessible Designated Vehicle:
 - (i) complies with the relevant Disability Standards and applicable TfNSW requirements;
 - (ii) without limiting clause 6.2(a)(i), complies with all Australian Standards and Australian/New Zealand Standards applicable to hoists, tie downs and ramps for wheelchair accessible vehicles, including AS/NZS 3856.1 (Hoists and ramps for people with disabilities – Vehicle-mounted Part 1: Product Requirements 1998);
 - (iii) has a space where a wheelchair is carried inside the Designated Vehicle at least 1,300 mm long, 800 mm wide and 1,500 mm high (or as otherwise provided by the Disability Standards from time to time), with no intrusions other than adjustable restraint devices, for each wheelchair carried;
 - (iv) carries an appropriate number of wheelchair restraints having regard to the number of wheelchairs that can be transported in the Designated Vehicle, which comply with AS/NZS 10542.1: 2009 Technical systems aids for disabled or handicapped persons - wheelchair tiedown and occupant-restraint systems and such other standards issued in replacement of the above from time to time; and
 - (v) has child restraints that comply with all applicable laws and regulations.
- (b) The Contractor will, at the request of the Department provide to the Department such evidence as the Department, acting reasonably, requires to demonstrate that the Contractor has complied with clause 6.2(a) in relation to each wheelchair accessible Designated Vehicle.

6.3 Replacement of Designated Vehicles

- (a) The Contractor acknowledges that the Department expects that, as far as practicable, for each separate Run provided as part of the Services, the same Designated Vehicle would be used throughout a school year so as to promote stability and regularity in the provision of the Services.
- (b) Notwithstanding clause 6.3(a), in the event of a breakdown of any Designated Vehicle or any other occurrence which prevents the use of the Designated Vehicle for the delivery of the Services, the Contractor must arrange for the provision of an alternative Designated Vehicle to provide the relevant Services.
- (c) Prior to the use of any relief Designated Vehicle as contemplated by clause 6.3(b), the Contractor must advise the Department and the affected Parents and schools of the intention to use the relief Designated Vehicle and provide to the Department such evidence as the Department requires to demonstrate that the relief Designated Vehicle complies with the requirements of this Agreement, including for the avoidance of doubt this clause 6.

6.4 Registration Documents

The Contractor must provide to the Department a true and correct copy of the certificate of registration for each Designated Vehicle which meets the requirements of clause 6.1(b)(iv), at the following times:

- (a) on or prior to the Commencement Date, for each Designated Vehicle that will be used to provide the Services on and from the Commencement Date;
- (b) prior to the date it is first used to provide the Services, for each Designated Vehicle that is first used to provide the Services after the Commencement Date; and
- (c) within 7 Business Days of the date on which renewal is required, for each Designated Vehicle which has a registration expire at any time during the Term.

7. ASSISTED TRAVEL SUPPORT OFFICERS

- (a) Assisted Travel Support Officers are engaged by the Department to support Students who have been identified by schools as requiring additional support during transit due to behavioural or medical needs.
- (b) The Department, in consultation with each relevant school and the Contractor, will identify suitably qualified persons to act as Assisted Travel Support Officers to provide the Services. No Run will be allocated to the Contractor as part of the Services that requires an Assisted Travel Support Officer unless:
 - (i) the Contractor has confirmed that a person who may be engaged as an Assisted Travel Support Officer will be available to provide the assistance required for the Run; and
 - (ii) the Department has engaged that person as an Assisted Travel Support Officer.
- (c) The Contractor acknowledges that the Department:
 - (i) will not engage any person as an Assisted Travel Support Officer unless the Department has obtained a cleared Working With Children Check and cleared National Police Check for that person;
 - (ii) will ensure that each relevant school will provide each Assisted Travel Support Officer with a behaviour support or health care plan specific to the needs of each Student that requires the support of that Assisted Travel Support Officer (each **Plan**) and provides reasonable support to the Assisted Travel Support Officer in the implementation of the Plan; and
 - (iii) will ensure that each Assisted Travel Support Officer participates in appropriate training in relation to the support that Assisted Travel Support Officer is to provide to any Student, which training will be coordinated by the relevant school.
- (d) The Contractor will ensure that, for each Run forming part of the Services that requires an Assisted Travel Support Officer, the Assisted Travel Support Officer is collected and returned by the Driver to mutually agreed pick-up and drop-off points on each day that the Run is provided.
- (e) The Contractor will ensure that no Student who requires the support of an Assisted Travel Support Officer enters a Designated Vehicle used for a Run forming part of the Services unless the relevant Assisted Travel Support Officer is on that Designated Vehicle. That

Assisted Travel Support Officer must be seated beside or adjacent to the Student or Students in the Designated Vehicle, or must otherwise be located in the Designated Vehicle in accordance with the Plan for the Student or Students.

- (f) The Contractor must ensure that no Assisted Travel Support Officer administers medication to any Student without prior approval from the Department.
- (g) The Contractor must certify on the Assisted Travel Support Officer's claim forms to be lodged with the Department, for each day that the Assisted Travel Support Officer provides services in connection with the Services, the time and date the Assisted Travel Support Officer services commenced, and the time the Assisted Travel Support Officer services ceased. Claim forms are to be certified via ASTP Online for Contractors before the end of the relevant Assisted Travel Support Officer pay ending period (as notified by the Department).

8. FEES

8.1 Determination of Fees

- (a) In consideration of the provision of the Services, the Department will pay the Contractor the Fees in accordance with the rates set out in Item 3 of Schedule 1, as adjusted in accordance with clause 8.3. The Fees will, subject to clauses 8.1(b) and 8.2, be calculated based on:
 - (i) the number of Students for whom the Services are provided; and
 - (ii) the total Loaded Kilometres for the provision of the Services.
- (b) For any Run forming part of the Services where an Assisted Travel Support Officer provides services, the Fees will include an additional allowance equivalent to 15% of the amount payable to the Contractor for the Loaded Kilometres for that Run.
- (c) For the avoidance of doubt:
 - (iii) an Assisted Travel Support Officer will be considered a passenger for the purpose of the Run Card and calculating the passenger capacity requirements of a Designated Vehicle; and
 - (iv) in respect of each Designated Vehicle that is a taxi, the Contractor is not entitled to any additional consideration for the use of that Designated Vehicle to provide the Services other than as set out in this clause 8.
- (d) The Contractor is not entitled to payment of any Fees unless, at the time of submission of a Pay Claim in accordance with clause 9 for the payment of those Fees, the Contractor has fully complied with its obligations under clause 15.3(h).
- (e) The Contractor acknowledges that the Department may from time to time and at its discretion, increase the applicable rate having regard to the relevant Student's needs.

8.2 Variations to Fees

- (a) The Fees will be adjusted where any Student does not receive the relevant Services for the period of 20 consecutive School Days (or other extended periods as determined by the Department), for example, where the absence continues for more than one month or where permanent variations to travel arrangements result in any Student travelling reduced days or distances.

- (b) The Fees will not be adjusted for temporary Student absences.
- (c) The Contractor will not be entitled to any payment of the Fees in respect of any Services where:
 - (i) the Contractor does not provide those Services for reasons which are regarded as normal commercial risks, for example, mechanical breakdown, industrial action, accident, the failure of any Driver to report for duty or unavailability of fuel or spares;
 - (ii) the Contractor does not provide any part of those Services because it is prevented from doing so by any natural hazard;
 - (iii) those Services are provided by any Personnel (including Drivers and Assisted Travel Support Officers) who are not authorised to provide those Services under this Agreement; or
 - (iv) any variations are made to the relevant Run forming part of those Services, unless prior approval is obtained from the Department or the Department agrees that the variation is unforeseen and unavoidable.

8.3 CPI adjustments

- (a) As soon as practicable after each Review Date, the Department will adjust the then current rates set out in Item 3 of Schedule 1 by multiplying those rates by the cost of living adjustment (**COLA**) calculated in accordance with clause 8.3(b). The Department will notify the Contractor of the adjusted rates, which will from the date of notification become the applicable rates applied by the Department to determine the Fees immediately thereafter and until the next adjustment is made by the Department in accordance with this clause 8.3.

- (b) For the purpose of this clause 8.3, COLA will be calculated for each Review Date as follows:

$$\text{COLA} = 1 + \text{CPI Measure}$$

- (c) The **CPI Measure** for each Review Date will be calculated using the latest Australian Bureau of Statistics (**ABS**) headline index for Sydney published before that Review Date (**Current CPI Index**) and the latest ABS headline index for Sydney most recently published at least 6 months prior to the relevant Review Date (**Previous CPI Index**). The CPI Measure for the Review Date will then be calculated as follows:

$$\text{CPI Measure} = \frac{(\text{Current CPI Index} - \text{Previous CPI Index})}{\text{Previous CPI Index}}$$

- (d) The rates at Item 3 of Schedule 1 will not, as a result of any adjustment under this clause 8.3, be less than those rates immediately before that adjustment. If the application of this clause 8.3 would, but for this clause 8.3(d), result in this occurring the rates at Item 3 of Schedule 1 will remain at the amounts specified immediately before that adjustment.

9. INVOICING

- (a) The Contractor must provide a payment claim form (**Pay Claim**), via ASTP Online for Contractors or in such form required by the Department from time to time, to the Department for each Run forming part of the Services within 14 days of the end of each calendar month all or part of which falls during the Term. The Contractor will ensure that

each Pay Claim is complete, unaltered and approved by the relevant school principal or that principal's delegate in the form required by the Department from time to time. The Contractor will not be entitled to any payment for a Run forming part of the Services for a calendar month unless a Form is submitted in accordance with this clause 9(a) for that month.

- (b) The Contractor will submit an online Pay Claim to the Department via ASTP Online for Contractors calendar monthly in arrears.
- (c) The Department will pay each correctly submitted Pay Claim within 28 days of receipt. Each payment by the Department will be made by way of direct deposit to the Contractor's bank account nominated to the Department.
- (d) The Department provides an online payment system (ASTP Online for Contractors) which may be used by Contractors for the submission of Forms in accordance with this clause 9.
- (e) The Department endeavours to process all Pay Claims promptly.

10. TAXES AND GST

- (a) Subject to the provisions of this clause 10, all taxes, duties and charges imposed or levied in connection with the performance by the Contractor of its obligations under this Agreement will be paid by the Contractor.
- (b) Unless expressly stated otherwise, all amount payable under this Agreement are exclusive of GST.
- (c) If the Contractor is registered for GST:
 - (i) the parties agree that the Department will issue RCTIs to the Contractor for each calendar month of the Term, within 28 days of determining the value of the Services supplied during that calendar month; and
 - (ii) the Contractor will not issue tax invoices to the Department for the Fees.
- (d) Unless clause 10(c) applies, where the Contractor is registered for GST, if GST is payable on any supply made under this Agreement, the recipient will, subject to receipt of a tax invoice from the supplier, pay to the supplier an amount equal to the GST payable on the supply at the same time that the consideration for the supply is to be paid under this Agreement.
- (e) The Department may withhold from any sums due to the Contractor such amounts as the Department is obliged to withhold under any relevant taxation or other legislation.
- (f) The Contractor will notify the Department of any change to its GST registration status, including details of the change, within 14 days of the change occurring.

11. TRAINING

11.1 Requirement to undertake training

The Department may at any time and from time to time during the Term require the Contractor, its Personnel and the Assisted Travel Support Officers (or any of them) to undertake training to ensure the safety of the Contractor, its Personnel, the Assisted Travel Support Officers and Students and to improve the quality of the Services.

11.2 General training

Training required to be undertaken in accordance with clause 11.1 may include, but will not be limited to, training related to:

- (a) child protection;
- (b) how to restrain wheelchairs and their occupants;
- (c) the operation of hoists and ramps;
- (d) restrictive practices; and
- (e) the identified needs of any Student or Students who are to be transported as part of the Services.

11.3 Driver and Personnel training

Without limiting clauses 11.1 and 11.2, the Contractor will ensure that:

- (a) each Driver undertakes the following training prior to the date on which the Driver first provides any of the Services, and at the other times specified below:
 - (i) training in relation to the ASTP Driver Information Package (as made available by the Department from time to time), which training must be repeated annually;
 - (ii) first aid training, undertaken by Nationally Recognised Training provider which must be completed every three years; and
 - (iii) CPR (cardiopulmonary resuscitation) and anaphylaxis program training, which must be completed annually; and
- (b) all Personnel are familiar and comply with any applicable requirements of the Code of Conduct.

11.4 Evidence of Driver training

The Contractor must provide to the Department such information that the Department, acting reasonably, requests to demonstrate its compliance with clause 11.3.

11.5 Compliance by Personnel

The Contractor will ensure that all Personnel required to undertake training in accordance with this clause 11 comply with the requirements of this clause 11.

11.6 Department's costs

The Department's costs incurred in training the Contractor and its Personnel will be met by the Contractor. The Department will invoice the Contractor from time to time for those costs. Each invoice must be paid within 30 days of its date of issue.

12. COMPLIANCE WITH POLICIES

12.1 Government policy

- (a) The Contractor warrants that it is aware of, and will comply with, the Department's policies on equal employment opportunity and anti-discrimination during the performance of the Service.

- (b) The Contractor must, on request by the Department, complete and procure that its Personnel complete an annual attestation of compliance with the Code of Conduct and other policies as applicable under this Agreement, including but not limited to the Assisted School Travel Program for School Students with Disability policy.

12.2 Aboriginal and Torres Strait Islander peoples' participation

- (a) It is NSW Government policy to create opportunities for Aboriginal Businesses and encourage Aboriginal and Torres Strait Islander peoples employment through the supply chain of NSW Government contracts.
- (b) The Contractor will endeavour to make purchases from Aboriginal Businesses, and employ Aboriginal and Torres Strait Islander peoples, in the provision of the Services. The Contractor acknowledges that if, during the Term, the value of this Agreement exceeds \$7.5 million, the Contractor must ensure that it meets the minimum requirement for 1.5% Aboriginal participation as set out in the NSW Government's Aboriginal Procurement Policy.
- (c) The Contractor will provide reporting in relation to Aboriginal participation and employment in connection with the provision of the Services as required in accordance with the Contract Management Plan.

12.3 Modern Slavery

- (a) The Contractor will, in performing its obligations under this Agreement:
 - (i) comply with all applicable modern slavery laws including the Modern Slavery Act 2018 (NSW) (together, **Australian Modern Slavery Legislation**);
 - (ii) have and maintain its own policies and procedures to ensure its compliance with Australian Modern Slavery Legislation;
 - (iii) not engage in any activity, practice or conduct that would constitute an offence under Australian Modern Slavery Legislation if such activity, practice or conduct were carried out in Australia; and
 - (iv) comply with any requests or requirements of the Department that are required to enable the Department to meet its obligations under Australian Modern Slavery Legislation.
- (b) The Contractor will notify the Department as soon as it becomes aware of any actual or suspected occurrence or incident of Modern Slavery (as defined in clause 12.3(d)) in any of its supply chains.
- (c) The Contractor will implement a system of training for its Personnel to ensure its compliance with this clause 12.3.
- (d) **Modern Slavery** has the same meaning as in the Modern Slavery Act 2018 (NSW), that is, including any conduct constituting a modern slavery offence and any conduct involving the use of any form of slavery, servitude or forced labour to exploit children or other persons taking place in the supply chains of government agencies or commercial organisations.

12.4 Small and Medium Enterprises (SME) participation

- (a) It is NSW Government policy to increase opportunities for SMEs to participate in goods and services procurement.
- (b) The Contractor must use its reasonable endeavours to increase its purchases from SMEs in the delivery of the Services.
- (c) If during the Term the value of this Agreement exceeds \$3 million then, if required under the NSW Government's Small and Medium Enterprise and Regional Procurement Policy:
 - (i) the Contractor must within 20 Business Days develop and provide the Department with a SME Participation Plan (based on the Department's then current template) that covers the Contractor's commitment to SME participation for its business generally and in the delivery of this Agreement;
 - (ii) the Department will review, and if appropriate, approve the draft SME Participation Plan; and
 - (iii) if requested by the Department, the Contractor and Department will negotiate in good faith changes to the Contractor's draft SME Participation Plan until it is approved by the Department.
- (d) Where an SME Participation Plan is approved under sub-clause (c) above, The Contractor will:
 - (i) use reasonable endeavours to comply with the SME Participation Plan; and
 - (ii) report against its compliance with the SME Participation Plan, as set out in the SME Participation Plan and as otherwise required by the Department.
- (e) **SME** means a SME is an Australian or New Zealand based enterprise with fewer than 200 full-time equivalent (FTE) employees.

13. INSURANCE REQUIREMENTS

13.1 Insurances of the Contractor

The Contractor must hold and maintain for the Term, or for such other period as may be specifically required by this Agreement for the particular policy:

- (a) public liability insurance to the value of at least the amount of \$20 million in respect of each claim;
- (b) workers' compensation insurance in accordance with applicable legislation;
- (c) compulsory third party personal injury insurance in respect of each Designated Vehicle; and
- (d) comprehensive motor vehicle insurance for each Designated Vehicle and, in the case of any Designated Vehicle that is a taxi, all additional insurance required by law.

13.2 Subcontractor insurances

The Contractor must ensure that each of its Subcontractors maintains each of the insurances referred to in clause 13.1.

13.3 Acceptable insurers

All policies of insurance required to be held in accordance with this clause 13 must be effected with an insurer acceptable to the Department.

13.4 Evidence of insurance

Not later than the Commencement Date, and then within 7 Business Days of the anniversary of the renewal date for each policy, the Contractor must provide to the Department a certificate of currency for each insurance policy required to be held in accordance with this clause 13 together with such other documentary evidence requested by the Department, acting reasonably, to demonstrate that such policies are in place.

14. INDEMNITY, LIMITATION OF LIABILITY AND DAMAGE TO PROPERTY

14.1 Indemnity

The Contractor irrevocably and unconditionally releases, discharges and indemnifies the Department, the State of NSW, their officers, employees and agents (**Indemnified Entities**) from and against loss, damage, liability, cost or expense (including legal expenses) suffered or incurred by any Indemnified Entity, whether in contract, tort (including negligence) or otherwise in connection with any act or omission of the Contractor, its Personnel or any Assisted Travel Support Officer in performing the Services or otherwise arising in connection with this Agreement or the use of any Designated Vehicle.

14.2 Limitation of liability of the Department

To the extent permitted by law, and without limiting clause 14.1, the Department will not be liable for, whether in contract, tort or otherwise, any loss or damage arising from or in connection with any injuries (including death) suffered by any Student, Assisted Travel Support Officer, Personnel or other person during, or in relation to, the provision of the Services or arising in any way from the use of any Designated Vehicle.

14.3 Damage to property

Without limiting clause 14.1:

- (a) if, in the performance of the Contractor's obligations under this Agreement, the Contractor or any of its Personnel damage any property of the Department or the NSW Government, the Contractor will, immediately on demand, pay the costs of repairing and making good such damage; and
- (b) if a Student damages any Designated Vehicle the Contractor may negotiate with the Parents of that Student for compensation to make good such damage. The Contractor irrevocably and unconditionally releases the Department from any claim, of any nature, in respect of, arising from or connected in any way with any such damage to any Designated Vehicle.

15. ASSIGNMENT, CHANGE IN CONTROL AND SUBCONTRACTING

15.1 Assignment, novation etc

- (a) The Contractor must not, in whole or in part, assign or novate this Agreement or otherwise deal with the benefit of it or any right under it, or purport to do so except with the prior consent of the Department, which may be given or withheld in the Department's sole discretion.

- (b) The Contractor agrees that the rights and obligations of the Department under this Agreement may be assigned or novated to another NSW Government department or agency without the consent of the Contractor. The Contractor agrees to co-operate in good faith and provide all reasonable assistance to the Department in respect of any such assignment or novation.

15.2 Change in Control

- (a) The Contractor must:
 - (i) notify the Department if the Contractor will or may undergo a Change in Control as soon as it becomes aware that the Change in Control will or may occur; and
 - (ii) provide the Department with all information reasonably requested by the Department in relation to the Change in Control, including in respect of any incoming owner or other person who is to obtain control over the Contractor or any holding company of the Contractor.
- (b) The Department's consent to the Change in Control may be given or withheld in the Department's sole discretion.

15.3 Subcontracting

- (a) The Contractor must not subcontract the performance of any of its obligations under this Agreement without obtaining the prior written consent of the Department, which may be withheld or given subject to any conditions which the Department, in its absolute discretion, determines.
- (b) A Subcontractor may not further subcontract the relevant obligations to another person without the Department's prior written consent.
- (c) If the Department consents to the engagement of any Subcontractor on a conditional basis, then the Contractor must comply with those conditions.
- (d) Any subcontracting by the Contractor does not relieve the Contractor of any of its obligations under this Agreement.
- (e) The Contractor must ensure that each Subcontractor complies with all of the terms of this Agreement to the extent that they are relevant to that Subcontractor.
- (f) The Department may withdraw its consent to a Subcontractor if in its reasonable opinion the Subcontractor is not meeting the requirements of this Agreement. The Department will notify the Contractor in writing that its consent is withdrawn and the Contractor will immediately terminate its arrangement with the relevant Subcontractor.
- (g) The Contractor is liable in accordance with this Agreement 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.
- (h) The Contractor is required to obtain and retain statements from each Subcontractor from time to time during the Term in respect of the Subcontractor's compliance with the various requirements of section 175B of the Workers Compensation Act 1987 (NSW), Schedule 2, Part 5 of the Payroll Tax Act 2007 (NSW) and section 127 of the Industrial Relations Act 1996 (NSW). Each statement must be in the form of the "Subcontractor's Statement" available from the State Insurance Regulatory Authority website

www.sira.nsw.gov.au. The Contractor will provide each statement obtained by it from the Subcontractors to the Department on request.

16. TERMINATION AND SUSPENSION

16.1 Termination for Convenience by either party

- (a) Without prejudice to any other rights of either party, either party may for its sole convenience, and without reason, terminate this Agreement by giving not less than 20 Business Days written notice to the other party.
- (b) The Contractor will be entitled, in accordance with the terms of this Agreement, to payment by the Department for all Services carried out up to the date of termination in accordance with clause 16.1(a).
- (c) Except as set out in clause 16.1(b), the Department will not be liable to pay the Contractor any other fees, charges, expenses, costs or other amounts as a result of the termination of this Agreement in accordance with clause 16.1(a). The Contractor irrevocably and unconditionally releases the Department from any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages or expenses in respect of, arising from or connected in any way with the termination of this Agreement under clause 16.1(a).

16.2 Termination for Cause by Department

- (a) Without prejudice to any other rights it may have, the Department may immediately terminate this Agreement by written notice to the Contractor if:
 - (i) the Contractor breaches this Agreement and either that breach is not capable of remedy or, if it is capable of remedy, has not been remedied within 20 Business Days of the Contractor being requested to do so by the Department;
 - (ii) any statement made by the Contractor, or information provided by the Contractor to the Department, is incorrect or incomplete in a way which would have affected the original decision of the Department to enter into this Agreement with the Contractor;
 - (iii) any representation or warranty made by the Contractor in this Agreement is untrue or misleading when made or repeated;
 - (iv) it is unlawful for the Contractor to comply with any of its obligations under this Agreement;
 - (v) any authorisation from any government authority or agency necessary to allow the Contractor to comply with its obligations under this Agreement is withheld or ceases to be in full force or effect;
 - (vi) the Department believes that the continuation of the Agreement may bring the Department into disrepute, affect the reputation of the Department or otherwise be detrimental to the Department;
 - (vii) the Contractor experiences a Change in Control which is not approved by the Department;
 - (viii) an Insolvency Event occurs in respect of the Contractor, to the extent there is no prohibition at law in respect of such termination;

- (ix) any Driver does not meet the requirements of clause 5.3(a);
 - (x) any allegations of Reportable Conduct are made against a Driver;
 - (xi) the Contractor or any of its Personnel fail to obtain or renew and maintain a cleared Working With Children Check or a cleared National Police Check, in either case, where required under this Agreement;
 - (xii) where the outcome of a performance evaluation of the Contractor under clause 18.1 is unacceptable to the Department; or
 - (xiii) the Contractor breaches or is removed from the Scheme.
- (b) If the Department terminates this Agreement under clause 16.2(a), the Contractor will have no claim whatsoever against the Department in respect of such termination and will be entitled, in accordance with the terms of this Agreement, only to payment by the Department for all Services carried out up to the date of termination.
- (c) The Contractor acknowledges that where a breach occurs under clause 16.2(a)(i) and is capable of remedy, the Department may suspend payment of the Fees for any period during the 20 Business Days within which the Contractor is endeavouring to remedy the breach but remains in breach.

16.3 Termination on death of Contractor

- (a) This clause 16.3 applies if the Contractor is an individual.
- (b) If the Contractor dies, this Agreement will terminate with effect on and from the date of death unless clauses 16.3(c) and 16.3(d) apply.
- (c) If, within 2 Business Days of the date of the death of the Contractor, the personal representative of the estate of the Contractor:
- (i) notifies the Department of the death of the Contractor, provides evidence of its appointment as the personal representative of the estate and states that it proposes to continue to perform the obligations of the Contractor under this Agreement; and
 - (ii) continues to perform the obligations of the Contractor under this Agreement,
- this Agreement will continue for a period of 3 months or such shorter period notified by the Department to the personal representative of the estate of the Contractor and the personal representative will be taken to be the Contractor for all purposes of this Agreement. Unless clause 16.3(d) applies, this Agreement will terminate on the expiry of that period.
- (d) If this Agreement is continuing in accordance with clause 16.3(c) then, at any time during the period referred to in that clause, the personal representative of the estate of the Contractor may request the Department to consider a novation of the rights and obligations of the Contractor under this Agreement to a third party and will provide to the Department all information regarding that third party as reasonably requested by the Department. Notwithstanding clause 15.1, the Department will act reasonably in considering any request made in accordance with this clause 16.3(d).
- (e) If the Department terminates this Agreement under this clause 16.3, the Contractor (and the estate of the Contractor) will have no claim whatsoever against the Department in

respect of such termination and will be entitled, in accordance with the terms of this Agreement, only to payment by the Department for all Services carried out up to the date of termination.

16.4 Suspension and Termination of Personnel

- (a) Without prejudice to any other rights it may have, the Department may, by notice to the Contractor, require the Contractor to immediately suspend or terminate the use any Personnel or Assisted Travel Support Officer in relation to the performance of the Services if the Personnel or Assisted Travel Support Officer:
 - (i) has, or is, acting in any way which has caused the Contractor to breach any of its obligations under this Agreement;
 - (ii) is charged with a serious criminal or motor traffic offence or any allegations of Reportable Conduct are made against that Personnel or Assisted Travel Support Officer; or
 - (iii) fails to obtain or renew and maintain a cleared Working With Children Check or a cleared National Police Check, where required under this Agreement.
- (b) The Contractor will be responsible for immediately replacing any Personnel who is required to be suspended or terminated in accordance with clause 16.4(a).
- (c) Where an Assisted Travel Support Officer is suspended or terminated in accordance with clause 16.4(a), the Student or Students designated for support by the Assisted Travel Support Officer cannot continue to travel on the relevant Run forming part of the Services until a relief or replacement Assisted Travel Support Officer and been appointed by the Department and notified to the Contractor.
- (d) If any Personnel or Assisted Travel Support Officer is suspended in accordance with clause 16.4(a), the Department will as soon as practicable notify the Contractor if the suspension is ended or if the Department has determined that the use of that Personnel or Assisted Travel Support Officer in relation to the performance of the Services is to be terminated.
- (e) The Department will not be liable to pay the Contractor any other fees, charges, expenses, costs or other amounts as a result of the suspension or termination of any Personnel or Assisted Travel Support Officer in accordance with clause 16.4(a). The Contractor irrevocably and unconditionally releases the Department from any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages or expenses in respect of, arising from or connected in any way with the suspension or termination of any Personnel or Assisted Travel Support Officer in accordance with clause 16.4(a).

16.5 Survival of rights on termination

- (a) Termination of this Agreement will be without prejudice to any rights or obligations which may have accrued under this Agreement on or before termination.
- (b) Clauses 3.2(d), 5.6(c), 13, 14, 16, 17, 19, 20 and 22 to 29 (inclusive) are continuing obligations and survive termination of this Agreement.

17. RECOVERY BY THE DEPARTMENT

- (a) 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.
- (b) Without limiting clause 17(a), any damages, costs and expenses recoverable by the Department from the Contractor as a consequence of the Contractor's breach of this Agreement may be deducted from money that may become due and payable to the Contractor under this 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:
 - (i) 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
 - (ii) recovered from the Contractor by the Department in an appropriate court.
- (c) Nothing in this clause will affect the rights of the Department to recover from the Contractor the whole of the debt or any balance that remains owing after any deduction.

18. PERFORMANCE EVALUATION, CONTRACT MANAGEMENT PLAN AND SERVICE LEVELS

18.1 Performance evaluation

- (a) The Department reserves the right to monitor and evaluate the performance of the Contractor of its obligations under this Agreement at any time during the Term, to ensure a high quality of Services are provided by the Contractor.
- (b) Any performance evaluation undertaken by the Department in accordance with clause 18.1(a) may include consultation with any school, Assisted Travel Support Officer, the Parents of any Student and other interested parties.
- (c) If any performance evaluation indicates that the Contractor has not complied with this Agreement, has acted in a manner that poses a risk to students' safety or that complaints have been made any Parents or schools about the Contractor or any of its Personnel, the Department may determine that the outcome of that performance evaluation is unacceptable to the Department.

18.2 Contract Management Plan and meetings with the Department

- (a) Without limiting clause 4.1(e), the Contractor must provide to the Department all reports and information required in accordance with the Contract Management Plan at the times specified in the Contract Management Plan and in the format required by the Department, acting reasonably.
- (b) Without limiting clause 18.2(a), the Contractor must participate in meetings requested by the Department about the operation of this Agreement as specified in the Contract Management Plan and as otherwise required by the Department from time to time.

18.3 Service Levels

- (a) The Contractor must, in supplying the Services and performing its other obligations under this Agreement, meet or exceed the Service Levels.
- (b) If the Contractor fails to meet any Service Level, the Contractor must, at no additional cost to the Department:

- (i) if requested by the Department, re-perform those Services which gave rise to the failure to meet the Service Level;
- (ii) arrange all additional resources reasonably necessary to perform the Services in accordance with the Service Level as soon as practicable;
- (iii) use all reasonable endeavours to correct the issue which caused the failure to meet the Service Level; and
- (iv) if requested by the Department, provide a detailed report on the steps taken by the Contractor to prevent similar future non-compliance with the Service Levels.

19. EXCHANGE OF INFORMATION BETWEEN GOVERNMENT AGENCIES

- (a) The Contractor authorises the Department to make available to other NSW Government departments or agencies information concerning the Contractor and its Personnel, including any information provided by the Contractor to the Department and any information relating to the Contractor's performance under this Agreement, or the Contractor or any of its Personnel's financial position (collectively, for the purposes of this clause 19, **Information**).
- (b) The Contractor acknowledges that the Information may be taken into account by NSW Government agencies in considering whether or not to offer the Contractor or any Personnel future opportunities for NSW Government work.
- (c) The Department regards the provision of the Information to any NSW Government department or agency as subject to qualified privilege within section 30 of the Defamation Act 2005.
- (d) The Contractor irrevocably and unconditionally releases and indemnifies the Department and the State of NSW from any claim of any nature in respect of any matter arising out of the provision of the Information to any NSW Government departments or agencies as contemplated by this clause 19.
- (e) The Contractor must obtain from all of its Personnel all consents required for the Contractor to comply with this clause 19.

20. PERSONAL INFORMATION

20.1 Protection and use of Personal Information

The Contractor must, and must ensure that each of its Personnel will, in relation to any Personal information that it or its Personnel collects, uses, holds or otherwise manages in relation to this Agreement:

- (a) comply with all Privacy Laws, as though it were a person subject to those Privacy Laws;
- (b) only use the Personal Information for the purposes of complying with its obligations under this Agreement;
- (c) not disclose the Personal Information to any other person without the Department's prior consent, which may be given subject to such conditions as the Department determines in its absolute discretion;
- (d) not transfer the Personal Information outside NSW or access it, or allow it to be accessed, from outside NSW;

- (e) protect the Personal Information from unauthorised access, use, disclosure, modification and other misuse; and
- (f) if it becomes aware that there has been an actual or suspected unauthorised access, use, disclosure, modification and other misuse of the Personal Information:
 - (i) immediately notify the Department;
 - (ii) comply with all directions from the Department in relation to that actual or suspected unauthorised access, use, disclosure, modification and other misuse of the Personal Information; and
 - (iii) take all reasonable steps to prevent such an occurrence from reoccurring.

20.2 No recording

Without limiting clause 20.1, the Contractor will ensure that no recordings, either audio, visual or audio/visual, are made of any Students at any time during the provision of the Services.

20.3 No limitation

Nothing in this clause 20 limits any obligations that the Contractor has at law with respect to privacy and the protection of Personal Information.

21. PUBLIC DISCLOSURE

The Department may disclose certain information in relation to this Agreement in accordance with its obligations under the Government Information (Public Access) Act 2009 (NSW) (**GIPA Act**). Nothing in this Agreement prevents the Department from disclosing any information which it is required to disclose by law, to satisfy the disclosure requirements of the State Auditor General, to satisfy the requirements of Parliamentary accountability, under State Government practices and procedures, or to satisfy any other recognised public requirement.

22. ACCESS TO CONTRACTOR'S PREMISES

The Contractor will at all times during ordinary working hours (that is, 9.00am to 5.00pm on each Business Day) permit, or arrange for, the Department and its representatives or agents to have reasonable access as required by the Department to the Contractor's and its Personnel's premises, Designated Vehicles, systems, documents and records to inspect, audit and review the processes and methods of the Contractor and its Personnel to ensure compliance with this Agreement.

23. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties about its subject matter. It replaces all prior arrangements, contracts, representations or undertakings about that subject matter.

24. VARIATIONS

Except as otherwise expressly provided in clause 3, no variation of this Agreement will be effective unless made in writing signed by both parties.

25. WAIVER

A waiver in respect of a breach of a term of this Agreement by a party will 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.

26. SEVERABILITY

Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this Agreement is not affected.

27. APPLICABLE LAW

This Agreement is governed by the laws of the State of NSW and the parties submit to the non-exclusive jurisdiction of the courts of the State of NSW.

28. NO AGENCY, EMPLOYMENT OR PARTNERSHIP

The Contractor agrees that the Contractor and its Personnel will not be taken to be, nor will it represent that it is, the employee, partner, officer and/or agent of the Department. The Contractor is solely responsible for its Personnel.

29. NOTICES

- (a) A notice, consent or other communication under this Agreement (**Notice**) is only effective if it is in writing and received in full and legible form at the addressee's address or email address set out in Schedule 1 or as otherwise notified by that party to the other party from time to time during the Term.
- (b) A Notice will be regarded as received at the time and on the day it is actually received, but if it is received on a day that is not a Business Day or after 5.00pm on a Business Day it is regarded as received at 9.00am on the following Business Day.

Executed as an Agreement.

Department of Education

Signed for and on behalf of the **Crown in right of the State of NSW acting through the Department of Education** by its authorised signatory:

Signature of authorised signatory

Full name and position of authorised signatory

Contractor

Signed by

Signature of Contractor

SCHEDULE 1 – AGREEMENT DETAILS

ITEM	DETAIL	
Item 1 DEPARTMENT ADDRESS DETAILS	Address:	105 Phillip Street, Parramatta NSW 2015
	Email address for notices:	businessassurance.astp@det.nsw.edu.au
Item 2 CONTRACTOR	Name:	
	ABN:	
	Address:	
	Email address for notices:	
Item 3 RATES FOR FEES	As published by Department on its website, https://education.nsw.gov.au/public-schools/astp/contractors/contractor-payments	
Item 4 COMMENCEMENT DATE	1 January 2024	
Item 5 EXPIRY DATE	31 December 2024	

SCHEDULE 2 – 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 Communities and Justice (DCJ), Office of the Children’s Guardian (OCG) and the Office of the Advocate for Children and Young People (OACYP). 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.

Behaviour of the Contractor, Drivers, Assisted Travel Support Officers and the Contractor’s other Personnel 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 Designated 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 Designated 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 the 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 Designated 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.

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. Any behaviour that affects the safety and wellbeing of other students and staff must be reported to the principal and the Department.
- **ask** the student, any of their parents, guardians or carers 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, guardian, carer 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 Communities and Justice (DCJ).

When an allegation concerning a Department employee, contractor or its personnel, is of a child protection nature, the principal must notify DCJ and/or the police and must also notify Professional and Ethical Standards (PES) 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 notification to the Department of Communities and Justice (DCJ) and/or NSW Police.**

This may result in a police investigation and criminal charges.

- **A notification to Professional and Ethical Standards (PES)**

PES 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

PES 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

PES 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

PES will then determine which allegations must be reported to the NSW Ombudsman and which matters require a report to the Office of the Children's Guardian (**OCG**). This may affect future applications for child related employment/engagements. Refer to <https://ocg.nsw.gov.au/working-children-check>.

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 employee assistance program (if available).

Other information and contacts

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

NSW DEPARTMENT OF COMMUNITIES AND JUSTICE

Child Protection Helpline 132 111

<https://www.dcj.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 3 – CONTRACT MANAGEMENT PLAN

[To be inserted by Department.]