



Education
Public Schools

SUBCONTRACT AGREEMENT

Provision of services for the Assisted School Travel Program

Further information

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Subcontract

Parties

Full details of the Head Contractor are set out in the Agreement Details. (**Head Contractor**)

Full details of the Head Contractor are set out in the Agreement Details. (**Subcontractor**)

Background

- A. The NSW Department of Education and Communities has set up an 'Eligible Service Providers List' for providing transport services for the Assisted School Travel Program. Under a Head Agreement, the Head Contractor is an Eligible Service Provider.
- B. The Head Agreement covers the Department's requirement for the delivery of assisted transport services for Run(s) allocated to the Head Contractor. The Department can obtain services from various suppliers and can vary and cancel the services (including Runs) from time to time.
- C. The Head Contractor may require the Subcontractor to provide services for the Program. The Subcontractor must not itself subcontract the services.

General terms

1. Definitions and interpretation

1.1. Definitions

In this Agreement:

Additional Terms has the meaning given by clause 4.6.

Agreement means this document and includes the schedules and annexures;

Agreement Details means the details specified at **Schedule 1 (Agreement Details)**.

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.

Caregiver means, for a Student, that Student's parent(s), guardian(s) or carer(s).

Child Protection Laws has the meaning given by clause 7.5(a).

Commencement Date has the meaning given by clause 2.

Department means the NSW Department of Education and Communities.

Designated Driver has the meaning given by clause 4.2.

Designated Vehicle has the meaning given by clause 4.2.

Designated Vehicle Requirements means the requirements set out at Schedule 4 as changed by the Department from time to time.

End Date is the date which the Head Agreement expires or is otherwise terminated.

Fees has the meaning given by clause 11(a).

Head Agreement means the agreement between the Department and the Head Contractor for 'Eligible Service provider List Contract for the provision of Assisted School Travel Services to the Assisted School Travel Program'.

Laws means the provisions of any statute, rule, regulation, proclamation, ordinance, by-law, present or future, whether local, state, federal, and includes statutory codes and standards.

Licenses and Consents means any licenses, consents, authorisations, recognitions, qualifications, approvals and permits required by applicable laws and Regulatory Requirements to provide the services and to perform obligations under this Agreement.

Personnel of a person includes that person's employee, agent, officer, or contractor. A reference to the Head Contractor's Personnel does not include the Subcontractor. A reference to Subcontractor's Personnel does not include the Head Contractor.

Program means the Department's Assisted School Travel Program.

RAMS means NSW Roads and Maritime Services.

Regulatory Requirements means:

- (a) any industry-wide non-statutory rule or obligation;
- (b) other non-statutory rules or a non-statutory mandatory code of conduct; or
- (c) any non-statutory rule of any industry body.

Reportable Conduct means grounds as detailed in Schedule 5.

Run means a route to transport Student(s) and Travel Support Officers to be provided by the Head Contractor under the Head Agreement.

Run Card means a card specifying any Run(s) allocated to the Head Contractor under the Head Agreement from time to time.

Run Requirements means the requirements set out at Schedule 3.

Special Conditions for Taxis means the conditions set out at Schedule 6.

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

Subcontractor Documentation has the meaning given at clause 3.2(a).

Subcontractor Run has the meaning given at clause 5.1.

Travel Support Officer means a person engaged by the Department to provide supervision or support for a Student during a Run.

Working With Children Requirements has the meaning given by clause 7.5

1.2. Interpretation

In this Agreement, unless the contrary intention appears:

- (a) a reference to:

- (i) the singular includes the plural and the plural includes the singular;
- (ii) a statute, ordinance, code or other law includes a regulation or other statutory instrument made or issued under it and consolidations, amendments, re-enactments or replacements of any of them;
- (b) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (c) if an act must be done on a given day which is not a Business Day, it must be done instead on the next Business Day;
- (d) the words **include, including, for example** or **such as** when introducing an example, do not limit the meaning of the words to which the example relates to the example or to examples of a similar kind; and
- (e) headings and any index are for convenience only and do not form part of this Agreement or affect its interpretation.

2. Term

This Agreement will commence on the day (**Commencement Date**) that the Head Contractor receives (if any) written approval from the Department for services to be subcontracted to the Subcontractor in relation to the Program. The Agreement will continue from the Commencement Date until the End Date, unless terminated earlier in accordance with this Agreement (**Term**).

3. Process for approval of Subcontractor by Department

3.1. Seek Department's approval for Subcontractor

As soon as possible after the date of this Agreement, the Head Contractor and the Subcontractor will use their best endeavours to complete and compile the following:

- (a) an 'Application for Approval to Use a Subcontractor to Provide Assisted School Travel Services'
- (b) a copy of a fully signed version of this Agreement; and
- (c) the Subcontractor Documentation. (These documents are defined and described below at clause 3.2.)

The documents must be agreed before they are submitted to the Department for approval.

(This is known as the **Approval Application Documents**.)

The Head Contractor must keep the Subcontractor reasonably informed on the Department's consideration of the Approval Application Documents.

If the Subcontractor is approved by the Department in writing, then the Subcontractor may provide the services as required by the Head Contractor from time to time.

This Agreement will end if the Department provides written notice to the Head Contractor denying or withdrawing the approval (for whatever reason).

3.2. Subcontractor Documentation for approval process

- (a) As part of the Approval Application Documents, the Subcontractor must obtain and compile the following documents:

- (i) **(documents for vehicles)** for each vehicle the Subcontractor proposes to use, including 'relief' vehicles, true and correct copies of:
 - (A) certificate of registration or renewal for each vehicle; and
 - (B) a RAMS 'Consent to Vehicle Check' form signed by the registered owner of the vehicle; and
 - (C) any 'engineering certificates' required under the Run Requirements.
- (ii) **(documents for drivers)** for each driver the Subcontractor proposes to use, including 'relief' drivers, true and correct copies of:
 - (A) a RAMS 'Consent to Driver Licence Check' form signed by the driver;
 - (B) all documents for to the identification requirements (set out at cl 7.4) and Working With Children Requirements (see cl 7.5);
 - (C) a 'Medical Assessment Certificate' (see cl 8.2);

For each driver, confirmation that the driver possess English language skills (see clause 8.3).
- (iii) **(documents for insurance)** certificate of currency for :
 - (A) public liability insurance policy (see cl 15(a)(i));
 - (B) comprehensive business insurance (taxi insurance as per the Special Conditions for Taxis at Schedule 6).
 - (C) current workers compensation policy (see cl 15(a)(ii)).

(This is the **Subcontractor Documentation**.)

Clause 4.3 sets out provisions relating to the ongoing currency of the Subcontractor Documentation during the Term.

4. Services

4.1. Provision of services

- (a) The Subcontractor must provide the services according to this Agreement, together with all services, functions and responsibilities not specifically described in this Agreement, but which are incidental to, or otherwise necessary for the Subcontractor to provide the services.

To be clear, the Subcontractor must not perform any services until, and only if, approved by Department.

- (b) The Subcontractor acknowledges it will transport students with disability and that the needs of the Program are subject to change at any time and on little or no notice. The Subcontractor acknowledges that the Department may arrange the transport of students by the most effective means available as determined its absolute discretion.
- (c) The Subcontractor:
 - (i) must manage all Designated Drivers;

- (ii) is responsible for meeting all expenses and costs associated with providing the services including vehicle running costs, payment of tolls, modification to vehicles, remuneration of drivers and provision of restraint systems;
- (iii) must have systems in place to ensure clear and continuous communications with the Head Contractor, the Department, schools, Students and Caregivers, including responding to issues in a timely manner.

The Subcontractor acknowledges that time is of the essence in responding to any communications. For this purpose the Subcontractor must regularly monitor its email and phone.

- (d) This Agreement does not:
 - (i) imply that the Subcontractor will work or that the Subcontractor is an exclusive provider; or
 - (ii) oblige the Head Contractor (or Department) to allocate any Run(s) to the Subcontractor;
 - (iii) guarantee any period of engagement with the Subcontractor.

4.2. Designated vehicles and drivers

- (a) **(Approval of vehicles and drivers)** If the Subcontractor is approved by the Department, then:
 - (i) each vehicle specifically approved by the Department, from time to time, may be used by the Subcontractor (**Designated Vehicle**).
Specific requirements relating to all Designated Vehicles are set out at clause 6.
 - (ii) each driver specifically approved by the Department, from time to time, may be used by the Subcontractor (**Designated Driver**).
Specific requirements relating to all Designated Drivers are set out at clause 7.

To be clear, any vehicle or driver not approved by the Department (in writing) must not be used in connection with the services.

- (b) **(Approval of further vehicles and drivers)** If the Subcontractor, from time to time, proposes to introduce a replacement vehicle or driver then the Subcontractor must provide full details to the Head Contractor. Such full details must include all information and documents consistent with those provided as part of the Subcontractor Documentation under clause 3.2.

The Head Contractor will then seek the Department's written approval of such vehicle or driver. Such vehicle or driver must not be used until written approval (if any) is provided by the Department and then notified by the Head Contractor to the Subcontractor.

4.3. Keep Subcontractor Documentation up to date

- (a) The Subcontractor must ensure that, at all times, the Subcontractor Documentation remains current and up-to-date during the Term.
- (b) The Subcontractor must provide to the Head Contractor copies of documents evidencing any renewal within 3 days of the renewal.

4.4. Performance and service standards

Without limiting any other obligation in the Agreement, the Subcontractor must perform the services:

- (a) with due care, skill and diligence, in a proper, professional and timely manner;
- (b) in compliance with all applicable Laws, Regulatory Requirements, Licenses and Consents, including those relating to the environment, and workplace health and safety;
- (c) in accordance with all relevant policies of the Department disclosed to the Head Contractor or Subcontractor from time to time. (This will include all Department policies relating to 'Equal Employment Opportunity' and 'Anti-Discrimination'.);
- (d) in accordance with any directions given by the Head Contractor or the Department or any of their Personnel from time to time; and
- (e) where no timing requirements are specified in the Agreement, or notified to the Subcontractor, reasonably promptly and without undue delay.

4.5. Performance evaluation

The Head Contractor itself, or through the Department, may monitor and evaluate the performance of the Subcontractor. This may include consulting schools and Caregivers and accessing the Subcontractor's premises (e.g. to conduct an onsite audit) in accordance with clause 10(b).

4.6. Additional Terms

- (a) The parties may agree additional terms (**Additional Terms**) to apply to this Agreement. Any Additional Terms must be included at Schedule 2.
- (b) Additional Terms must not be inconsistent with or otherwise reduce or take-away from the terms and condition set out in this Agreement (including the Run Requirements and Designated Vehicle Requirements).
- (c) Where the Additional Terms do not comply with clause 4.6(b), such Additional Terms will not form part of this Agreement.

The parties acknowledge that Additional Terms inconsistent with this Agreement may result in the Department cancelling Head Contractor Runs or even terminating the Head Agreement.

5. Runs

5.1. Runs

- (a) (**Subcontractor Runs**) From time to time, the Head Contractor and the Subcontractor may agree that the Subcontractor will perform Run(s) (this is a **Subcontractor Run**).
- (b) (**Details in Run Card**) For each Subcontractor Run, the Head Contractor will provide the Subcontractor with a Run Card. The Run Card will include the details of all Students to be transported, including details of pick-up addresses, destination and any requirements relating to Travel Support Officers.
- (c) (**Comply with Run Card**) The Subcontractor must provide the services strictly in accordance with the Run Card.

To be clear, under no circumstances should services be provided in a manner that is different to the requirements set out in the applicable Run Card. This includes by runs being combined, or students dropped-off at unauthorised addresses.

The Subcontractor must not make or agree to any arrangements which are inconsistent with the Run Card unless the Department has provided, to the Head Contractor, its prior written consent to such arrangements. For example, the Subcontractor must not agree to any private arrangements with Caregivers or schools to vary travel patterns or routes including varying pick-up or drop-off times.

- (d) **(Comply with Run Requirements)** The Subcontractor must it complies with the Run Requirements for a Run. (These requirements are set out at Schedule 3.) The Run Requirements may be changed from time to time by the Department – the Head Contractor will advise the Subcontractor of such changes.

To be clear, the Subcontractor must ensure that each Designated Driver fully complies with the Run Requirements.

- (e) **(maximum Student travel time during each one-way trip)** The Subcontractor must ensure that, for each Student, the maximum travel time is no more than 90 minutes for each one-way trip, unless otherwise approved in writing by the Department.

5.2. Change or cancellation of Runs

- (a) **(Runs may be changed or cancelled)** The Subcontractor Run(s) are continually subject to review, rationalisation, cancelation and re-organisation by the Department. The Department may, without notice, change or cancel a Subcontractor Run at the Department's discretion.

To be clear, a change to a Run may include:

- (i) changes to Students including more or less;
 - (ii) changes to addresses;
 - (iii) having or not having a Travel Support Officer; and
 - (iv) adding, consolidating or cancelling Runs.
- (b) **(New Run Cards)** If a change affects a Subcontractor Run then a new Run Card will be provided by the Head Contractor to the Subcontractor.
- (c) **(Potential cost or financial impact if change to Run(s))** The Subcontractor acknowledges and accepts that no compensation will be payable to the Subcontractor (by anyone, including the Department) if any change to a Run(s) has any cost or financial or other impact on the Subcontractor.

6. Designated Vehicles

The Subcontractor must only use Designated Vehicles. The Department may withdraw its approval of any vehicle at any time.

6.1. Comply with Designated Vehicle Requirements

The Subcontractor must ensure all Designated Vehicles comply with the Designated Vehicle Requirements: (These requirements are set out at Schedule 4.) The Designated Vehicle Requirements may be changed from time to time by the Department – the Head Contractor will advise the Subcontractor of such changes.

6.2. Relief Vehicles

The Subcontractor must, at no additional cost, ensure that its fleet of Designated Vehicles include relief vehicles in case a Designated Vehicle which is normally used for a particular Subcontractor Run cannot be used.

If changes to use of the Designated Vehicles is necessary, the Subcontractor must inform the Head Contractor, Department, schools and Caregivers of such change, prior to the commencement of any change.

7. Personnel

7.1. Subcontractor's Personnel

- (a) The Subcontractor must ensure that its Personnel, including any Designated Drivers, perform the services in accordance with this Agreement.
- (b) The Subcontractor must employ only such persons in respect of this Agreement who:
 - (i) are skilled, qualified, experienced and trained in providing the services; and
 - (ii) hold all necessary Licences and Consents.
- (c) The Subcontractor undertakes to comply with all Laws and Regulatory Requirements in relation to itself and any of its Personnel.

7.2. Health and Safety

The Subcontractor must comply with all applicable obligations in connection with the *Work Health and Safety Act 2011* (NSW). The Subcontractor must also comply with any regulations made under this Act and any relevant 'Codes of Practice' made under this Act.

7.3. Payment of Wages and Allowances

- (a) **(Personnel to be paid in accordance with law)** The Subcontractor must ensure that all its Personnel are paid all wages and allowances in accordance with relevant Laws or Regulatory Requirements.
- (b) **(Statement that wages and allowances have been properly paid)** The Head Contractor may request, from time to time, that the Subcontractor provide a statement that, for the services, there is:
 - (i) no remuneration or other allowances or benefits due and owing by the Subcontractor to its Personnel (including deemed workers under any legislation);
 - (ii) no payroll tax due and owing by the Subcontractor; and
 - (iii) no unpaid workers compensation insurance premiums due.

The Head Contractor may refuse to pay any Subcontractor invoices for services until the Subcontractor has complied with this clause.

- (c) **(Responsibility for Subcontractor's Personnel)** The Subcontractor is fully responsible for the Subcontractor's Personnel 'on-costs', including wages, salaries, holiday pay or allowances, sick pay, workers' compensation, superannuation, PAYG tax, payroll tax, fringe benefits tax, or any other tax or levy.

7.4. Identification requirements

The Subcontractor must ensure that its Personnel satisfy all pre-engagement character clearance requirements, as required by the Head Contractor or the Department from time to time, which may consist of:

- (a) identity verification (e.g. production of a passport, citizen certificate); and

- (b) character assessment (e.g. disclosure of criminal convictions, consenting to a police records checks).

7.5. Child protection requirements

- (a) The Subcontractor acknowledges that it is aware of the requirements of the *Child Protection (Working with Children) Act 2012* (NSW) and all related laws concerning child protection (**Child Protection Laws**).
- (b) The Subcontractor must, and must ensure that all its Personnel, comply with the requirements of:
 - (i) the Child Protection Laws including as amended from time to time; and
 - (ii) any Departmental policy relating to child protection as notified to the Subcontractor from time to time.
- (c) All the Subcontractor's Personnel engaged in providing services must, at the Subcontractor's expense, certify that they are not a prohibited person under any Child Protection Laws and undergo any screening, such as the Working with Children Check, as required under Child Protection Law or the Department from time to time.

(These are the **Working With Children Requirements**.)
- (d) Any of the Subcontractor's Personnel that is a prohibited person under any Child Protection Legislation must not be used for any services.
- (e) The Subcontractor must ensure that it and its Personnel:
 - (i) are aware of the specific instructions on Reportable Conduct;
 - (ii) immediately report any and all concerns about suspected risk of harm to children and young people to the Department and then the Head Contractor.
- (f) The Subcontractor acknowledges that the Subcontractor, the Designated Drivers and Travel Support Officers have a direct responsibility under Child Protection Laws to ensure that Students are not placed 'at risk'.

7.6. Provide evidence

The Subcontractor must provide evidence its compliance with clause 7.4 and 7.5 at the Head Contractor's request from time to time.

7.7. Removal of Personnel

If Personnel are unable or not suitable in the reasonable opinion of the Department to undertake the work assigned to them, the Contractor must promptly provide replacement Personnel acceptable to the Department at no additional charge.

8. Designated Drivers

8.1. General requirements relating to Designated Drivers

- (a) (**Only use Designated Drivers**) The Subcontractor must ensure that it only uses Designated Drivers.

- (b) **(Notification of offences)** The Subcontractor must advise the Head Contractor in writing within 18 hours of a charge or conviction for any criminal, traffic or any other offence relating to a Designated Driver.
- (c) **(Requirements for drivers)** The Subcontractor must ensure that all Designated Drivers:
- (i) hold a current full driver licence for the applicable Designated Vehicle type being operated by that Designated Driver and any other Licence or Consent that may be required to operate the relevant Designated Vehicle. (To be clear, no person holding a provisional 1 or 2 licence can be used, under any circumstances, to provide services.);
 - (ii) are of good character;
 - (iii) have a good driving record;
 - (iv) are fully aware of all information provided by the Head Contractor (or the Department or Caregivers) in relation to the physical and psychological wellbeing of Students;
 - (v) if requested, provide their drivers licence to any Department Personnel or school staff or Caregivers.
- (d) **(Comply with Department's code of conduct)** The Subcontractor must ensure that all Designated Drivers are aware of the Department's 'Code of Conduct Policy' (**Code**). The Subcontractor and its Personnel must comply with the Code.

*The Code can be accessed via the Department's Internet Site:
www.det.nsw.edu.au/policies/index.shtml*

8.2. Medical assessment

Before being approved as a Designated Driver, each driver must complete a medical assessment. A qualified health professional is to complete the Department's 'Medical Assessment Certificate'. The Head Contractor will provide the Subcontractor with a copy of such certificate. After the certificate has been completed by a qualified health professional it must be provided to the Head Contractor. The Head Contractor will then provide the certificate to the Department in order to seek approval for that driver as a Designated Driver.

Each year the Head Contractor may request Designated Drivers provide an updated 'Medical Assessment Certificate'. The Subcontractor must comply with such a request.

8.3. English language skills

The Subcontractor must ensure that all Designated Drivers have adequate English language skills sufficient to allow them to carry out the obligations under this Agreement. If there is a complaint about inadequate English language skills the Subcontractor must, at its own cost, have the English language skills of such Designated Driver tested in a method approved by the Head Contractor.

If the Designated Driver fails any such English language skills test that driver must not be used anymore.

8.4. Consistent provision of services

As far as reasonably possible, the Subcontractor must ensure that the same Designated Driver and Designated Vehicle is used for the same Subcontractor Run during a school year. This is to promote stable and regular services.

9. Travel Support Officers

- (a) The Travel Support Officer must be collected and returned by the Designated Driver to mutually agreed pick-up and drop-off points. If this causes any delay, Head Contractor may cancel that Subcontractor Run.
- (b) The Subcontractor must certify on the Travel Support Officer's claim form, the time/date any Travel Support Officer services started/ended.

10. Access

- (a) **(Official establishments)** The Subcontractor must ensure that all Personnel entering official establishments, including schools, are approved to be on-site. Such Personnel must comply with all applicable policies and regulations regarding security and conduct and discipline.
- (b) **(Access to Subcontractor's premises)** The Subcontractor must, on request, allow the Head Contractor or the Department and their representatives to have reasonable access, as required, to inspect, audit and review the Subcontractor's compliance with this Agreement. This will include access to:
 - (i) the Subcontractor's premises, systems, documents and records;
 - (ii) Designated Vehicles and Subcontractor Personnel.

11. Fees and invoicing arrangements

- (a) **(fees)** The Head Contractor will pay the Subcontractor the fees (**Fees**) as set out in Schedule 2 (Fees and Invoicing and Additional Terms).
- (b) **(invoicing)** The Subcontractor will be entitled to invoice the Head Contractor for the Fees in accordance with the invoicing arrangements set out in Schedule 2 (Fees and Invoicing and Additional Terms).
- (c) **(suspension of payment of fees)** If the Subcontractor refuses or fails to comply with the Agreement (or carry out the instructions or other requirements of the Department) (a **Matter**), then the Head Contractor may suspend all payments to the Subcontractor (without cost to the Head Contractor) until the Matter has been fully resolved.
- (d) **(withholding sums)** The Head Contractor may withhold from any amounts due to the Subcontractor, such amounts as the Head Contractor is obliged to withhold under any relevant Laws including taxation or other legislation.

12. Events impacting the Services and Fees

- (a) **(Fees not impacted by temporary Student absence)** Entitlements to Fees, for each Subcontractor Run, will not be impacted or otherwise adjusted for temporary Student absences (e.g. illness).
- (b) **(Scope of services may be changed for extended Student absence)** If a Student is or will be absent permanently or for an extended period then Subcontractor Run(s) may be cancelled or reduced.
- (c) **(Notifications from Department if absences)** Under the Program, schools and Caregivers are required to notify the Head Contractor if they are aware of any absence of a Student. The Head Contractor will notify the Subcontractor as soon as possible after being notified such information.

- (d) **(Notifications to the Department if absences)** The Head Contractor is required to notify the Department of any temporary Student absences on a monthly basis. For this purpose, the Subcontractor must notify the Head Contractor of any temporary Student absences in any period by providing full written details of such absences on the relevant payment claim form.
- (e) **(Fees adjustment if natural hazard)** If the Subcontractor is prevented from providing the services (in whole or part) as a result of a natural hazard (e.g. bushfire) then the Subcontractor will only be entitled to Fees for any part of the services actually performed.

Note: To assist with avoiding misunderstanding and potential impacts on Fees, the Subcontractor should notify the Head Contractor as soon as the Designated Driver becomes aware of any adverse traffic conditions or any other factor that may require a departure from the best route as set out in the Run Requirements.

13. Training

From time to time, the Head Contractor may require the Subcontractor (including its Personnel) to undertake training (at the Subcontractor's cost). Training may be for safety matters or to improve service quality. Such training may be conducted or arranged by the Department. Training may include:

- (a) training in connection with Child Protection Laws;
- (b) how to restrain wheelchairs and their occupants or operation of hoists and ramps; or
- (c) specialised training in relation to the identified needs of Student(s) being transported.

14. Use of information by government

The Subcontractor acknowledges and accepts that the Department may make available to other NSW government departments or agencies or entities information relating to the Subcontractor and the services.

This may include the Subcontractor Documentation or information relating to the Subcontractor's performance or details about the Subcontractor's financial position.

This information may be taken into account by any NSW Government department or agency for any future NSW government work.

The Subcontractor acknowledges and accepts that the Department, under the Program, accepts no liability for use or disclosure of any information.

The Subcontractor must not make any claims against the Head Contractor or the Department or the Department's Personnel for any loss or damage arising out of or in connection use or disclosure of any such information.

15. Insurance

- (a) **(maintain insurance)** The Subcontractor must hold and maintain:
 - (i) public liability insurance to the value of at least the amount of \$20million in respect of each claim; and
 - (ii) workers compensation insurance as required by Laws; and
 - (iii) "business use" compulsory third party insurance policy for each Designated Vehicle; and

- (iv) "business use" comprehensive motor vehicle insurance policy for each Designated Vehicle(s) which covers damage caused by all drivers using the vehicles.

Taxi insurance must be obtained in accordance with Special Conditions for Taxis.

- (b) **(evidence)** Within 5 days of the Commencement Date and then within 5 days of the anniversary of the renewal date for each policy, the Subcontractor must provide evidence to the Head Contractor that the required policies are current and in effect.

16. Liability and indemnity

- (a) **(Department accepts no liability under Program)** The Subcontractor acknowledges and accepts that the Department, under the Program, accepts no liability for injuries suffered by Students, Travel Support Officers, anyone's Personnel or any other person in relation to the services arising out of or in connection with this agreement.

The Subcontractor must not make any claims against the Department or the Department's Personnel for any loss or damage in relation to the services arising out of or in connection with this agreement.

- (b) **(Indemnity in favour of Head Contractor)** The Subcontractor indemnifies and must keep indemnified the Head Contractor against any claim, loss or expense or damages (including for personal injury or death or damage to property) which the Head Contractor pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) as a result of any act or omission of the Subcontractor or its Personnel in performing the services arising out of or in connection with this agreement.

17. Termination and suspension

17.1. Termination if Head Agreement ends

If the Head Agreement is terminated in whole or part, for any or no reason, then this Agreement will automatically terminate.

17.2. Termination for Convenience

- (a) **(ending by Head Contractor)** The Head Contractor may, for any or no reason, terminate this Agreement in whole or part by 15 Business Days written notice to the Subcontractor.
- (b) **(ending by Subcontractor)** The Subcontractor may, without reason, terminate this Agreement in whole or part by 25 Business Days written notice to the Head Contractor.

17.3. Termination for Cause

- (a) Without prejudice to its rights at law, the Head Contractor may immediately terminate this Agreement, in whole or in part, by written notice to the Subcontractor:
 - (i) **(breach of agreement)** if the Subcontractor breaches this Agreement;
 - (ii) **(abandonment of services)** if the Subcontractor abandons or refuses to proceed with any part of the services;
 - (iii) **(criminal or traffic offences)** if the Subcontractor or any of its Personnel is charged with a serious criminal or motor traffic offence;
 - (iv) **(allegations of Reportable Conduct)** if the Subcontractor or any of its Personnel are the subject of any allegations of 'Reportable Conduct';

- (v) **(Department notifies relationship or reputational issues)** if there is a change in the affairs or reputation of the Subcontractor which in the reasonable opinion of the Department or Head Contractor causes a deterioration in the nature or quality of the relationship with the Subcontractor or the affiliation it involves; or
- (vi) **(unacceptable performance evaluation)** where a performance evaluation is unacceptable to the Department or the Head Contractor; or
- (vii) **(insolvency)** if the Subcontractor or a related body corporate becomes or threatens to become insolvent.

17.4. Payments on termination

Subject to this Agreement, on termination (in whole or part) the Subcontractor will be entitled to be paid all Fees for services performed up to the date of termination. Otherwise, the Head Contractor is not liable for any additional or other fees, charges, expenses or costs.

17.5. Suspension

The Head Contractor may by notice in writing to the Subcontractor immediately suspend any of the Subcontractor's rights under this Agreement if the Head Contractor is entitled to terminate this Agreement under clause 17.3.

The Head Contractor must stop suspending the Subcontractor's rights under this clause if the Head Contractor's right to terminate this agreement under clause 17.3 ends.

17.6. No liability for consequential losses

The Head Contractor will not, in any circumstances, be liable for any consequential loss or loss of profits suffered by the Subcontractor as a result of the suspension or termination under this Agreement.

18. Control, assignment and subcontracting

18.1. No change in Control

Any change in Control (as defined by Section 50AA of the *Corporations Act 2001* (Cth)) of the Subcontractor or any proposed or other action by the Subcontractor to reconstruct or amalgamate itself, requires the prior written consent of the Head Contractor and the Department. The Subcontractor must seek such consent by giving full details of any such proposed event to the Head Contractor. The Head Contractor will then seek the Department's written consent.

18.2. No assignment and no subcontracting

The Subcontractor must not:

- (a) assign all or any of its rights under this Agreement.
- (b) subcontract the performance of any part or all of this Agreement.

19. General

19.1. Waiver

A waiver in respect of a breach of this Agreement by a party must not be taken to be a waiver in respect of any other breach. The failure of either party to enforce a breach of this Agreement must not be interpreted as a waiver of that breach.

19.2. Relationship of parties

Nothing in this Agreement creates a relationship between the Parties of partnership, employment, principal and agent or of trustee and beneficiary.

19.3. Governing law and jurisdiction

The law of New South Wales governs this Agreement. The Parties submit to the exclusive jurisdiction of the courts of New South Wales and any courts which are entitled to hear appeals from them.

SIGNED as an Agreement.

Signed by)
[insert company name])
ACN [insert ACN])
in accordance with section 127 of the)
Corporations Act 2001:)

.....
Signature of director/company secretary

.....
Signature of director

.....
Name of director/company secretary

.....
Name of director

Signed by)
[insert company name])
ACN [insert ACN])
in accordance with section 127 of the)
Corporations Act 2001:)

.....
Signature of director/company secretary

.....
Signature of director

.....
Name of director/company secretary

.....
Name of director

Schedule 1 (Agreement Details)

Description	Details
Details of head contractor	Name: ACN: ABN: Address:
Details of subcontractor	Name: ACN (if applicable): ABN: Address:
Head contractor's details for service of notices	Name: Address: Email:
Subcontractor's details for service of notices	Name: Address: Email:

Schedule 2 (Fees and Invoicing and Additional Terms)

Fees and Invoicing

Description	Details
Fees	[insert details of fees arrangement agreed between the head contractor and subcontractor. This information does not need to be shared with the Department.]
Invoicing	[insert details – e.g. 30-day payment period on receipt of invoice. This may include a requirement for Subcontractor to be responsible for 'Recipient Tax Created Invoice' each month for each contracted Subcontractor Run.]

Additional Terms

Description	Details
[heading of item]	[insert any additional terms. If none, delete this table and specify 'Not Applicable'.]
[heading of item]	[insert any additional terms. If none, delete this table and specify 'Not Applicable'.]

Schedule 3 (Run)

Item	Run Requirement
Use of best routes	<p>The Subcontractor must ensure that the shortest practicable route for Subcontractor Runs is used (i.e. minimum distance to/ from particular destinations). This is to ensure that all Students and Travel Support Officers spend the least amount of time as possible in transit and arrive at the applicable destination(s) at the nominated time(s).</p> <p>The Subcontractor must notify the Head Contractor of any adverse traffic conditions or any other factor that may require departure from the best route for the applicable Subcontractor Run(s). However, the Subcontractor must not implement any change to the best route unless the Head Contractor advises the Subcontractor that the Department has agreed to such change.</p>
Communicating details to Caregivers	<p>The Subcontractor must, for each Subcontractor Run, contact each Caregiver to receive details for pick-up and drop-off times and to provide the name of the relevant Designated Driver, including his/her contact information and the details of the Designated Vehicle to be utilised in providing the service. The Subcontractor must ensure that such details must remain up-to-date at all times.</p>
risk and safety requirements to be observed during a Run	<p>As part of a Subcontractor Run:</p> <ul style="list-style-type: none"> - (monitor safety) each Students' safety must be monitored closely at all times; - (avoid need to cross roads) pick-up and alighting points must not require the Student(s) to cross any roads; - (stay near vehicle) the Designated Driver must not leave the immediate vicinity of their Designated Vehicle if a Student is inside or around the vehicle. (A Designated Driver should only leave the vicinity of their vehicle in an emergency having regard to the safety/well-being of all Students.); - (only stop as authorised) no unauthorised stops must be made. (This includes a proposed unauthorised stop at the request of a Student. Drop-off and pick-up points can only be approved by the Department); - (no unauthorised persons) no unauthorised persons are to travel in a Designated Vehicle; - (no other business) the Designated Vehicle must not be used to undertake any other non-Agreement related services; - (restraints) all safety restraints must be used which are reasonably deemed necessary or are otherwise required to be used under applicable Regulatory Requirements (including RAMS regulations); - (student medication) no medication must be administer to a Student, without written approval from the Department; - (no smoking) there must be no smoking. This includes ensuring no smoking in or around school grounds or in the Designated Vehicle at any time; - (alcohol and drugs) a Designated Driver must not be under the influence of alcohol or any other substance or drug that would impair the performance of the services; - (physical contact) a Designated Driver must not administer corporal punishment to a Student or otherwise have any inappropriate physical contact; - (report bad behaviour) a Designated Driver must not must report, as soon as reasonably possible, any inappropriate student behaviour to the Subcontractor. (The Subcontractor must then immediately provide that information to the Head Contractor).

Item	Run Requirement
Livery	The Subcontractor must comply with any 'livery' requirements notified to it, from time to time, by the Department or the Contractor. For example, to avoid confusion as to who is responsible for the provision of the services, this may include the Subcontractor taking reasonable steps to use the 'livery' of the Head Contractor.
manual lifting of a student	If as part of a Subcontractor Run special lifting equipment is unavailable or unsuitable, then the Designated Driver may be required to assist with the manual lifting of Student(s) into and out of the Designated Vehicles. Such manual lifting should only be undertaken if the Designated Driver reasonably believes that he or she can do so without causing injury to themselves or anyone else.
Caregiver unexpectedly absent for pick-up or drop-off	<p>Under the Program a Caregiver is required to be present when Student(s) are picked-up and dropped-off. The Subcontractor acknowledges that circumstances may arise which prevent a Caregiver from being able to be present during a pick-up or drop-off.</p> <p>If a Caregiver is not present to accept a Student, then the Designated Driver must:</p> <ul style="list-style-type: none"> - check available records to determine if the Caregiver has made alternative arrangements; - contact the Department immediately on telephone number 1300 338 278 and stand-by while the Department attempts to contact the Caregiver and/or emergency contact; - if the Department's contact attempts are unsuccessful, then the driver will be advised to complete the Subcontractor Run by dropping-off any other Student(s) in that relevant Designated Vehicle and then to return to the drop-off location relating to the Student with the absent Caregiver; and - on return contact the Department and advise the current status and wait for further instructions from the Department (if the Caregiver is still absent). <p>Under no circumstances are Student(s) to be left with any persons other than a Caregiver or a responsible and appropriate person who has agreed to accept responsibility for the student by prior arrangement, or a person who, as a consequence of his or her professional office or duties, is a responsible and appropriate person.</p>
Accident notifications	If the Designated Driver is involved in an accident then the Subcontractor must immediately contact the Department to notify the details of such accident. The Subcontractor must then, within 3 days of such accident, provide a written report to the Head Contractor setting out full details in relation to the accident.
Contact availability of Subcontractor and drivers	<p>The Subcontractor must ensure:</p> <ul style="list-style-type: none"> - the Subcontractor is contactable, at minimum by mobile telephone, between 6.00 a.m. and 6.00 p.m. each Business Day; - each Designated Driver is contactable, by mobile telephone, during any period commencing at least 1 hour before the nominated commencement time of any Subcontractor Run and 1 hour after the ending time of such run (Run Contact Period); - if the Designated Driver is a taxi operator, then the Subcontractor may be contactable during the Run Contact Period.
Contacting the Department	<p>For any urgent matters relating to the services (including accidents), the Subcontractor must immediately notify the Department directly as follows:</p> <ul style="list-style-type: none"> - by telephone on 1300 338 278 - by email on contractors.astp@det.nsw.edu.au

Schedule 4 (Designated Vehicle Requirements)

Item	Designated Vehicle Requirement
General Requirements for all Designated Vehicles	<p>All Designated Vehicles (at all times) must:</p> <ul style="list-style-type: none"> - (safe and clean) be maintained in hygienic, safe and good working order to the satisfaction of the Head Contractor and in accordance with any requirements of the Department or RAMS from time to time; - (seatbelts and safety of users) be fitted with seatbelts and are maintained to ensure the safety of Designated Drivers, passengers and the public; - (business use registration) have current appropriate "business-use" registration (if required) by RAMS, in the State or Territory where the vehicle is garaged; - (locking devices) have locking devices fitted to external doors; - (weekly clean and check) be cleaned and checked at least weekly to ensure the interior, exterior and fittings are clean, undamaged and in good repair. Any damaged fittings are to be repaired immediately; - (restraints) be fitted with restraints that comply with Australian Standards and Design Rules; - (air con) be fitted with an air-conditioning system that is fully operational and regularly maintained; - (4 door sedan) if a sedan, have a minimum of 4 doors; - (taxi, buses and hire care laws) where appropriate, comply with requirements of the law relating to taxis, buses and hire cars additionally to that provided for in this Agreement.
Retro-fitting seat belts <i>(engineer certificate required)</i>	<p>Retro-fitting of seat belts is to be in accordance with all applicable standards. Where retro-fitting of seat belts has occurred, then a copy of the Engineering Certificate for the retro fitting must be kept inside the vehicle at all times.</p> <p><i>Refer to RTA Vehicle Inspectors Bulletin 49 and 50, available at www.rms.gov.au or local RAMS office.</i></p>
Wheelchairs <i>(engineer certificate required)</i>	<p>Designated Vehicles with wheelchair access (engineer certificate required)</p> <p>For all Designated Vehicles with wheelchair access, the Subcontractor must provide to the Head Contractor a current (less than 3 years old) 'Engineering Certificate' from a RAMS's recognised engineering signatory.</p> <p><i>Refer RAMS website www.rms.gov.au or local RAMS office to obtain contact the details for Engineering Signatories.</i></p> <p>Wheelchair Restraint System and Wheelchair Occupancy Restraints</p> <p>All wheelchair restraint systems include occupant restraints and are used and fitted in accordance with:</p> <ul style="list-style-type: none"> - AS/NZS 10542.1 (2009) (or such other standards replacing this standard from time to time)

Item	Designated Vehicle Requirement
	<ul style="list-style-type: none"> - any other applicable RAMS requirements applying from time to time relating to use and fitting of wheelchair restraint systems. <p>Instructions for use of the restraint system must be clearly displayed in each vehicle.</p> <p>Wheelchair Lift Mechanism (engineer certificate required)</p> <p>All wheelchair lifts and ramps must have a current 'Engineering Certificate' from a RAMS recognised engineering signatory. Hoist or lift mechanisms must not obstruct any passenger access and egress and must satisfy AS/NZS.3856.2: 1998 (or such other standards replacing this standard from time to time).</p> <p>The wheelchair lift mechanism must also comply with any other applicable RAMS requirements applying from time to time.</p> <p>A copy of the Engineering Certificate for the wheelchair lift mechanism must be kept inside the vehicle at all times.</p>
<p>Modification to Vehicles (<i>engineer certificate required</i>)</p>	<p>Any modification to a Designated Vehicle (e.g. additional seats, changing seating arrangements) must be implemented in accordance with all relevant:</p> <ul style="list-style-type: none"> - Australian Design Rules and applicable AS/NZS; - RAMS requirements, <p>applying from time to time.</p> <p>A copy of the Engineering Certificate for all modifications must be kept inside the vehicle at all times.</p>
<p>Warning signs for large vehicles</p>	<p>Any Designated Vehicle with a seating capacity of 12 seats or more (such number to include the driver's seat) must be fitted with all 'warning signs' as required by applicable laws.</p>
<p>Vehicle Age</p>	<p>A Designated Vehicle must be less than 15 years old, unless otherwise agreed in writing by the Department.</p> <p>If a Designated Vehicle is approaching the 15-year limit, then the Subcontractor must provide full details to the Head Contractor of its proposed replacement vehicle. The Head Contractor will then seek the Department's approval of such replacement vehicle. The replacement vehicle must not be used for the services until such written approval is provided by the Department and notified to the Subcontractor.</p>
<p>Display of driver licence</p>	<p>In each Designated Vehicle, the Designated Driver's driver licence must be clearly displayed at all times.</p>

Schedule 5 (Reportable Conduct)

What is Reportable Conduct?

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

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

Behaviour of Subcontractor 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 vehicle and assisting disabled student passengers with seat belts)
- using unnecessary force to make physical contact with a student as a prompt for a verbal instruction or to force compliance
- engaging in any conversations with passengers that may be considered inappropriate. This includes swearing and questioning children about aspects of their home life.
- shouting angrily at students to intimidate them
- making contact, either by telephone, in writing or in person, with a student outside of travelling times
- commenting to or about students on the basis of disability, gender, sexuality, cultural or racial stereotypes
- removing a student from the vehicle or hitting them as a disciplinary measure
- threatening students with physical punishment or humiliating a student
- giving gifts of any kind to students, including lollies and drinks unless directed by Principal
- giving alcohol or drugs to students or encouraging the use of alcohol or drugs by students
- consuming alcohol or being affected by alcohol while performing duties as a driver
- not delivering students to an approved supervised address attended by a responsible adult
- not ensuring the safety of students while entering, travelling in and exiting from the vehicle

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

Subcontractor Personnel should:

- **seek assistance** with regards to support for Student's **behaviour** from the Student's school or the Department. 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, their Caregiver or the school what assistance the **Student with a disability** needs. Each Student will have individual needs. Some may experience difficulties in learning new information, understanding instructions and expressing and understanding language. It is important at all times to treat the Student with respect.

A Principal, parent or someone in the community can make a notification about Subcontractor Personnel's behaviour with a student in their care.

The notification can be made to the Principal or directly to **FACS**.

When an allegation is of a child protection nature, the Principal must notify FACS and/ or the police.

What may happen following a notification of reportable conduct?

Sometimes the complaints are relatively minor and not child protection matters. Where there are concerns about **suspected risk of harm to a child**, action may result in:

a) A notification to FACS and/or NSW Police.

This may result in a police investigation and criminal charges.

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

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

- A Risk Assessment

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

- An Investigation

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

- Reporting

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

- The Decision

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

- Taking Action

The Subcontractor will be informed of actions to be taken. These actions may include termination of contracts and services or restricted access to DET sites.

What support is available?

During an investigation of an allegation of reportable conduct, the affected person can seek support and welfare advice through their Staff Support Officer (if available) or EPAC Senior Counsellors 9266 8070.

Other information and contacts

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

NSW DEPARTMENT OF FAMILY & COMMUNITY SERVICES

FACS Helpline 132 111

<https://www.facs.nsw.gov.au/>

NSW POLICE

Police Assistance Line 131444

NSW 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 6 (Special Conditions for Taxis)

- SC1 These special conditions relate to taxis and other public passenger vehicles, as described under the *Passenger Transport Act 1990* (NSW) (the **Act**), where such vehicles are to be used to provide services for the Program.
- SC2 The Subcontractor acknowledges that it is the Department's understanding that the services under the Program performed using taxis are not considered to be 'taxi cab services' for the purposes of the Regulations to the Act so far as maximum fares are concerned but does not rely upon the Department's view in entering into this Agreement.
- SC3 The Subcontractor acknowledges that it is the Department's understanding that the Department and taxi operators are not bound by price fare schedules applicable to 'taxi cab services' for the provision of services under this Program. The Subcontract does not rely upon the Department's view in entering into this Agreement.
- SC5 All taxis and other public passenger vehicles used in providing the services must comply with the requirements of the Act in respect of:
1. vehicle age, registration, inspection and licencing requirements;
 2. operator accreditation requirements;
 3. vehicle authorisation requirements;
 4. conditions (other than for fares) prescribed in Regulations under the Act;
 5. any additional conditions as may be imposed from time to time for the purpose of accreditation or authorisation under the Act.
- SC6 Insurances for taxis used in the provision of services to the Assisted School Travel Program are, as a minimum, to be in accordance with the requirements of the Act and applicable regulations. Where comprehensive motor vehicle insurance is not in effect for taxis used in the provision of the services, the Department and Head Contractor will not be liable for any loss incurred by the Subcontractor in respect of damage to the taxi arising from the provision of services.
- SC7 Not used.
- SC8 Subcontractors that are 'Taxi Networks' must implement any necessary operational provisions to ensure that services are at all times delivered in accordance with this Agreement, most specifically in relation to requirements relating to the use of only screened and cleared 'Designated Drivers; for the provision of services, that the Department is advised of the drivers nominated to undertake the service on a run by run basis and processes to ensure that as far as possible the same person would provide the service throughout a school year so as to promote stability and regularity in the provision of the services.