

DATED

March 2023

Eastern Colleges Group

AGREEMENT FOR THE SUPPLY OF BUS SERVICES

THIS AGREEMENT is made on the

day of

2023

BETWEEN

- (1) **Eastern Colleges Group** of (College).
- (2) **XXXXXXXX** incorporated with company number XXXXXXXX whose registered office is at **XXXXXXXX (Operator)**.

BACKGROUND

- (A) The Operator is in the business of providing pupil bus transportation services.
- (B) The College agrees to obtain and the Operator agrees to provide such services on the terms set out in this Agreement.

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply in this Agreement.

Applicable Laws	means all laws, regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services;
Business Day	means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
Change Order	has the meaning given in clause 14.1;
Charges	means the sums payable for the Services, as set out in Error! Reference source not found. ;
Control	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly;

controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures	means as defined in the Data Protection Legislation;
Data Protection Legislation	means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party;
EIRs	means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
FOIA	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
Information	has the meaning given under section 84 of FOIA;
Mandatory Policies	means the College's policies and codes listed in Schedule 2, as amended by notification to the Operator from time to time;
Regulated Activity	in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;

Regulated Activity Provider	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006;
Request for Information	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs;
Route	means a particular bus route as set out in Error! Reference source not found. ;
Service Credits	means the sums payable by the Operator to the College where the Operator does not meet the service levels, as set out in Schedule 1Part 1;
Service Levels	means the service levels to which the Services are to be provided as set out Schedule 1Part 1;
Services	means the operation of bus services as set out in 0;
Student	any student at the College who uses the Services;
UK Data Protection Legislation	means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;
VAT	means value added tax, or any equivalent or replacement tax from time to time.

- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.4 A reference to **writing** or **written** includes email.

1.5 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.6 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. COMMENCEMENT AND DURATION

2.1 This Agreement shall commence on the date when it has been signed by all the parties and shall continue, unless terminated earlier in accordance with its terms, until the last day of the summer term 2023 when it shall terminate automatically without notice.

2.2 The Operator shall provide the Services to the College in accordance with this Agreement from 4th September 2023.

3. OPERATOR'S RESPONSIBILITIES

3.1 The Operator shall:

3.1.1 provide the Services in accordance, and ensure they conform in all respects, with 0 and the terms of this Agreement;

3.1.2 perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Operator's industry;

3.1.3 co-operate with the College in all matters relating to the Services, and comply with the College's instructions;

3.1.4 before the date on which the Services are to start, obtain and at all times, maintain during the term of this Agreement, all necessary licences and consents and comply with all Applicable Laws in relation to the supply of the Services;

3.1.5 observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the College's premises from time to time and that have been communicated to it under clause 9.1.2 and the College reserves the right to refuse any of the Operator's personnel involved in the provision of the Services access to the College's premises, which shall only be given to the extent necessary for the performance of the Services;

- 3.1.6 not do or omit to do anything which may cause the College to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
 - 3.1.7 provide the College, as soon as reasonably practicable on request, copies of its policies relevant to the provision of the Services (which may include policies relating to safeguarding, bribery and anti-corruption, modern slavery, equality and diversity); and
 - 3.1.8 notify the College in writing immediately upon the occurrence of a change of Control of the Operator.
- 3.2 Time is of the essence in relation to any performance of the Services.
- 3.3 In relation to the Operator's personnel, the Operator shall ensure that all personnel involved in the provision of the Services have suitable skills and experience to enable them to perform the tasks assigned to them, and that such personnel are in sufficient number to enable the Operator to fulfil its obligations under this Agreement
4. **PERFORMANCE LEVELS AND SERVICE CREDITS**
- 4.1 The Operator shall ensure that the Services meet or exceed the Service Levels at all times during the term of this Agreement.
- 4.2 The Operator shall provide the College with a monthly report detailing its performance in respect of the Service Levels.
- 4.3 The Operator shall provide the College, as soon as reasonably practicable on request, with such information as the College may reasonably require in order for the College to establish the veracity of any performance report issued by the Operator pursuant to clause 4.2.
- 4.4 The Operator shall automatically credit the College with the applicable Service Credits. Service Credits shall either:
- 4.4.1 be shown as a deduction from the amount due from the College to the Operator in the next invoice to be issued under this Agreement; or
 - 4.4.2 the Operator shall issue a credit note against a previous invoice and the amount for the Service Credits shall be repayable by the Operator as a debt within 10 Business Days of issue of such credit note.
- 4.5 The parties agree that any such Service Credits have been calculated as, and are, a genuine pre-estimate of the loss likely to be suffered by the College.

5. STATUTORY REQUIREMENTS

5.1 The Operator shall at all times during the term of this Agreement comply with the Applicable Laws which, for the avoidance of doubt shall include:

5.1.1 holding a valid Public Service Vehicle Operator License (or replacement or equivalent licence from time to time);

5.1.2 ensuring all drivers used to deliver the Services hold a valid Passenger Carrying Vehicle License (or replacement or equivalent licence from time to time);

5.1.3 ensuring all vehicles used in the provision of the Services:

5.1.3.1 are fit for purpose in all respect and comply with all Applicable Laws;

5.1.3.2 have (as may be applicable to the particular vehicle) either a Certificate of Initial Fitness or a Certificate of Conformity (or replacement or equivalent certification from time to time);

5.1.3.3 have a valid MOT; and

5.1.3.4 clearly display the Operator's name and address.

5.2 The Operator shall, as soon as reasonably practicable following a request from the College (any in any event, no longer than two Business Days following such request), provide to the College such information as the College may reasonably request to enable the College to assess whether the Operator is in compliance with the terms of this clause.

5.3 Failure by the Operator to comply with the terms of this clause 5 shall give the College the right to terminate this Agreement immediately on notice pursuant to clause 18.2.1.

6. SERVICE REQUIREMENTS

6.1 In addition to the Operator's obligations as set out in **Error! Reference source not found.**, the Operator shall ensure that:

6.1.1 it notifies the College immediately when the Operator is aware of any particular Route running late, or of any other issue which may impact on the delivery of the Services and the action being taken by the Operator to mitigate the effect of such issue;

- 6.1.2 it maintains appropriate records to ensure any complaints, or any other issues that may arise in connection with the Services, can be followed-up and dealt with in a timely manner; and
- 6.1.3 drivers, whilst driving vehicles in delivering the Services, immediately inform the Operator of any: delay; emergency; issues of safeguarding; matters which may affect the wellbeing of any passenger; or any other incident relevant to the delivery of the Services in accordance with this Agreement;
- 6.1.4 in respect of each vehicle used in the provision of the Services are:
 - 6.1.4.1 fitted with a two-way communication system to enable the driver of said vehicle to communicate directly with the Operator whilst in transit;
 - 6.1.4.2 fitted with working heating and air conditioning systems; and
 - 6.1.4.3 well maintained and cleaned, internally and externally (subject to weather conditions), to such standard that they present a professional image to the public.
- 6.2 Further, the Operator shall procure that all drivers driving vehicles in connection with the delivery of the Services:
 - 6.2.1 are sufficiently fit and healthy to enable them to drive safely;
 - 6.2.2 as often as required by the Applicable Laws, declare that they are not taking any medication which may diminish their ability to drive;
 - 6.2.3 are not under the influence of drugs and/or alcohol;
 - 6.2.4 are punctual for the first pick-up on the relevant Route and use their best endeavours to keep to the relevant schedule for the relevant Route (as set out in **Error! Reference source not found.**);
 - 6.2.5 pick up and set down passengers only from those locations as set out in **Error! Reference source not found.** (unless otherwise agreed in writing by the College);
 - 6.2.6 do not take any unnecessary detours or unscheduled stops (save for if there is any emergency or unexpected roadworks which require such actions to be taken);

- 6.2.7 adhere to the 5mph limit on the College's premises, being mindful of pedestrians and other vehicles in the designated drop-off location; and
- 6.2.8 are responsible for and manage Student welfare in the event of a breakdown or accident, calling for any assistance as may be required, including that of emergency services.

7. PASSENGER CARE AND SAFETY

- 7.1 Students permitted to use the Services (or any part of them) shall be issued, by the College with a form of bus pass (which may be in the form of ticket available on the Operator's applicable mobile app, or a physical card).
- 7.2 The Operator shall permit any Student with a pass as referred to in clause 7.1 to travel on the Route as specified on that pass.
- 7.3 It will be the Operator's responsibility to ensure that any Student using the Services has the correct pass (although the College may also periodically check this).
- 7.4 The Operator shall procure that its drivers, before leaving any pick-up location, ensure all Students are safely on the vehicle (whether seated or standing) and that the capacity of the relevant vehicle is never exceeded.
- 7.5 The Operator shall, as soon as possible, inform the College of any Student (or Students) who engage in any anti-social behaviour or violence.
- 7.6 The College shall have no liability, whatsoever, to the Operator for any damage caused by any Student to any of the Operator's vehicles or other property.

8. MONITORING OF SERVICE

- 8.1 The Operator will use the Kura App to capture usage data (including passenger numbers, vehicle capacity, details relating to whether a particular Student used the Services on a particular date etc.) The app will send this automatically to the college.
- 8.2 The College will monitor the provision and quality of service provided through feedback from users of the Services and if any complaints or feedback are received the Operator will be given the opportunity to comment and to supply additional evidence as appropriate.

9. COLLEGE'S OBLIGATIONS

- 9.1 The College shall:
 - 9.1.1 co-operate with the Operator in all matters relating to the Services;

- 9.1.2 inform the Operator of all health and safety and security requirements that apply on the College's premises which the Operator will be required to comply with;
- 9.1.3 in August, prior to the commencement of any academic term during the term of this Agreement, inform the Operator of:
 - 9.1.3.1 the term dates for the forthcoming academic year;
 - 9.1.3.2 any inset dates, or other dates during any term where Students will not be attending College (and the delivery of the Services shall not be required); and
- 9.1.4 at any other time, on reasonable notice, any other dates on which Students will not be attending college (and the delivery of the Services shall not be required).

10. **COVID-19**

- 10.1 For as long as the current COVID-19 pandemic subsists (or any subsequent outbreak thereafter):
 - 10.1.1 the College and the Operator will work together to ensure the Services are provided in line with any mutually agreed risk assessment and such Applicable Laws to the extent to which they apply to each party's obligations under this Agreement; and
 - 10.1.2 the Operator will ensure that all vehicles used in the delivery of the Services shall be cleaned in accordance with **Error! Reference source not found..**
- 10.2 The Operator will report to the College, as soon as reasonably practicable, any Students who are not adhering to any guidelines issued in respect of COVID-19.
- 10.3 If the College closes its premises to its students (or substantially all of its students) as a result of any COVID-19 related event (which shall include any Government mandated closure, or the College otherwise deciding to close in the best interests of its students) the parties acknowledge and agree that:
 - 10.3.1 the Operator shall have no obligation to perform the Services; and
 - 10.3.2 the College shall have no obligation to pay the Charges,

for such period as the College premises remain closed to students (or substantially all of its students).

10.4 Where the College closes its premises pursuant to clause 10.3, the College shall as soon as reasonably practicable:

10.4.1 inform the Operator of the closure and,

10.4.2 the date on which its premises will reopen.

11. CHARGES AND PAYMENT

11.1 In consideration of the provision of the Services by the Operator, the College shall pay the Charges.

11.2 The College shall raise a purchase order in respect of the Charges on or before the first day of an academic term during the term of this Agreement.

11.3 As soon as reasonably practicable following the receipt of the College's purchase order referred to in clause 11.2, the Operator shall issue an invoice in respect of the Charges as set out in the relevant purchase order (subject to any Service Credits as may be applicable pursuant to clause 4) which, subject to clause 11.4, shall be payable by the College before the end of the month following the month in which the College received the Operator's invoice.

11.4 The College shall not be obliged to pay any invoice which does not contain the relevant purchase order number (as contained in the purchase order provided by the College to the Operator pursuant to clause 11.2).

11.5 The Charges are exclusive of amounts in respect of VAT. The College shall, on receipt of a valid VAT invoice from the Operator, pay to the Operator any additional amounts in respect of VAT as are chargeable on the supply of the Services under this Agreement.

11.6 Should any dispute arise in respect of the Charges payable under this Agreement, the parties agree to negotiate in good faith to attempt to resolve the dispute promptly. If the dispute has not been resolved within 10 Business Days from the date the disputing party notified the other party of the dispute, then the dispute shall be referred to the College's auditors for determination whose decision (save for any manifest error) shall be binding on each party.

12. INSURANCE

12.1 During the term of this Agreement the Operator shall maintain in force, with a reputable insurance company:

12.1.1 employee liability insurance at an amount not less than £10,000,000; and

12.1.2 public liability insurance at an amount not less than £10,000,000,

and in each case to cover the liabilities that may arise under or in connection with this Agreement and shall produce to the College on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

13. COMPLIANCE WITH LAWS AND POLICIES

13.1 In performing its obligations under this Agreement, the Operator shall comply with:

13.1.1 the Applicable Laws; and

13.1.2 the Mandatory Policies.

13.2 The Operator will inform the College as soon as it becomes aware of any changes in the Applicable Laws.

14. CHANGE CONTROL

14.1 The College may propose changes to the scope or execution of the Services, but no proposed changes shall come into effect until a relevant Change Order has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect those changes will have on:

14.1.1 the Services;

14.1.2 the Charges;

14.1.3 the timetable for the Services; and

14.1.4 any terms of this Agreement.

14.2 If the College wishes to make a change to the Services:

14.2.1 it shall notify the Operator, providing as much detail as is reasonably necessary to enable the Operator to prepare the draft Change Order; and

14.2.2 the Operator shall, within five Business Days of receiving the College's request at clause 14.2.1, provide a draft Change Order to the College.

14.3 If the parties:

14.3.1 agree to a Change Order, they shall sign it and that Change Order shall amend this Agreement; or

14.3.2 are unable to agree a Change Order, then the College may terminate this Agreement in accordance with clause 18.2.2.

15. DATA PROTECTION

15.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

15.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the College is the controller and the Operator is the processor. Schedule 2 sets out the scope, nature and purpose of processing by the Operator, the duration of the processing and the types of personal data and categories of data subject.

15.3 Without prejudice to the generality of clause 15.1, the College will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Operator and/or lawful collection of the personal data by the Operator on behalf of the College for the duration and purposes of this Agreement.

15.4 Without prejudice to the generality of clause 15.1, the Operator shall, in relation to any personal data processed in connection with the performance by the Operator of its obligations under this Agreement:

15.4.1 process that personal data only on the documented written instructions of the College which are set out in Schedule 2 unless the Operator is required by the laws of any member of the European Union or by the law of the European Union applicable to the Operator to process personal data (**Applicable Data Protection Law**) to otherwise process that personal data. Where the Operator is relying on the laws of a member of the European Union or European Union law as the basis for processing personal data, the Operator shall promptly notify the College of this before performing the processing required by the Applicable Data Protection Law unless the Applicable Data Protection Law prohibits the Operator from so notifying the College;

- 15.4.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 15.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- 15.4.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the College has been obtained and the following conditions are fulfilled:
 - 15.4.4.1 the College or the Operator has provided appropriate safeguards in relation to the transfer;
 - 15.4.4.2 the data subject has enforceable rights and effective legal remedies;
 - 15.4.4.3 the Operator complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - 15.4.4.4 the Operator complies with reasonable instructions notified to it in advance by the College with respect to the processing of the personal data;
- 15.4.5 assist the College, at the College's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- 15.4.6 notify the College without undue delay on becoming aware of a personal data breach;
 - 15.4.7 at the written direction of the College, delete or return personal data and copies thereof to the College on termination or expiry of this Agreement unless required by Applicable Data Protection Law to store the personal data; and
 - 15.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 15 and allow for audits by the College or the College's designated auditor and immediately inform the College if, in the opinion of the Operator, an instruction infringes the Data Protection Legislation.
- 15.5 The College does not consent to the Operator appointing any third party processor of personal data under this agreement.
- 15.6 Either party may, at any time on not less than 20 Business Days' notice, revise this clause 15 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
16. **INDEMNITY**
- 16.1 The Operator will indemnify the College against, and covenant to pay to the College, an amount equal to:
- 16.1.1 all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that the College does or will incur or suffer; and
 - 16.1.2 all claims or proceedings made or brought or threatened against the College by any person and all losses, liabilities or costs (on a full indemnity basis), damages and expenses the College does or will incur or suffer as a result of defending or settling any such actual or threatened claims or proceedings,
- in each case arising out of or in connection with:
- 16.1.3 the Operator's breach or negligent performance or non-performance of this Agreement;
 - 16.1.4 any claim made against the College arising out of or in connection with the provision of the Services, to the extent that such claim arises out of

the breach, negligent performance or failure or delay in performance of this Agreement by the Operator; and

16.1.5 the enforcement of this Agreement.

17. **LIMITATION OF LIABILITY**

17.1 Nothing in this Agreement shall limit or exclude either party's liability for:

17.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

17.1.2 fraud or fraudulent misrepresentation; or

17.1.3 any matter in respect of which it would be unlawful to exclude or restrict liability.

17.2 Further, nothing in this Agreement shall limit or exclude the Operator's liability under clause 15.1.

17.3 Subject to clause 17.1, neither party shall be liable to the other, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:

17.3.1 loss of profits;

17.3.2 loss of sales or business;

17.3.3 loss of agreements or contracts;

17.3.4 loss of anticipated savings;

17.3.5 loss of damage to goodwill;

17.3.6 loss of opportunity; and/or

17.3.7 any indirect or consequential loss.

Subject to clauses 17.1 and clause 17.3, the College's liability to the Operator whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall not exceed the greater of either:

17.3.8 **£TBC DEPENDING ON FINAL VALUE OF CONTRACT;** or

- 17.3.9 100% of the Charges paid or payable by the College to the Operator under this Agreement in the 12 months prior to the event from which the loss arose.

18. TERMINATION

- 18.1 Without limiting its other rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

18.1.1 the other party commits a material breach of any term of this Agreement and (if such a breach is remediable) fails to remedy that breach within ten Business Days of that being notified in writing to do so;

18.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

18.1.3 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

18.1.4 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986; or

18.1.5 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under this Agreement has been placed in jeopardy.

- 18.2 Without limiting its other rights or remedies, the College may terminate this Agreement with immediate effect by giving written notice to the Operator:

18.2.1 the Operator is in breach of clause 5;

18.2.2 the Operator is subject to a change of control; or

18.2.3 the parties are unable to agree a Change Order pursuant to clause 14.

19. OBLIGATIONS ON TERMINATION AND SURVIVAL

- 19.1 Termination of this Agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination.
- 19.2 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.
- 19.3 On termination or expiry of this Agreement the Operator shall, if so requested by the College, provide all assistance reasonably required by the College to facilitate the smooth transition of the Services to the College or any replacement Operator appointed by it.

20. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 20.1 The parties acknowledge that the Operator is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 20.2 The Operator shall:
- 20.2.1 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for Regulated Activity undertaken through the Disclosure and Barring Service (**DBS**);
 - 20.2.2 monitor the level and validity of the checks under this clause 20.2 for each member of staff; and
 - 20.2.3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.
- 20.3 The Operator warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Operator in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

20.4 The Operator shall immediately notify the College of any information that the College reasonably requests to enable it to be satisfied that the obligations of this clause 20 have been met.

20.5 The Operator shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to either children or vulnerable adults.

21. **FREEDOM OF INFORMATION**

21.1 The Operator acknowledges that the College is subject to the requirements of the FOIA and the EIRs. The Operator shall:

21.1.1 provide all necessary assistance and cooperation as reasonably requested by the College to enable the College to comply with its obligations under the FOIA and EIRs;

21.1.2 transfer to the College all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within two Business Days of receipt;

21.1.3 provide the College with a copy of all Information belonging to the College requested in the Request for Information which is in its possession, or control, in the form that the College requires within 5 Business Days (or such other period as the College may reasonably specify) of the College's request for such Information; and

21.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the College.

21.2 The Operator acknowledges that the College may be required under the FOIA and EIRs to disclose Information (including commercially sensitive information) without consulting or obtaining consent from the Operator. The College shall take reasonable steps to notify the Operator of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the College shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

21.3 Notwithstanding any other term of this Agreement, the Operator consents to the publication of this Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.

21.4 The College shall, prior to publication, consult with the Operator on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Operator shall assist and co-operate with the College to enable the College to publish this Agreement.

22. **FORCE MAJEURE**

22.1 **Force Majeure Event** means any circumstance not within the College's reasonable control including: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic (including the current COVID-19 pandemic); terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority (including any action relating to the current COVID-19 pandemic), including without limitation imposing an export or import restriction, quota or prohibition, failing to grant a necessary licence or consent, restrictions on the operation of educational establishments; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; non-performance by Operators or subcontractors; and/or interruption or failure of utility service.

22.2 Provided it has complied with clause 22.4, if the College is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event, the College shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

22.3 The corresponding obligations of the Operator will be suspended, and its time for performance of such obligations extended, to the same extent as the College.

22.4 The College shall:

22.4.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the Operator of the Force Majeure Event and the date on which it started; and

22.4.2 use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

22.5 If the Force Majeure Event prevents, hinders or delays the College's performance of its obligations for a continuous period of more than two months, it may terminate this agreement immediately on written notice to the other party.

23. ENTIRE AGREEMENT

23.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

23.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

23.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

23.4 Nothing in this Agreement shall limit or exclude either party's liability for fraud or fraudulent misrepresentation.

24. NOTICES

24.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

24.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service; or

24.1.2 sent by email,

to the following:

24.1.3 in respect of the College to [NAME] at [ADDRESS] or [EMAIL ADDRESS];
and

24.1.4 in respect of the Operator to [NAME] at [ADDRESS] or [EMAIL ADDRESS].

24.2 Any notice shall be deemed to have been received:

24.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

- 24.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- 24.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 24.2.3, business hours means 9.00am to 5.00pm Monday to Friday on any Business Day.
- 24.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
25. **GENERAL**
- 25.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 25.2 The Operator may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under this Agreement without the prior written consent of the College.
- 25.3 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 25.4 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision of this Agreement is deemed deleted under this clause 25.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 25.5 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
26. **GOVERNING LAW AND JURISDICTION**
- 26.1 This Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

- 26.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

SERVICE LEVELS AND SERVICE CREDITS

Part 1

1. **Service Level Agreement**

1.1. Customer Services

The Operator will acknowledge any feedback received within one working day and will provide a written report within one additional working day.

- Where further investigation or information is required the Operator will respond to the Company within one working day of each subsequent request.

1.2. Performance Criteria

- Each route will be evaluated individually against the criteria and by school term.
- The performance targets will be monitored throughout the school term to ensure that targets are met at the end of each term.

Performance Criteria and Description	Performance Target
Arrival on time at first pickup. <i>This is a measure of whether the vehicle arrives on-time for the first stop on the route. If a first stop is not being used on any particular day then the first stop with passengers will be used.</i>	95%
Kura technology correctly installed on the vehicle and operational. Driver must log in 15 minutes prior to start of route. <i>If a fault or missing equipment has already been logged with Kura the route will be discounted from the statistics.</i>	98%
Vehicle reliability (breakdowns) <i>This is a measure of the number of times that there were mechanical issues with the vehicle that prevented the route from running, in whole or in part, or impeded the progress of the route.</i>	95%

2. **Performance Measurement**

2.1. The following targets will be measured according to data gathered via the Kura App.

- Arrival on time at first pickup
- Regulation of service (timetable).
- Passenger tap-in and tap-out

2.2. Where one of the targets detailed in Section 1.2 is missed over a school term, a rebate of 5% per KPI for that route will be applied from the Operator to the College.

2.3. The following penalties will be applied for significant service standard failures:

Description of event	Sanction to Operator
Missed passengers (Proven by Kura driver departed stop early or wrong location)	£40 penalty per stop plus cost of alternative transport
Operator departed stop without vulnerable passengers being met – Passengers to be identified to Kura in advance.	£100 penalty
Driver allowing unauthorised passenger to travel (this is a closed service)	£100 penalty
Unapproved driver used	£500 penalty
Operator unable to recover breakdown	50% route fee plus excess cost incurred by the Company if providing cover
Operator unable to serve route due to unavailability of vehicle or driver	100% route fee plus cost incurred by the Company if providing cover

SCHEDULE 2

PROCESSING, PERSONAL DATA AND DATA SUBJECTS

SCOPE

The processing of personal data of students as necessary for the delivery of bus services pursuant to the Agreement.

NATURE

Personal data will be transferred by the College to the Operator to allow the Operator to issue smart passes to students. Thereafter the Operator will collect store and delete personal data showing individual journeys taken and will transmit such data to the College in an identifiable form or will compile and structure the data to produce aggregated reports for the College. In the event that students do not adhere to appropriate behavioural standards when using the service the Operator may notify the College of relevant incidents and identify individual students by name or groups of students by description.

PURPOSE OF PROCESSING

To enable the effective outsourcing of bus services by the College and for the efficient delivery of bus services by the Operator pursuant to the Agreement.

DURATION OF THE PROCESSING

The processing shall continue for the duration of the Agreement or, if longer, for so long as the Operator retains any student data that it processed in the course of delivering the Services under the Agreement.

TYPES OF PERSONAL DATA

Name, date of validation of pass, school code, route purchased, destination, times and dates of journeys taken, card ID number, information regarding involvement of any on-board incidents.

CATEGORIES OF DATA SUBJECT

Students of the College

Signed by [NAME] for and on)
behalf of **Eastern Suffolk**) Director
College)

Signed by [NAME] for and on)
behalf of) Director
)