



**WEST MIDLANDS**  
COMBINED AUTHORITY

# **Standard schedules for all minimum subsidy local bus contracts let on or after**

## **Sunday 23<sup>rd</sup> July 2017**

**Key changes from the previous version dated 31<sup>st</sup> July 2016.**

- **As part of the payment procedure outlined in Schedule V operators will continue to be required to supply relevant data on a journey by journey basis using the Electronic Ticket Machine Data Analysis Software (ETM DAS) produced by EP Morris and Company Ltd to evidence operation of the service prior to payment being made. However the payment procedure is simplified so that as long as lost mileage is captured through the ETM DAS system there will now NOT be any requirement to submit an invoice for the 25% payment.**
- **In the general requirements on Schedule II there will now be a requirement to ensure that an up to date fleet list is maintained in the ETM DAS system so that the deployment of the correct vehicles on contracted journeys can be monitored.**

# Local Bus Contract

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**AGREEMENT BETWEEN**  
**WEST MIDLANDS COMBINED AUTHORITY**  
(hereinafter referred to as WMCA)

**AND**

**{THE LEGAL NAME OF THE OPERATOR}**  
(hereinafter referred to as the Operator)

***The Services***

1. This Agreement shall commence on the agreed commencement date and shall continue in force until the agreed termination date unless previously determined in accordance with the provisions of this Agreement.
2. The Operator shall provide public passenger transport services in accordance with the timetable and the stopping places and route details as set out in Schedule I attached using vehicles of the description set out in Schedule II attached (such services being hereinafter called "the Services") and the Operator shall not make any change whatsoever to the Services without obtaining the prior written consent of the WMCA.
3.
  - a) The Operator shall have and keep in force a Public Service Vehicle Operator's Licence granted under Part II of the Public Passenger Vehicles 1981 as modified by the Transport Act 1985 which permits the lawful operation of the Services and shall produce the licence at any time for inspection by an authorised representative of the WMCA.
  - b) Without prejudice to the generality of sub-clause (a) above this Agreement shall automatically be determined upon surrender, revocation or suspension of the Public Services Operator's Licence or upon such Licence becoming subject to conditions whereby the Services can no longer be operated lawfully by the Operator.
  - c) The Operator shall notify the WMCA forthwith upon the happening of any event referred to in sub-clause b) above and shall immediately cease to operate the Services.
4.
  - a) The Operator shall before the date of commencement of the service and in accordance with the registration requirements as set out under the Transport Act 1985 (as amended) register any intended service to be operated under this Agreement and failure to do so shall render this Agreement null and void. It is a requirement of the said Act that the registration documents shall be copied to the WMCA at the same time as they are submitted to the Office of the Traffic Commissioner.

- b) The Operator accepts and shall have full liability to ensure that prior to the commencement of the services, that the vehicles as specified in this this contract are suitable for the provision of the services along the specified routes at all times and the Operator shall indemnify the WMCA in full against any and all claims arising in breach in this clause 4 (b) in accordance the indemnity clause as set out below.

### ***Statutory Requirements***

- 5. The following obligations are conditions of this agreement and any breach thereof shall be deemed to be a material breach entitling the WMCA to immediately determine this agreement. The rights and liabilities of the parties shall thereafter be determined.
  - a) The Operator shall operate the Services and maintain the vehicles used throughout the duration of the operation of the Services in all respects in accordance with any and all requirements set out in any Act of Parliament and/or any Statutory Instruments or orders from time to time in force which are or may become applicable to Public Service Vehicles or the provision of the Services throughout the period of this Agreement. The Operator hereby grants to the WMCA's suitably qualified representative entry to the Operator's premises at all reasonable times for the purposes of inspecting the vehicles used in the provision of the services. The operator shall provide a named contact to facilitate such inspections. The WMCA representatives will comply with the reasonable requirements of operators relating to Health and Safety policies when visiting the Operator's premises.
  - b) Any driver employed by the Operator shall have the required licence to drive the vehicle under the contract.
  - c)
    - (i) The Operator acknowledges that the WMCA has a duty to ensure that public funds are not used to support the provision of public passenger transport services under any of its contracts in breach of the Safeguarding provisions relating to the carrying out of 'regulated activity' as set out in the Safeguarding Vulnerable Group Act 2006 (the "SVG Act") and the Operator warrants and shall procure that the Operator and its staff, including its contractors and/or agents will comply with all requirements as set out under the SVG Act.
    - (ii) The Operator shall ensure that any driver employed to undertake any 'regulated activity' under any Contracted Service shall be checked using the Disclosure and Barring Service in compliance with the safeguarding provisions.

(iii) The WMCA reserves the right to require the removal of any driver who does not comply with clause 5(ii) or where any substantial complaint/s are received by the WMCA or the Operator about the conduct of any driver or employee.

(iv) The Operator is required to and shall inform the WMCA of any and all complaints received and shall ensure that any driver or employee found not to be in compliance with the requirements of this clause is immediately removed from providing the Contracted Services.

- d) Where the WMCA deems it necessary to ensure that any vehicle to be used in the provision of the service satisfies contractual and statutory requirements currently in force the Operator shall present the vehicle for inspection at the WMCA's expense at a site to be advised by the WMCA to the Operator (such site may include the Operator's premises).
- e) The Operator shall not operate either the whole or any part of the service in a manner that will be unlawful or render the provision of services unsafe.
- f) The Operator shall be required to maintain public liability, employer's liability and vehicle insurance to a level approved by the WMCA. (The WMCA shall give guidance as to the level of insurance that shall be appropriate with regard to the provision of services under this Agreement). In the event of any breach of any of these obligations then the WMCA may without prejudice terminate this Agreement and the WMCA shall not be liable for any loss or damage which may be occasioned by the Operator in terminating this Agreement with immediate effect.

### ***Insurance***

- 6. The Operator shall as required by the WMCA produce for inspection the policy or policies setting out the insurance cover required at clause 5(f) above, and the receipt or receipts for the current premiums or alternatively evidence of the provision of appropriate security as required under the provisions of the Road Traffic Act 1972 (or as amended or enacted from time to time).

### ***Fares and Ticketing***

- 7.
  - a) The Operator shall accept the various passes and special tickets as referred to in Schedule III.
  - b) The Operator shall as required under this Agreement ensure that the relevant fare table for the route or routes on which it operates the Services are made available to the public on the vehicle.
  - c) The Operator shall not charge fares in excess of those shown in Part I of Schedule IV except where such fares have been amended in accordance

with Part 2 of Schedule IV.

- d) The Operator shall be party to and shall have signed the Agreement relating to the Travel Concession Schemes in the West Midlands County and administered by the WMCA subject to the conditions from time to time applying.
- e) The Operator shall be party to and shall have signed the Agreement relating to the nNetwork scheme in the West Midlands County and administered by the WMCA subject to the conditions from time to time applying.
- f) The Operator shall be party to and shall have signed the Agreement relating to the nBus Ticket Scheme in the West Midlands County subject to the conditions from time to time applying.

### ***Payment***

- 8. WMCA shall pay the Operator the amounts calculated in accordance with and in the manner set out in Schedule V of this agreement.

### ***Contract Ownership***

- 9.
  - a) The Operator shall not assign or sub-let, or transfer control of this Agreement or any part thereof without the prior express written consent agreement of the WMCA such consent not to be unreasonably withheld.
  - b) WMCA shall have the right to terminate the Agreement where there has been a change of control in breach of 9 a) above, and where such change of control in the reasonable opinion of the WMCA impacts adversely or materially upon the performance of the Agreement, and
  - c) The WMCA shall have the right to terminate the contract where either the contractor or the acquiring body corporate, its management, employees, servants or agents are in the reasonable opinion of the WMCA likely to adversely or materially impact upon the performance of the contract or the goodwill and/or reputation of the WMCA on the grounds of morality, ethics, or performance and,
  - d) Where the WMCA exercises its right to terminate the Agreement under 9 a) 9 b) or 9 c) the Operator shall indemnify the WMCA for any losses howsoever arising, claims or additional costs flowing from the termination of the Agreement and such losses, claims or additional costs shall include any increase in tender price covering the unexpired period of the Agreement, reimbursement of administration and management costs associated therewith.

### ***Inspections and surveys***

10. The Operator shall upon request supply to the WMCA details of passenger returns in such form as the WMCA may require and gross revenue for the Service from all sources.

### ***Confidentiality***

11.
  - a) Subject to Clause 11 (b) below the Operator and the WMCA hereby mutually undertake to keep confidential and not to disclose without prior written consent any trade or business secrets or similar confidential information supplied to, or acquired the receiving party, save where ordered to do so by a Court or Tribunal of competent jurisdiction.
  - b) The Operator hereby acknowledges that the WMCA is a public authority subject to the provisions of the Freedom of Information Act 2000 (as amended) and to the Environmental Information Regulations 2004 (as amended) and that this clause 11 (a) is subject to the requirements of forgoing legislative provisions.
  - c) The Operator agrees to respond to any request for information made by the WMCA regarding its statutory duty under the Information Acts set out at 11 (b) above and hereby agrees to provide such response within three business days of the request being made by the WMCA
  - d) The parties acknowledge and agree to adhere to the requirement to comply with the Data Protection Act 1998 and data principles.

### ***Indemnity***

12. The Operator shall keep the WMCA indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered and/or incurred by the WMCA as a result of or in connection with:
  - a) any claim made against the WMCA by a third party for death, personal injury or damage to property arising out of, or in connection with the provision of the Services, to the extent attributable to the acts or omissions of the Operator, its employees, agents or subcontractors; and.
  - b) any claim made against the WMCA by a third party 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 the Contract by the Operator, its employees, agents or subcontractors.

This clause 12 shall survive termination of the Contract.

**Termination**

13. a) Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- I. the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - II. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
  - III. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - IV. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - V. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
  - VI. the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;



- VII. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - VIII. the other party (being an individual) is the subject of a bankruptcy petition or order;
  - IX. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
  - X. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause II to clause IX (inclusive);
  - XI. the Operator suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
  - XII. the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;
  - XIII. there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- b) The operator shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and shall;
- I. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - II. comply with the WMCA's Ethics, Anti-bribery and Anti-corruption Policies as may be updated from time to time.
  - III. have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with this clause 14, and will enforce them where appropriate;

- IV. promptly report to the WMCA any request or demand for any undue financial or other advantage of any kind received by the Operator in connection with the performance of the services under this agreement;
  - V. within two months of the date of this agreement certify to the Customer in writing signed by an officer of the Operator, compliance with this clause 13 by the Operator and all persons associated with it under clause (c). The Operator shall provide such supporting evidence of compliance as the WMCA may reasonably required.
- c) The Operator shall ensure that any person associated with the Operator who is performing the services in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Operator in this clause 13. The Operator shall be responsible for the observance and performance by such persons of these terms and shall be directly liable to the Customer for any breach by such persons of any of this clause.
  - d) Breach of this clause 13 shall be deemed a material breach under this agreement entitling the WMCA to terminate the contract.
  - e) For the purposes of this clause 13 a person associated with the Operator includes but is not limited to any subcontractor of the Operator.
  - f) The WMCA shall have the right to determine this Agreement forthwith and recover from the Operator any costs or expenses incurred by the WMCA (being the natural and foreseeable costs incurred as a consequence of the WMCA's having to re-procure the service which is the subject of this agreement for the remainder of the term) if the Operator fails to observe the terms and conditions of this Agreement or fails to execute with due diligence and expedition anything necessary for the proper performance of the Agreement.
  - g) The determination of this Agreement under this clause 13 shall be without prejudice to any rights the WMCA may have in respect of any antecedent breach of contract by the Operator.
14. The Agreement may be terminated by WMCA by giving three four-weekly periods (as determined by the WMCA) of notice in writing to the Operator in the following circumstances:-
- a) If in the opinion of the WMCA the provision of a service or services by the Operator under the Agreement is or will become no longer appropriate to meet the public requirements within the area.

- b) If there is insufficient finance made available to the WMCA through the Levy or by a third party specified to the Operator prior to the execution of the Agreement for revenue support of a service under this and other like Agreements.
- c) If a named third party responsible for meeting the whole or part of the cost of the contract has failed or has indicated that they will fail to do so.

In the event that the Agreement is terminated under Clause 14 then the Operator shall be paid one fifth of the remainder of the contract sum due from the effective date of termination to the Expiry Date but otherwise shall not be entitled to any other sum.

- 15. Either party may terminate this Agreement by providing three months' notice in writing in the event that the financial performance of the Services is significantly and/or adversely affected by the introduction of competing commercial services. Any changes whatsoever to the arrangements whereby the WMCA estimates the levels of usage of special tickets and passes for the purposes of reimbursement to Operators under Clauses 2.1 to 2.4 inclusive of Part 2 of Schedule III of this Agreement shall in no circumstances whatsoever constitute or be construed as a variation to the reimbursement arrangements referred to in this Clause.

### ***Dispute Resolution***

- 16. Should any dispute arise then the following stages will be followed to resolve the issues:
  - a) Stage one - The parties shall attempt, in good faith, to resolve any dispute promptly by negotiation within a 14 day period.
  - b) Stage two – If the dispute remains unresolved any party may issue a Dispute Notice to the other parties.
  - c) Stage three – within seven days of the Dispute Notice being issued, each party shall refer the dispute to a nominated representative for resolution.
  - d) Stage four – If the dispute remains unresolved following 21 days then the matter will be referred to a Director from each of the parties who is not directly involved in the provision under this Agreement for resolution.
  - e) Stage five – If following stages one to four above the dispute remains unresolved, the parties agree to engage mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (ADR notice) to the other party to the dispute requesting mediation. A copy of the request should be sent to CEDR. The mediation

will start not later than 14 days after the date of the ADR notice. No party may commence any court proceedings or arbitration in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

- f) The pendency of any dispute shall not entitle the Operator to suspend the operation of the Services.

**Communication**

- 17. a) Any notice or other communication which is required to be given to the WMCA shall be deemed to be properly given if it is addressed to **Director of Transport Services at 16 Summer Lane Birmingham B19 3SD** or such other person or address as the WMCA may from time to time specify to the Operator.
- b) Any notice or other communication which is required to be given to the Operator shall be deemed to be properly given if it is addressed to the person or address as specified to the WMCA by the Operator.
- c) Any notice required by this Agreement to be given to either party by the other shall be served by sending the same by registered post or recorded delivery to the last known address of the other party and any receipt issued by the postal authorities shall be conclusive evidence of the fact and date of posting of any such notice.

Signed by: Head of Governance, authorised signatory for and on behalf of the WMCA

.....Date.....

Signed for and on behalf of the Operator by .....(print)

Date.....

..... (sign) Position in Company.....

# **SCHEDULE I**

## **Part 1**

### **DESCRIPTION OF SERVICE REQUIRED**

The WMCA's requirement for this service is set out in the Service Specification. Specified departure/arrival times must be adhered to. A timetable must be offered which, as a minimum, meets all the requirements set out in the Service Specification. The WMCA will only consider tenders that offer a timetable meeting these requirements although alternative specifications will be considered if submitted in addition.

The service required assumes that the buses used will have a capacity as shown in the Service Specification. Proposals to run buses of a smaller capacity must be negotiated with the WMCA prior to implementation. In the event of such a proposal the WMCA is likely to require a higher number of buses on the routes concerned.

Where required by the nature of the highways to be traversed or on environmental grounds, a maximum size of vehicle may be specified in the Service Specification. Proposals to operate larger sized vehicles must be negotiated with the WMCA.

### **PICKING UP/SETTING DOWN POINTS**

Services are to pick up and set down at all recognised bus stops along their respective lines of route. Exceptions are shown in the Service Specification. Where multiple stops are situated at a given location, e.g. at bus stations, interchanges, etc., The WMCA will advise on which specific stop is to be observed.

Stickers should not be attached to bus stop plates nor plates attached to poles belonging to the WMCA or other operators without their prior permission. In the event that additional stops are required the Operator shall liaise the WMCA regarding the siting of such stops.

### **PASSENGER INFORMATION**

The WMCA shall issue timetable information leaflets for all subsidised services. These shall be made available on the vehicle for distribution to passengers, on request, appertaining to the services operated under this agreement.

Prior to the expiry of this agreement, but not sooner than the announcement of the award of any replacement contract for the service, the Operator shall display on the vehicles used in operation of the Services a notice advising passengers of the continuance, or discontinuance, of the service and, where applicable, the name of the operator taking over the service. The WMCA may assist in providing such notices.

Operators providing their own notices shall be required to copy them to the WMCA's Network Delivery Team. The Operator shall ensure that they are able to provide information regarding the service operated under this agreement when there is substantial disruption that is likely to result in inconvenience to passengers. The WMCA provide a service update email distribution facility to which the Operator must subscribe in order to facilitate the distribution of the above mentioned service disruption information. Operators are required to contact the Network Delivery Team to subscribe to this service.

## **PASSENGER SAFETY**

In the event of an on board incident and in the interests of passenger and driver safety, all drivers must have the capability, either via a radio system or mobile telephone, of calling for assistance.

## **RUNNING TIMES**

Where operators submit their own alternative timetables, The WMCA recommends the adoption of realistic running times that might vary at different times of the day. In the case of difficulties being experienced with timetables specified by the WMCA, these should be raised as soon as possible.

## **FARES**

For minimum subsidy contracts the maximum fares that may be charged are those set out in Schedule IV, Part 1. For minimum cost contracts these are the actual fares.

## **QUALITY OF SERVICE**

Buses shall operate in accordance with the timetable and shall not fail to pick up any person presenting themselves at any designated stopping place described above. The WMCA will measure the quality of service provided in relation to the service specification by sampling the operation of service at timetabled timing point on the route. However, Operators should be aware that specific complaints will also be investigated.

## **TARGETS**

Any bus running more than 10 minutes late will be regarded as a cancellation.

Any bus departing early from an advertised timing point will be regarded as a cancellation.

Any journey not operated in accordance with the contract, which is not covered by the circumstances specified above, shall be regarded as a cancellation.

In addition to the financial consequences described in Schedule V, the WMCA reserves the right to terminate the contract should there be either: -

- a) a failure to meet the targets in respect of more than 5% of the journeys in any one week,
- b) failure to operate particular journeys in accordance with the specification.

## **STAFF**

The Operator and its employees shall at all times observe and comply with the law relating to road traffic, the Highway Code and the legislation and regulations relating to Drivers' hours.

The Operator must meet the targets specified in Schedule VI in respect of customer care and disability awareness training of operational staff employed in the provision of the service.

Drivers operating the Services shall be of clean and smart appearance and shall wear a uniform and shall be qualified to drive or operate the type of vehicle used in the performance of the contract. The Operator must ensure that all Drivers hold a current driving licence of the appropriate class for the Vehicle concerned by regular inspection of Drivers' licences and shall keep records of such checks.

The Driver must not smoke on the bus or work under the influence of alcohol or drugs at any time during the performance of the Contract.

## **COMPLAINTS**

The Operator shall respond to any matter or issue in connection with the Services raised by the WMCA within 14 days. Where this comprises the forwarding of a complaint from the public concerning the operation of the Service, the Operator shall respond to the complainant within 14 days, and shall at the same time be required to forward a copy of the response to the WMCA. The Operator shall copy the WMCA any written complaint he receives direct, together with any reply he may make, no later than 14 days after the receipt of the complaint. Complaints regarding staff attitude/behaviour shall not exceed 1 per 20000 passengers carried and failure to achieve this standard may result in preclusion from the award of future contracts.

## **SCHOOL JOURNEYS**

The Operator will comply with all requirements as set out under the Safeguarding Vulnerable Group Act 2006.

If the Operator is willing to change the time of a journey at the request of a school without any additional expense to the WMCA this may be done. Details must be shown on the Operator's Return if the journey is run earlier or more than 10 minutes later than specified in the contract. Provided such details are shown such change of timing will not be regarded as a cancellation for the purposes of Schedule I or Schedule V. The WMCA will not accept any additional charge from the Operator for complying with school requests unless such additional charges have been agreed in advance with the WMCA.

Should a school notify the Operator that a particular journey is not required on a specific day the journey need not be run. Provided that details are shown on the Operator's Return it will not be regarded as a cancellation for the purposes of Schedule I or Schedule V.

### **CHRISTMAS AND NEW YEAR ARRANGEMENTS**

Over the Christmas and New Year holiday period the service required may vary to reflect commercial provision. The WMCA will normally advise operators of any such requirement as soon as the commercial service levels are made known to the WMCA.



# **SCHEDULE I**

## **Part 2**

*{Contents of this schedule are specific to the particular contract agreement and it will outline the required route, timetable and days of operation}*

## **SCHEDULE II - VEHICLE SPECIFICATION** (LOW FLOOR VEHICLES)

**THE VEHICLE TYPE(S) APPROVED FOR USE ON THIS CONTRACT IS SHOWN ON FORM TEND 2**

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Under the Equality Act 2010 public transport providers have the duty to provide an accessible service and to take reasonable steps to offer the same level and standard of service for disabled people and any vehicle proposed for use on the service shall fully comply with the Public Service Vehicles Accessibility Regulations 2000.

### **GENERAL REQUIREMENTS**

1. The vehicle will have a minimum capacity and shall not exceed the maximum dimensions, if any, as specified in the Service Specification. For the purpose of this Agreement a minibus is defined as a vehicle under 8.4 metres in length.
2. The correct destination and route numbers or letters shall be displayed at all times when the vehicle is operating on the service. The destination displayed should at all times be the final calling point of the service unless otherwise agreed with the Network Support and Partnerships Manager.
3. The operator must ensure that the vehicles used on the service are clean, both inside and out, at all times. Vehicles should be swept off and washed prior to leaving garage to operate a subsidised service. Clear visibility through the vehicle windows should be maintained at all times.
4. Smoking shall be prohibited throughout the whole vehicle.
5. The Operator shall at all times ensure that exhaust emissions are controlled within the requirements of any relevant legislation and that there are no visible smoke emissions.
6. Vehicles shall have fitted such equipment to enable, as far as is reasonably practicable, the temperature throughout the passenger accommodation to be regulated. The ambient temperature should at no time be too high or too low as to cause discomfort.
7. The operator must keep their fleet list up to in the ETM DAS system at all times to reflect any changes in the fleet. This data needs to include for each vehicle the registration plate details, fleet number (if used), the vehicle Euro emission standard and vehicle length for any vehicle that is or likely to be deployed on this contract. Where a vehicle has had an engine and or exhaust modification to achieve an improved emission standard WMCA will require copies of the annual test certification to prove the vehicle still achieves this improved standard.

## NOTICES AND SIGNS - MANDATORY

8. Concessionary fares and travel tickets: Notices must be exhibited, visible from outside the front of the vehicle, indicating that the WMCA Concessionary Passes, nNetwork Tickets and nBus Tickets or any equivalent tickets introduced under the Network West Midlands brand are accepted



9. Notice of Subsidy: A notice must be exhibited on the side window (by the entrance door) of the vehicle, indicating to the general public that the journey being operated is subsidised by the WMCA. This can be in the form of a vinyl notice or through the use of destination blinds.
10. Comments and suggestions: A notice must be exhibited inside the vehicle giving details of where comments or suggestions concerning the service may be made.
11. Notices (general): To cover the requirements in Paragraphs 8 to 10 above, The WMCA produces appropriate notices. These should be exhibited as specified above. Should operators request an alternative means of showing the same information, this must first be agreed by the WMCA in writing.

## **SCHEDULE III**

### **Fares and Special Tickets**

- 1.1. Passengers other than those in possession of special tickets, passes or products listed in 1.2 below are to be charged fares as follows:
- a) Children of 5 to 15 years inclusive - a fare not exceeding that shown in the table in Part I of Schedule IV as corresponding to the relevant adult fare for the journey to be made (currently half fare).
  - b) Passengers aged 16 years and over – the fare for the journey to be made shown in Schedule IV. However holders of the WMCA's 16 -18 Photocards are to be afforded travel at child fares in accordance with the *West Midlands Integrated Transport Authority Transport Act 1985 Travel Concession Scheme*.

Children under the age of 5 years are to be allowed free travel.

- 1.2. The following special tickets, passes or products are to be accepted by the Operator in accordance with standard the WMCA conditions:
- a) WMCA employees' identity cards;
  - b) English National Concessionary Travel Passes issued to Senior Citizens and to Blind and Disabled passengers;
  - c) All products listed in the nNetwork Ticket Scheme;
  - d) All products listed in the nBus Ticket Scheme including PLUSBUS tickets;
  - e) Any equivalent products to nNetwork and nBus introduced under the Network West Midlands brand.

### **Reimbursement for Special Tickets and Passes**

- 2.1 No reimbursement will be made for acceptance of the WMCA Employees' Identity Cards. For other special tickets, passes or products identified in paragraph 1.2 of part 1 of this Schedule, the Operator will be reimbursed in accordance with the levels of usage estimated by the WMCA, except where the Operator's own information about levels of usage will be used where this is demonstrably superior to that available to the WMCA.

- 2.2 The Operator will be reimbursed for acceptance of English National Concessionary Travel Passes referred to in paragraph 1.2 (b) on the basis described in the documents *West Midlands Passenger Transport Executive Transport Act 2000 Travel Concession Reimbursement Arrangements* and *West Midlands Integrated Transport Authority Transport Act 1985 Travel Concession Scheme*.
- 2.3 The Operator will be reimbursed for the acceptance of nNetwork Travel Products on the basis currently agreed between the WMCA and Operators participating in the nNetwork Ticket Scheme.
- 2.4 The Operator will be reimbursed for the acceptance of nBusTravel Products on the basis currently agreed between the bus operators participating in the nBus Ticket Scheme.
- 2.5 The Operator will be reimbursed for the acceptance of any equivalent products introduced under the Network West Midlands brand on the basis agreed between the WMCA and participating Operators.

## **SCHEDULE IV**

### **PART 1**

The maximum adult fares which may be charged to passengers not in possession of the special tickets or concessionary passes included in paragraph 1.2 of part 1 of Schedule III are as shown in the fare table below.

### **CHILD FARES**

Adult Fare

Child Fare

### **ADULT FARES**

*{Actual fares will be specified in the individual Contract Agreement. In the case of a Minimum Subsidy Agreement then these fares are maximum fares that can be charged}*

# **SCHEDULE IV**

## **Part 2**

### **EFFECT OF CHANGES TO FARES ON CONTRACT PAYMENTS**

1. The WMCA reserves the right at its sole discretion to change the fares specified in Part 1 of this schedule on giving the operator 28 days written notice.
2. On the coming into effect of any change to fares as provided for under paragraph 1 above, The WMCA may adjust the contract price to reflect the increase or decrease in revenue which, in the opinion of the WMCA, will become available to the Operator as a result of the change. For the purpose of this paragraph, revenue will be taken as including cash fares and reimbursement for the special tickets and passes as listed in Schedule III.
3. The WMCA will not apply the provisions of paragraph 2 of part 2 of this schedule provided that the change in fares does not significantly differ from the average change in the General Index of Retail Prices (all items) as published by the Central Statistical Office since the fares were last changed. The base index figure shall be the latest figure which was available when the fares were last changed and the other figure shall be that applicable at the date of the current change.

## SCHEDULE V

- 1.1 In respect of each four weeks of the duration of the contract and subject to the provisions of this Agreement, the WMCA shall pay the Operator an amount to be calculated as a proportion of the agreed Contract sum.

Such proportion shall be equal to the proportion of time which four weeks bears to the total duration of the contracts as specified in Clause I of the Agreement.

As Operators are aware, the WMCA are now responsible for administering some elements of the Bus Service Operators Grant (BSOG) following devolution from the Department for Transport (DFT). Since 1st January 2014 Operators have been required to offer prices that reflect BSOG having been devolved to the WMCA for all tendered contracts EXCEPT where this is de-minimis. For de-minimis contracts operators are required to claim for BSOG directly from DFT in line with the process for commercial bus mileage.

- 1.2 The adjustment referred to in Clause 1.3 of the schedule will only be implemented from the four weekly period commencing on the nearest day of the week to the anniversary of the contract which has the same position in the week as the day of initiation of the service provided under the contract.
- 1.3 The amount applicable to any four week period for which adjustment may be made under Clause 1.2 of this schedule will be adjusted in accordance with paragraphs a), b) and c) hereof.
- a) As to 10% of the amount payable under the terms of this contract by reference to the Automobile Association monthly fuel price report relating to diesel pump prices in the Midlands (or should such index not be available by such other relevant index as may be agreed by the parties or, in default of agreement, specified by the WMCA). The base figure will be the latest figure which was then available when the contract was commenced. The other figure shall be the value of the index which is the latest then available immediately prior to the relevant anniversary of this contract.
  - b) As to 90% of the amount payable under the terms of this contract by reference to the general index of Retail Prices (all items) as published by the Central Statistical Office. The base figure will be the latest figure which was then available when the contract was commenced. The other figure shall be the value of the index which is the latest then available immediately prior to the relevant anniversary of this contract.
  - c) Adjustments (where applicable) arising from the application of paragraphs a) or b) will be made with all payment subsequent to the relevant anniversary date.



- 2.1 Any journey not operated in accordance with the contract, unless wholly covered by the circumstances identified in Clause 2.2 of this Schedule (as to which loss of part of a journey counts as loss of the whole journey and including early or late running deemed to be a cancellation by Schedule I) will result in a deduction from payments due to the operator of an amount equal to the average price per journey as calculated by applying the contract sum to the total journeys to be provided by the operator under the contract.
- 2.2 Any journey which is operated with a vehicle which is not displaying the correct destination, route numbers or notices required under Schedule II, Paragraphs 2, 8, 9 and 10 will result in a deduction from payments due to the operator on the basis of 50% for one item or 100% for more than one item, of the average price per journey as calculated in Clause 2.1 of this Schedule.
- 3.1 On the 14th day of each 28 day period the WMCA shall pay the Operator a provisional sum of 75 per cent of the sum calculated under Clause 1 of this Schedule.
- 3.2 At the end of each 28 day period, the Operator shall ensure that all data on the daily operation of this contract on a journey by journey basis, including numbers of passengers carried and ticket types, is submitted to WMCA by the agreed date in each payment cycle using the Electronic Ticket Machine Data Analysis Software (ETM DAS) provided by EP Morris and Company Ltd. WMCA will make any adjustments to the due payment based on ETM DAS and or monitoring data in accordance with Clause 2 of this Schedule. The WMCA reserves the right to require the submission of the Electronic Ticket Machine Data on a more regular basis than every 28 days which may be anything up to a daily basis.
- 3.3 The WMCA will assess the amount due to the Operator in respect of each 28 day period in the light of:-
- i) the statements referred to in Clause 3.2 of the Schedule.
  - ii) data provided through the EP Morris and Company Ltd Electronic Ticket Machine Data Analysis Software (ETM DAS) system on whether a particular contracted journey has operated and the information on the passengers carried. Failure to provide this data for any contracted journey(s) or suitable alternative evidence that the relevant journey was operated will result in the journey(s) being treated as a failure to operate and will attract a 100% deduction in line with clauses 2.1 and 2.2

- iii) audit of operator validated and submitted data through the ETM DAS return. Operators will be expected to provide unrestricted access and support to WMCA for audit of all data relevant to contracted subsidised journeys to ensure that subsidised sums claimed are conversant with the contract. Payments for total contract amounts for a period or individual journeys may be withheld if:
    - a) an operator wilfully prevents or obstructs an open audit;
    - b) on audit, journeys previously validated by an operator are found to have insufficient supporting data / information to support the validation of operation.
  - iv) any other information available to the WMCA regarding operation of the service.
- 3.4 Any balance assessed by the WMCA to be due to the Operator in respect of each 28 day period will, subject to timely receipt of statements from the Operator, be added to the next payment due under Clause 3.1 of this Schedule. Any balance receivable from the Operator will be deducted.
- 3.5 If the first and/or final period has to be of abnormal length, due to contract commencement and/or expiry dates falling part way through the WMCA's standard four-week periods, the amount of the first and/or final payment will be adjusted proportionately.
- 3.6 The final payment will be made within 28 days of the end of four-week period during which the contract expires, subject only to possible later settlement in respect of any sums which are not agreed at that date.

## **SCHEDULE VI**

### **Training, Development & Professional Standards for Driving Staff Employed by Operators to provide the Subsidised Bus Services to the WMCA**

#### **Training & Development - Basic principles**

1. Operators who are contracted to the WMCA in the performance of local bus services shall have implemented a training & development programme which enables them to achieve the target for education and training agreed by the West Midlands Bus Operator's Panel on 8 June 2001. (See paragraph 11). Any change in this sector targets shall apply only if adopted by the WMCA after discussion with the West Midlands Bus Operator's Panel.
2. The requirement as identified in paragraph 11 shall be met by Operators at the time of commencement of any contract for which they submit tenders in order for their tender to be valid. Operators shall complete form DTS (Driver Training Standards) and return to the WMCA with their tender bid.
3. Operators who subsequently fail to meet the target shall not be considered to have met the conditions of clause 1 above for future tenders and their bids will not be considered valid until such time as they shall meet the target.
4. The WMCA may conduct an audit in respect of Operators' declarations on form DTS for each Operator submitting successful tender bids in that year. Subject to clause 5 below any such declarations that shall be found to be incorrectly submitted shall constitute a failure to observe the terms and conditions of this Agreement under clause 14 (c) of the Agreement.
5. Notwithstanding any action taken by the WMCA under clause 4 above the WMCA shall not act unreasonably in taking such action where a declaration submitted in respect of clause 2 above has been incorrectly submitted as a result of later unforeseen circumstances beyond the control of the Operator prior to the commencement of any contract awarded that prevents the Operator from attaining the forecast target.
6. Drivers shall normally commence NVQ training after 6 months employment with the Operator and shall complete Level 2 standard within 15 months of commencement. (This standard shall apply once agreed targets are met and should generally apply to new employees.)
7. NVQ Level 2 training shall include the mandatory units of Transporting Passengers by Road – Short Itineraries (currently TP1 to TP7 inclusive) plus the optional units “Provide Local Bus Services” (currently TP11) and “Operate payment systems” (currently TP8) unless otherwise superseded or agreed by the West Midlands Bus Operator's Panel and the WMCA.

8. In line with current legislation all drivers shall be in possession of their Certificate of Professional Competence (CPC) for any service where this is applicable.
9. All employees shall receive training that shall include caring for the customer and disability awareness.
10. The Operator will comply with all requirements as set out under the Safeguarding Vulnerable Group Act 2006.

### **Targets for Education and Training**

11. The percentage of employees normally engaged in driving local bus services required to be trained to NVQ Level 2 at commencement of contracts from 1 January 2006 will be 60% for all operators. Part time employees who drive for less than 21 hours per week on average on local bus services are to be considered equivalent to half a full time equivalent and agency staff are to be included in the total number of employees normally engaged in driving local bus services before calculating the percentage trained to NVQ Level 2.
12. The 60% standard shall be deemed to be met if operating centres providing services for the WMCA meet the targets individually or collectively.

### **Targets for Driving Standards**

13. The WMCA employs external contractors to monitor and assess drivers of subsidised bus services both in respect of driving ability and customer care standards. Every assessment is reported both to the WMCA and to the Operator concerned and performance graded from 1 to 4.
14. Operators are expected to investigate all assessments, and, in the event of an Assessment resulting in grade 4 (“dangerous” for driving ability, or “unacceptable” for customer care) to communicate the results of their investigation and action taken to the WMCA within fourteen days of their receipt of original assessment
15. In any rolling six monthly period the WMCA will expect a minimum of 65% of assessments to be graded 1 or 2 (good to excellent or acceptable). If 50% or more result in grades 3a, 3b or 4 (potentially dangerous or dangerous in respect of driving ability and average or unacceptable in respect of customer care) the Operator will be required to produce within 28 days an action plan detailing to the WMCA’s satisfaction his proposals to improve standards going forward.
16. The WMCA would expect that drivers assessed as achieving high standards would be recognised.