

29 JANUARY 2017

**VOLUNTARY PARTNERSHIP AGREEMENT IN RELATION TO BUS SERVICES IN
BARNSELY**

THE BARNSELY AREA VOLUNTARY PARTNERSHIP AGREEMENT

SOUTH YORKSHIRE PASSENGER TRANSPORT EXECUTIVE	(1)
BARNSELY METROPOLITAN BOROUGH COUNCIL	(2)
ROSA HOLDINGS LIMITED	(3)
RONALD WATERSON AND SHEILA WATERSON LIMITED	(4)
THE YORKSHIRE TRACTION COMPANY LTD	(5)

UPDATED ON THE 04 NOVEMBER 2016

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This Agreement is made the _____ day of _____ 2016

Between:

- (1) **SOUTH YORKSHIRE PASSENGER TRANSPORT EXECUTIVE** of 11 Broad Street West, Sheffield, S1 2BQ (the "**Executive**");
- (2) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Westgate Plaza 1, Westgate, Barnsley, S70 2DR (the "**Council**")
- (3) **ROSA HOLDINGS LTD** of 60 Eldon Street, Barnsley, S70 2JL, (t/a "**Globe Coaches**")
- (4) **RONALD WATERSON & SHEILA WATERSON LIMITED** of 69 Highfield Road, Hemsworth, Pontefract, WF9 4EA (t/a "**Watersons Coaches**")
- (5) **THE YORKSHIRE TRACTION COMPANY LTD** t/a **STAGECOACH YORKSHIRE** of Daw Bank, Stockport SK3 0DU ("**Stagecoach Yorkshire**")

Each a Party together the Parties

WHEREAS

- i. The Parties wish to set out the basis upon which they will work together to improve bus services, grow patronage and encourage modal shift in Barnsley through providing and promoting a stable, reliable, quality, value for money network which reduces its impact on the environment.
- ii. The Parties wish to formalise these arrangements by entering into this Voluntary Partnership Agreement (as defined in section 153(2) of the Transport Act).
- iii. The Executive is the passenger transport executive for South Yorkshire, the Council is the local authority and highway authority for Barnsley and the Operators are companies operating in South Yorkshire providing local bus services who have expressed an interest in entering into partnership with the Executive. The Parties have agreed to enter into this Agreement to improve local bus services. This Agreement defines what each Party shall contribute and demonstrates how the agreed bus service operations and shared bus improvement objectives will be implemented in order to provide public benefits and achieve the Purpose.

- iv. The Competition Test set out in Part 2 of Schedule 10 to the Transport Act has been applied and this Agreement is considered by the Executive and Council to be an exempt voluntary multilateral agreement for the purposes of paragraph 22(1) of Schedule 10 of the Act and accordingly it should be exempt from the prohibition at paragraph 20 of Schedule 10 of the Transport Act.
- v. The Parties acknowledge that the arrangement is voluntary but agree to fully co-operate with each other in the spirit of collaboration to achieve the Purpose of the Agreement, subject to any restrictions placed on co-operation by prevailing legislation, including the Competition Act 1998.
- vi. This Agreement shall be known as the Barnsley Area VPA.

NOW IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires, the following terms have the meaning set opposite them below:
- (a) **3xY Service Change Dates** means the last Sunday of January, the last Sunday of April (as may be altered by joint agreement of all Parties if it falls on Easter Sunday) and the first Sunday of September in each year;
 - (b) **Combined Authority** means the Doncaster Barnsley Rotherham Sheffield Combined Authority and includes decisions made by its Transport Committee under delegated powers;
 - (c) **Council** means Barnsley Metropolitan Borough Council;
 - (d) **Data Sharing Agreements** means the Data Sharing Agreements as may from time to time be agreed in relation to this Agreement;
 - (e) **De-Minimis Contract** means a bus service contract directly awarded to a bus operator by the Executive in accordance with the Service Subsidy Agreements (Tendering) Regulations 2002 (as amended);

- (f) **Disclosed Information** means any information disclosed by the Parties in respect of the implementation and operation of this Agreement;
- (g) **Barnsley Annual Footfall** means the official footfall data collated by the Council;
- (h) **Effective Date** means 15 May 2016;
- (i) **Exempt Services** means:
 - (i) Services operating across the Barnsley boundary with minority mileage within, or express services specifically for commuters from outside the boundary into Barnsley except for Services as agreed (*see appendix WP1.7 for specific exempted services*);
 - (ii) Tendered Services and De Minimis Contracts commencing before the date of this Agreement (*see appendix WP1.7 for specific exempted services*) for the duration of each specific contract until expiry or termination date (FOR THE AVOIDANCE OF DOUBT Tendered Services commencing on or after the date of this Agreement are not Exempt Services and are subject of this Agreement);
 - (iii) Third party funded services where such funding is a substantial or sole source of funding, excluding fare box/BSOG/concessions revenue;
 - (iv) Designated night services; and
 - (v) All School Services of all operators;
- (j) **Investments** means the investments each Party has committed to undertake as detailed in Schedule WP2;
- (k) **KPIs** means the key performance indicators detailed in Schedule WP5;
- (l) **Major Network Change** means any other change which exceeds the limits of a Minor Network Change;

- (m) **Minor Network Change** means a minor timetable change or minor frequency adjustment not impacting on that service's frequency standards, the overall hours/days of service provision or routes;
- (n) **Minimum Period** means five years from the Effective Date;
- (o) **Network** means the Services (including route, frequency and broad timing of first/last bus) operated (or to be operated) by the Operators detailed in Schedule WP1.7 Barnsley Bus Partnership Route Summary and Frequency Guide as amended from time to time in accordance with this Agreement but excluding the Exempt Services;
- (p) **Network Change** means any Major Network Change or Minor Network Change (including additions/reductions) to any Service(s) or Route(s) forming part of the Network as a result of a Network Review;
- (q) **Operators** means Stagecoach Yorkshire, Globe Coaches, Watersons Coaches;
- (r) **Network Review** means any review of the Network or any part thereof carried out by any of the Parties hereto;
- (s) **Party** means a party to this Agreement;
- (t) **Protocols Strategies and Plans** means the operational arrangements and methods of working detailed in Schedules WP1 to WP5;
- (u) **Purpose and Objectives** have the meaning given to them in Clause 3.2;
- (v) **Qualifying Agreement** means an agreement as defined in paragraph 17(4)(a) of Schedule 10 to the Transport Act;
- (w) **Resource** means the total mileage and/or bus hours and/or vehicle capacities and/or peak vehicle numbers (as the case may be) operated by the Operators to provide the Network recorded by each Operator individually;
- (x) **Reimbursement Arrangements** means the arrangements with each individual Operator relating to the English National Concessionary

Travel Scheme concessionary fares reimbursement as in place at the date of this Agreement;

- (y) **Route** means a route, series of routes and/or sections of routes or corridors forming part of the Network as detailed in Schedule WP1;
- (z) **Saved Resource** means the reduction in Resource resulting from changes to the Network;
- (aa) **School Services** means Services that operate for the primary purpose of transporting children and young people to designated education establishments either within or outside the Barnsley Metropolitan boundary;
- (bb) **Service(s)** means the bus services of the Operators embraced within this Agreement, or such services which are the successors of those bus services;
- (cc) **Standards** means the bus, infrastructure or highway management standards as set out in Schedule WP2;
- (dd) **Tendered Services** means subsidised transport services for which there is an obligation to invite tenders under section 89 of the Transport Act 1985;
- (ee) **Tendered Services Criteria** means the Executive's prevailing criteria for deciding how the Executive should spend available budget on bus services prior to procuring Tendered Services or awarding De-Minimis Contracts as approved by the Combined Authority including any subsequent revisions, the current version being March 2014;
- (ff) **The Customer Service Plan** means the Customer Service Plan as detailed in Schedule WP4;
- (gg) **The Information Products Strategy** means the Information Products Strategy as detailed in Schedule WP4 or such other information strategy as may from time to time be agreed by the Parties;
- (hh) **The Strategic Marketing and Communication Plan** means the Strategic Marketing and Communication Plan as detailed in Schedule

WP4 or such other marketing plan as may from time to time be agreed by the Parties;

(ii) **Transport Act** means the Transport Act 2000.

(jj) **TravelMaster Panel** means the governing body for the TravelMaster Multi-operator Travel Card.

1.2 Any references to a specific statute include any statutory extension or modification amendment or re-enactment of such statute and any regulations or orders made under such statute and any general reference to 'statute' or 'statutes' includes any regulations or orders made under such statute or statutes

1.3 Words importing the plural shall also include the singular and vice-versa.

2 DATE AND PERIOD OF AGREEMENT

2.1 This Agreement shall apply with effect from the Effective Date and shall continue in force unless terminated in accordance with clauses 2.2 to 2.5 below.

2.2 This Agreement may be terminated as follows:-

(a) at any time by mutual written consent of all the Parties; or

(b) by 12 months' prior written notice served by any Party on the other Parties subject to expiry of the Minimum Period PROVIDED THAT the remaining Parties may agree to continue this Agreement without the Party that has served notice (such agreement to be reached at the next meeting referred to in clause 14.4(b) or such earlier meeting which shall be arranged between those remaining Parties); or

(c) by immediate written notice served by an Operator on the other Parties where approval is secured of the Combined Authority to the making of an area wide Franchise or Quality Contract (or series of individual Quality Contracts intended to achieve area-wide coverage) under the Transport Act in the area covered by the Agreement (or an area substantially similar to it) PROVIDED THAT an Operator will not serve such notice to terminate the Agreement until the Parties have met at the next meeting referred to in clause 14.4(b) (or such earlier meeting

which shall be arranged between the Parties), in good faith to determine whether the Agreement should continue up to and/or beyond the date of the Franchise or Quality Contract coming into operation AND FOR THE AVOIDANCE OF DOUBT a route specific Quality Contract linked to major capital investment (such as Bus Rapid Transit North and South) does not comprise an area wide Quality Contract for the purpose of this clause and the Executive will ensure that if they intend that more than one such Quality Contract is to be made that together such Quality Contracts would not act to create an area wide Quality Contract.

- (d) by 6 months' prior written notice served by an Operator on the other Parties where the Council and/or the Executive:
 - (i) permanently reduces the extent of measures in the area covered by the Agreement that are aimed at reducing bus journey times and/or their availability, and/or reduces the hours of operation of such measures, and/or reduces its level of enforcement activities (as the case may be); or
 - (ii) The Council and/or the Executive breaches its obligations under clause 5.4,

PROVIDED THAT an Operator will not serve such notice to terminate the Agreement until the Parties have met at the next meeting referred to in clause 14.4(b) (or such earlier meeting which shall be arranged between the Parties), in good faith to determine if, such measures or obligations can be replaced by others, which if requiring funding would be funded by the Council, offering at least a comparable benefit, or are agreed by all Parties, (such agreement not to be unreasonably withheld);

- (e) by immediate written notice served by the Executive or Council on the other Parties where an Operator reduces the Network (other than in accordance with the terms of this Agreement) PROVIDED THAT no such notice to terminate the Agreement will be served until the Parties have met at the next meeting referred to in clause 14.4(b) (or such earlier meeting which shall be arranged between the Parties) to determine whether the Agreement should continue.

- (f) by 9 months' prior written notice served by an Operator on the other Parties where there is a material deterioration in bus operation finances as set out in sub-clause 2.3 below and subject to the provisions of sub-clause 2.4.
- (g) by immediate written notice served by one Party on the other Parties where there has been a failure to agree or implement a KPI remedial action plan in accordance with clause 9.8.
- (h) by immediate written notice served by one Party on the other Parties where there has been a failure to agree or implement an action plan in accordance with clause 6.5.

2.3 In accordance with clause 2.2(f) there will be considered to be a material deterioration in bus operation finances of an Operator if:

- (a) the reimbursement rates payable in respect of Bus Service Operators Grant ("BSOG") (or such other equivalent or replacement system of reimbursement) for an Operator are reduced AND FOR THE AVOIDANCE OF DOUBT this does not apply to the process, method or source of payment; and/or
- (b) renegotiation or recalculation of the Reimbursement Arrangements (and any subsequent arrangements) which on its own or, together with other such renegotiations or recalculations results in a 5% or greater reduction in the current annual total reimbursement entitlement rate for an Operator measured against the prevailing reimbursement rate (which shall be based on the April 2016 entitlement rate adjusted annually by CPI) PROVIDED THAT total reimbursement level may alter by 5 per cent or more if linked to a more accurate means of allocation i.e. through use of Smartcards; or as a consequence of a proportionate passenger reduction; or as a consequence of operator changes to its fares upon which the entitlement is calculated AND PROVIDED ALWAYS THAT this paragraph 2.3(b) shall not apply in its entirety where any mutually agreed Reimbursement Arrangements are implemented as a result of a jointly agreed BSOG devolvement package; and/or

- (c) both (A) Gross Domestic Product, as measured using the data series referred to as YBEZ by the Office of National Statistics reduces by 2 per cent for two consecutive quarters when compared with the previous quarter; and (B) Barnsley Annual Footfall indicators reduce by 4% from the previous quarter; and

SUBJECT IN ALL CASES TO the relevant Operator disclosing accounts to, or otherwise demonstrating to the Council and the Executive a detrimental and prejudicial impact on the Operator's business.

- 2.4 Where a material deterioration in bus operation finances can be demonstrated to have occurred, (in accordance with clause 2.3 above) the issue will be considered by the Operator concerned, the Executive and the Council at the next quarterly meeting referred to in clause 14.4(b). Each Operator agrees that it will only serve notice of its intention to terminate its involvement in the Agreement on the basis of deterioration in bus operation finances if the Operator concerned, with the Executive and the Council cannot agree proportionate mitigating measures.
- 2.5 Termination by any Operator of its participation in this Agreement in accordance with section 2.2(b) – (d) (inclusive) and 2.2(f) – (h) (inclusive) above shall not affect the ongoing validity of any other separate agreements between the Parties or the continuation of this Agreement between the remaining Parties should they so agree in accordance with clause 2.2(b).

3 PURPOSE AND OBJECTIVES

- 3.1 The Parties agree to work together during the term of this Agreement in a constructive and cooperative manner with a view to achieving the Purpose, and a copy of this Agreement and supporting documentation shall be placed by the Executive on the CPT/UTG website on behalf of all Parties.
- 3.2 The Purpose and Objectives, in furtherance of the wider objectives of the Sheffield City Region Transport Strategy and Public Transport Action Plan are:-
- Secure improvements in the quality of vehicles used for or in connection with the provision of local services for the benefit of customers;

- Secure other bus quality and operational improvements to expressly benefit users of local services, including joint promotion of an agreed service pattern and performance (which rationalises the services offered), and simplification and inter-availability of ticketing to reduce customer confusion, delay and inconvenience;
- Reduce and limit traffic congestion and thereby air pollution? through investment in higher Euro Engine specifications
- Providing a high quality transport option for those without use of a car
- Providing a high quality choice for those with use of a car
- Increasing the overall volume of people using bus services in the Barnsley area during years 1-5 of the life of the Agreement by an annual target to be agreed
- Prioritising resources to support sustained economic growth and reducing worklessness
- Reducing environmental impact.

To achieve the Purpose the Parties hereto wish to:-

- (a) Provide high quality, reliable, punctual services
- (b) Provide a stable, clear to understand, network that is promoted as a whole
- (c) Provide affordable, cost competitive value for money fares and ticket products
- (d) Provide a high quality customer experience, both on and off bus
- (e) Promote and market the services
- (f) Optimise combined total resources to achieve efficiency
- (g) Minimise the impact of travel on the environment.

4 NETWORK

- 4.1 Aligned to the Purpose and Objectives, the Parties will comply with the following clauses of this section 4, EXCEPT THAT if all Parties agree otherwise, those obligations and arrangements may be varied if considered to be in the best interests of the customer and where agreement cannot be reached the matter will be considered at the next meeting referred to in clause 14.4 (a) or if necessary raised by any Party at the meeting referred to in clause 14.4(b).
- 4.2 Subject to the provisions of this section 4 the Operators separately agree to provide the Network and Routes as detailed in Schedule WP1 (Barnsley Bus Partnership Route Summary and Frequency Guide) and to implement the Protocols set out in Schedule WP1.
- 4.3 The Operators may individually introduce
- (a) seasonal and Bank Holiday changes to the Network in agreement with the Executive and the Council (following consultation through the Executive of any affected Operators) (such agreement not to be unreasonably withheld); and/or
 - (b) temporary timetables and diversions of Services as a result of temporary road works, utility works or external events PROVIDED THAT all Parties shall strive for minimum disruption to Services in such circumstances.
- 4.4 The Parties will undertake periodic whole or partial Network Review(s) in order to monitor on an ongoing basis fulfilment of the Purpose and make proposals for adjustments to the Network and Resource. Such reviews shall be no more frequent than annual (unless agreed by all Parties). Such reviews must be consistent with the Purpose PROVIDED ALWAYS that the Operators may only reduce the Network;
- (a) if passenger demand reductions can be objectively evidenced to the satisfaction of the Executive and the Council and the reduction is not as a result of poor performance or delivery by the Operator proposing the reduction or where highway improvements are delivered which achieve punctuality improvements to justify reduction of the Resource; and;

- (b) if the reduction would not require the Executive to secure Tendered Services or award De Minimis Contracts if eligible in accordance with the Tendered Services Criteria unless otherwise agreed with the Executive and Council; and;
- (c) if any proposed frequency reductions are not justified by operation of larger capacity buses, unless otherwise agreed between the Parties; or
- (d) in accordance with clauses 4.3 and 11.2.

Network Changes

- 4.5 The Operators will use all reasonable endeavours to achieve and maintain stability of the Network, however where the Council and the Executive agree, periodic change may be prudent. The Operators will comply with the provisions of clauses 4.6 to 4.13 below before making any changes to the Network and will consider in good faith with the Parties any suggestions for change which they propose. Any changes to the Network must be settled through discussions between the Operator proposing the changes and both the Executive and Council who will in turn consult other affected Operators, as considered appropriate by the Executive and the Council taking into account the Purpose of the partnership.
- 4.6 Within 12 months from the Effective Date any Operator may propose Network Changes in accordance with clause 4.8 below, such changes to be made on any of the 3xY Services Change Dates.
- 4.7 12 months after the Effective Date any Operator may propose Network Changes in accordance with clause 4.8 below, such changes to be made as follows:-
- (a) for a Minor Network Change on any of the 3xY Service Change Dates;
- or
- (b) a Major Network Change per Service may be made once per year on one of the 3xY dates, such date taken from the anniversary date of the last time that Service was subject to a significant change and such anniversary date to ignore minor variations of the date of each 3xY change in different years.

- 4.8 In order that the Executive has adequate time for public consultation and for information production, if an Operator wishes to make a Network Change, it shall, in the case of a Minor Network Change, 91 days in advance of the relevant Service Change Date and, in the case of a Major Network Change, 126 days in advance of the relevant Service Change Date formally notify the Executive and the Council in writing of the proposal (who will in turn consult other affected Operators) and provide the Executive and Council with evidence to justify the proposal (including, timetabling and routing details, timing points and in the case of any planned service reduction, route specific patronage and any associated service changes) PROVIDED THAT such discussion and notification is made to enable the timescales set out in clauses 4.9 and 4.10 below to be met. The Operator(s) concerned will provide information as specified on the condition that it is shared only with the Executive and the Council for the benefit of informing the consultation and discussion on the proposal.
- 4.9 Following consultations with affected Operators, and in order that the Executive has adequate time for information production, at least 77 days in advance of the relevant Service Change Date, the Operator(s) concerned, the Executive, and Council will jointly decide, having regard to the Purpose whether the Network Change is acceptable.
- 4.10 Any accepted Network Change must be progressed by the Operator(s) requesting the change providing full stop specific and accurate timetable and route details to the Executive and other affected Operators at least 70 days in advance of the relevant Service Change Date to enable formal registration of the Network Change 56 days in advance of the relevant Service Change Date (failing which the Executive will produce information (if at all) at its discretion and the relevant operator shall fund all reprint costs including associated staff costs).
- 4.11 All Parties agree that where a Service operates in more than one area subject to a Voluntary Partnership Agreement (as defined in section 153 (2) of the Transport Act) then the Network Change provisions to apply will be those from the Voluntary Partnership Agreement in which the majority of the mileage of the Service falls, unless otherwise specifically stated.

- 4.12 In the event that the current statutory notification periods set out in the Public Service Vehicles (Registration of Local Services) Regulations 1986 are varied then the notification dates set out in clauses 4.8, 4.9 and 4.10 will be revised to the same extent.
- 4.13 Where, in the opinion of the Operator(s) concerned, the Executive and the Council, any proposed Network Changes are considered significant and the Operator has not already publicly consulted on the proposed changes, the Executive and the Operator(s) concerned will:
- (a) within 5 working days from the notice referred to in clause 4.8 above, consider and agree what, if any, public consultation of these proposed Network Changes is required; and
 - (b) carry out such agreed consultation by the notice period referred to in clause 4.9 above or such later date as agreed between the Executive, the Council and the Operator(s) concerned.

Saved Resource

- 4.14 The Operators agree that insofar as a Network Change or Network Review results in Saved Resource then subject to the agreement of the Executive and the Council (following consultation through the Executive of any affected Operators) the Saved Resource will be redeployed to another part of the area covered by this Agreement where evidence of demand exists or invested in other elements of these partnership arrangements, or be used to offset a material deterioration in bus operation finances (see clause 2.3). Where redeployment is considered inappropriate at that time the Saved Resource will be temporarily withdrawn and redeployed at a later date as agreed between the affected Operator, Executive and the Council (following consultation through the Executive of any affected Operators) when evidence of demand re-occurs on the original Route in question or an alternative is agreed PROVIDED THAT the business case of the affected Operator shall be no worse than that which existed when the Resource was withdrawn and became Saved Resource and PROVIDED THAT such re-deployments will be implemented on one of the 3xY Service Change Dates or as agreed between the Parties. All Parties acknowledge that the reinvestment of the Saved Resource may be applied to the Network as peak vehicle requirement and/or bus mileage and/or bus hours of operation, lower fares or increased

investment by the agreement of the affected Operator, Executive and Council (following consultation through the Executive of any Operators the Executive deem affected). All Parties agree that the redeployment of Saved Resource may include price reductions or the cost of other commercial or operational interventions designed to have a customer benefit, and which have the potential to contribute to the overall shared objective of passenger volume growth.

- 4.15 FOR THE AVOIDANCE OF DOUBT any savings made as a direct result of highway changes funded through a devolved BSOG package will not be considered as Saved Resource, as this saving will be considered as off-setting any changes to the BSOG reimbursement rate.

Tendered Services/Journeys

- 4.16 At the date of the Agreement the Network includes Tendered Services or De-Minimis Contracts commencing on or after the date of this Agreement that are provided under contract to the Executive. It is agreed that when contracts are offered for tender, the Operators may individually submit tenders.
- 4.17 In the event that the Executive does not retender the service(s)/journey(s) concerned, or that the Operators are not offered a De-minimis Contract or are not successful in retaining the contracted service/journey that forms part of the Network (having complied with the provisions of clause 4.16 above) then that service(s)/journey(s) shall no longer form part of the Network for the purpose of this Agreement.
- 4.18 The Operators agree that additional services/journeys that they operate under contract won or awarded to them by the Executive after the date of this Agreement shall for the period of this Agreement or the duration of the contract, whichever be the shorter, be deemed to form part of the Network if such services lie within the area covered by the Network.
- 4.19 Wherever possible the Executive will not reduce the funding it makes available to the Tendered Services budget relating to services operating in the area covered by the Network (subject to the resolutions of the Combined Authority and compliance with the Executive's Tendered Services Criteria). For the purpose of clarity, Exempt Services and external grant funding for Services is considered outwith such budget funding and grant funded services shall be

maintained only in line with the specific grant funding timescales and conditions.

Cross Boundary Services

WP1.7 - Services and Frequency Table

- 4.20 The Executive acknowledges that in respect of those Services indicated in Schedule WP1.7 Services and Frequency Table with 'Exempt Services' category status (being those Services that form part of the Network but that do not exclusively or substantially operate within it) the Operators may, for circumstances relating to actions taken by the highway authority for the part of the route that falls outside of the Network area, or actions taken by a utility company or similar body on such part of the route, need to change the Services. In such circumstances the Operators will follow the Network Change procedure detailed in clauses 4.6 to 4.13 above, and provided that the affected Operator has demonstrated it has used all reasonable endeavours to mitigate the effect of the required change then the Executive and the Council shall agree that Network Change.

5 BUS QUALITY, HIGHWAYS MANAGEMENT MAINTENANCE AND BUS STOP STANDARDS

- 5.1 Aligned to the Purpose and Objectives, the Parties will comply with the following clauses of this section 5 UNLESS all Parties consider that an alternative proposal can be implemented which does not undermine the customer offer in any practically discernible way or proportionate mitigating measures are made and agreed by all Parties.
- 5.2 The Operators undertake to operate buses on the Network which meet or exceed the Bus Quality Standards set out in Schedule WP2.3 as amended from time to time by agreement of the Parties and FOR THE AVOIDANCE OF DOUBT all parties agree that where a Service operates in more than one area subject to a Voluntary Partnership Agreement (as defined in section 153(2) of the Transport Act) or a Statutory Quality Partnership Scheme (as defined in section 114-123 of the Transport Act 2000), then the Bus Quality Standards to apply will be those from the Voluntary Partnership Agreement or Statutory Quality Partnership Scheme in which the majority of the mileage of the Service falls.

5.3 The Operators undertake to meet or exceed the Bus Quality Targets set out in Schedule WP2.2.

5.4 The Council and the Executive undertake to retain and manage the effective operation of public highways within the Network area and other elements of infrastructure in accordance with the Highways Management Maintenance Standards set out in Schedule WP2.4 and the Bus Stop Standards set out in Schedule WP2.5. PROVIDED ALWAYS THAT permanent reductions in infrastructure may be agreed with all other Parties SUBJECT TO no material detriment being evidenced or alternative mitigation measures being put in place as agreed with the Parties at, or prior, to the removal of the infrastructure in question.

6 INVESTMENTS

6.1 The Parties undertake to deliver the Investment Programme as set out in Schedule WP2.1. The process of regular review under clauses 6.2 and 14 may include the addition by agreement of further investment commitments as Investments.

6.2 On or before each anniversary date of the Effective Date the Parties agree to complete an Investment Review for the previous financial year, and will use their respective reasonable endeavours to agree the Investments for the financial year following.

6.3 If the regular review process set out in clause 14 identifies a failure or likely failure by any Party to deliver its Investments the defaulting party shall be required to table, at the next meeting of the forum defined in clause 14.4(a) a remedial action plan detailing:-

- (a) progress to date;
- (b) delivery programme;
- (c) detailed reasons for the delay;
- (d) any mitigation measures; and
- (e) any other relevant information including an action plan or, in the event that an Investment can no longer be implemented, the defaulting party's alternative investment proposals.

6.4 All such action plans shall subsequently be updated for each further meeting of the said forum and shall also be referred to the forum identified in clauses 14.4(b) to be resolved.

6.5 If the Parties fail to agree the action plan within 6 months' of the referral set out in clause 6.4 above, the termination provisions set out in clause 2.2(h) shall take effect.

7 TICKETING/FARES

7.1 The Operators agree to participate in ticketing arrangements for the Network as detailed in Schedule WP3 via the TravelMaster Multi-Operator Travel Card Scheme.

7.2 The Parties recognise the need for affordable, simple and easy to understand ticketing arrangements for customers and potential customers that offer value for money. The Parties will continue to assess the demand for changes to existing arrangements and will, where possible, implement any changes in furtherance of this partnership objective.

7.3 The Operators are individually free to set their own fare levels and will make all reasonable endeavours to limit changes to each price/fare to once per year on one of the 3xY Service Change Dates (or one of the notified rail fare change dates for TravelMaster products) and any such proposed variation of fares shall be notified to the Executive and Council as follows:

(a) for fares currently specified in timetables issued by the Executive, publicised in information displayed at bus stops or in any other promotional material made available by the Executive, then the Executive requires 56 days' notice and for all other unpromoted fares (being fares which are not used in any Executive or Partner wide publicity, information or promotional material) the Executive requires 21 days' notice;

(b) if any fares advertised by the Executive are varied more than once per year or outside one of the 3xY Service Change Dates (or one of the notified rail fare change dates for TravelMaster products) the Executive will only produce information (if at all) at its discretion and the relevant Operator shall fund all reprint costs including associated staff costs;

(c) the principles behind the change will be communicated to the Executive and Council together with a comparison with the most recent Confederation of Passenger Transport Cost Index or reasons for varying from that.

7.4 An Operator may promote end dated fare promotions (at its own cost unless otherwise agreed) SUBJECT TO not less than 7 days prior notice to the Executive and Council and where such promotional fares cause any other Party's advertisements of fares to be materially inaccurate or in breach of advertising standards, the Operator making the promotion agrees to meet all reasonable costs of rectifying the advertised fare information.

8 MARKETING & INFORMATION

8.1 Aligned to the Purpose and Objectives the Parties will comply with the following clauses of this section 8 and will seek to pool collective resources to present and promote the overall bus offer PROVIDED THAT all Operators are free to market and promote their own offer SUBJECT TO the wider bus offer not being undermined.

8.2 The Parties agree to implement the Customer Service Plan and Customer Charter set out in Schedule WP4.3 and WP4.4;

8.3 The Parties agree to implement the Information Products Strategy set out in Schedule WP4.

8.4 The Parties agree to implement the Strategic Marketing and Communications Plan set out in Schedule WP4.1.

9 PERFORMANCE

9.1 The Parties agree to implement the Business Reporting Protocol and Performance Framework set out in WP5. The KPIs for each Party under this Agreement are set out in Schedule WP5.2 and shall be revised from time to time by agreement of the Parties.

9.2 Each Party acknowledges that performance by that Party in respect of the matters to which the KPIs detailed in Schedule WP5.2 below relate are of importance in respect of delivering the Purpose and Objectives and delivering and maintaining reliable and good quality bus services and that the aim of the

KPIs are to drive up individual and collective performance rather than undermine any one Party.

- 9.3 The relevant Party shall report on their performance in meeting or exceeding the Baseline performance figure and target performance at the frequency required. Should performance not meet or exceed the target performance for more than 1 reporting period (or any Party becomes aware that it will not meet such performance) that Party shall follow the procedure set out in clause 9.4 below.
- 9.4 A Party or Parties that fail(s) (or believes they will fail) to meet one or more of their KPI's shall, at the next meeting of the forum defined in clause 14.4(a), discuss and agree with the other Parties a KPI remedial action plan for each KPI that has not been met (or which they reasonably believe will not be met), such plan detailing:-
- (a) the target figure and actual performance since the Effective Date;
 - (b) detailed reasons for failure to meet the KPI;
 - (c) any mitigation measures;
 - (d) proposals for ensuring the KPI will be met in the next and subsequent reporting periods.
- 9.5 All such action plans shall be updated for each further meeting of the said forum and shall also be presented to the forum identified in clause 14.4(b) until such time as the problem is resolved.
- 9.6 A Party may call for a review of any KPI and such review shall proceed only with the agreement of all Parties. In any case all KPIs shall be reviewed annually and modified as agreed by the meeting defined in clause 14.4(b).
- 9.7 Where the Parties cannot agree a KPI remedial action plan as required by clause 9.4, the matter will be referred to the next meeting of the forum defined in clause 14.4(b) which will discuss and agree the KPI remedial action plan within 6 months from the referral.
- 9.8 If the Parties fail to agree the KPI remedial action plan within 6 months' of the referral set out in clause 9.7, the termination provisions set out in clause 2.2(g)

shall take effect, or alternatively the Parties may refer to the dispute resolution procedure in Clause 1514.4(b)(i).

10 DATA SHARING

10.1 The Operators will provide all data required to discharge their obligations under the provisions of this Agreement to the Executive and the Council in accordance with the provisions of the Data Sharing Agreements.

11 OTHER OPERATORS

11.1 Other bus operators may join this Agreement at any time. Where another operator (in furtherance of the Purpose of this Agreement) wishes to join the partnership arrangements (in whole or part) and they wish to operate on a corridor such that interworked timetables would apply, they shall be allowed to do so and become a Party to the Agreement PROVIDED THAT the Services provided by the Operators and the new operator(s) are re-timetabled where considered necessary by the Parties. The new operators' intended bus services shall be considered additional to the Network. Under such conditions if there is duplication of Services, Routes and/or times then the Operators would be permitted to propose a Network Change to reduce their Services' provision and retain a level of Service equivalent to the original timetable, at their discretion.

11.2 Nothing in clause 11.1 above would prevent another operator outwith this Agreement running new bus services ("*the new services*"), and FOR THE AVOIDANCE OF DOUBT under such circumstances;

(a) the Operators party to this Agreement will maintain the Network but may, within 12 months from the introduction of *the new services* or any alteration to *the new services*, respond to the competition by:-

(i) increasing or decreasing Services, by way of a Network Change save that clauses 4.5, 4.6, 4.7 and 4.9 will not apply and the provisions of clause 4.18 relating to notification will apply subject to a reduced notification period of 63 days;

(ii) improving quality;

(iii) reducing fares and/or introducing new ticketing arrangements;
and/or

(iv) any other such other reasonable and proportionate measures;

AND where an Operator increases Services pursuant to this clause 11.2(a) and subsequently reduces them, they will not be considered Saved Resource; and

(b) the Operators party to this Agreement may, after 12 months from the introduction of the new services or any alteration to the new services only make a Network Change by way of the Network Change procedure in clauses 4.5 to 4.13 SAVE THAT under Clause 4.9 the Executive and the Council will have regard to the overriding criteria of financial viability of the Services subject to the proposed change where the Service has not been deliberately or negligently mismanaged PROVIDED ALWAYS that any permitted reduction in Services will be considered a Saved Resource which the Operators will reinstate to a level agreed with the Executive and Council if the new services are withdrawn; and

(c) any Operator(s) making any changes to Services outside the 3xY Service Change Dates (in accordance with clause 11.2 (a) and (b) above) will fund the cost of maintaining accurate customer information produced by any Party pursuant to their obligations under this Agreement unless otherwise agreed between the Parties

12 SALE OF OPERATOR'S BUSINESS

12.1 In the event that an Operator sells all or part of its operational business and/or goodwill the Operator will make such sale subject to the terms of this Agreement and oblige the purchaser to comply with the terms of this Agreement as a condition of sale.

13 MISCELLANEOUS

13.1 Each Party hereto acknowledges and agrees that nothing done under this Agreement shall adversely affect any other part of South Yorkshire in respect of the quality of vehicles and frequency and coverage of local bus services and the affordability of such services.

13.2 The Parties will work together with a view to ensuring that the Operators individually advise the Executive and Council, or the Council and/or Executive individually advises the Operators of plans they may be considering or adopting and of developments of which they become aware which, in either case, are relevant in any material way to the purpose or the fulfilment by the Parties of their obligations under this Agreement.

13.3 The Parties agree to implement the Protocols, Strategies and Plans set out in Schedules WP1 to WP5 and will work together in good faith to revise them where necessary or negotiate new protocols as necessary.

13.4 All parties shall bear their own costs in relation to this Agreement.

14 REGULAR REVIEW PROCESS

14.1 Each Party shall nominate an individual within its organisation who shall have primary responsibility for day-to-day contact with the other Parties in connection with this Agreement. A Party may amend the details of its nominated individual at any time on written notice given to the other Parties.

14.2 All Parties will provide a written report to the other Parties summarising activity which it has undertaken since the previous report tabled to the meeting held under clause 14.4(b).

14.3 In addition to the report in 14.2 above the Parties have agreed specific metrics and targets which are to be reported against on a regular basis as set out in Schedule WP5.

14.4 Unless the Parties otherwise agree, the Parties shall meet together regularly to review the progress made under this Agreement as follows:

(a) at least monthly for the initial 12 months, and thereafter by mutual agreement, an **Operations Group** involving;

(i) the Principal Public Transport Manager, South Yorkshire Passenger Transport Executive (at the date of this Agreement, **Chris Roberts**);

(ii) the Transportation Officer, Barnsley Metropolitan Borough Council (at the date of this Agreement, Mark Anderson).

- (iii) the Managing Director, Globe Coaches (at the date of this Agreement, Scott Woolley);
 - (iv) the Managing Director, Watsons Coaches (at the date of this Agreement, Ronald Waterson);
 - (v) the Commercial Director, Stagecoach Yorkshire (at the date of this Agreement, John Young);
- (b) quarterly (or as otherwise agreed between the Parties), a **Steering Group** involving:
- (i) the Executive Director, South Yorkshire Passenger Transport Executive (at the date of this Agreement, Stephen Edwards);
 - (ii) the Service Director for Environment and Place, Barnsley Metropolitan Borough Council (at the date of this Agreement, Paul Castle).
 - (iii) the Managing Director, Globe Coaches (at the date of this Agreement, Scott Woolley);
 - (iv) the Managing Director, Watsons Coaches (at the date of this Agreement, Ronald Waterson);
 - (v) the Managing Director, Stagecoach Yorkshire (at the date of this Agreement, Matthew Davies);

15 DISPUTE RESOLUTION

15.1 In case of a dispute between the Parties arising under this Agreement (which cannot be resolved by the Parties hereto) the matter or issue shall be referred to an independent expert for determination and the following provisions shall apply:-

- (a) The expert is to be appointed by the parties in dispute jointly or if they do not agree on the appointment appointed by the President of the Law Society or his duly appointed deputy or other person authorised by him to make such appointments on his behalf;
- (b) The person appointed is to act as an expert and not as an arbitrator;

- (c) The expert must afford the parties in dispute the opportunity within such a reasonable and proper time limit as he may stipulate to make representations to him (accompanied by professional valuation reports or other appropriate evidence in the relevant circumstances) and permit each party to the dispute to make submission on the representations of the other;
- (d) The expert will if deemed necessary engage the assistance of such advisers of other professions whose expertise is necessary to resolve issues arising from the dispute;
- (e) The fees and expenses of the expert including the cost of his nomination are to be borne as the expert directs or in the absence of a direction by the parties in dispute in equal shares but the parties in dispute will bear their own costs with respect to the determination of the issue by the expert.
- (f) One party to the dispute may pay the fees expenses and costs required to be borne by another if they remain unpaid for more than fifteen working days after they become due and then recover on demand from the other party to the dispute these and the incidental expenses incurred;
- (g) If the expert refuses to act, becomes incapable of acting or dies any party to the dispute may request the appointment of another expert in his place under paragraph 15.1(a);
- (h) The determination of the independent expert (except in case of manifest error) is to be binding on the parties in dispute until referred to the courts by a party to the dispute for determination, and in any such proceedings the courts will have full power to open up, review and revise any certificate, opinion, decision, valuation, requisition or notice given or made under this Agreement or any determination of the expert, including an award as to costs.

16 FORCE MAJEURE

- 16.1 No Party shall be liable to another for any delay in, or failure of, the performance of its obligations under this Agreement arising from any cause beyond its reasonable control including any of the following: act of God,

governmental act (including any act of any foreign government, the European Community or other international body), war, fire, flood, explosion or civil commotion, and industrial action. The Party so affected shall;

- (a) as soon as practicable, send to the others a written notice setting out the circumstances of the event and its anticipated effect; and
- (b) use all reasonable endeavours to minimise the effect of any such circumstances.

16.2 If any Party is prevented from performing its obligations under this Agreement due to an event of force majeure for a continuous period of six (6) months or more, then any Party may terminate this Agreement with immediate effect on giving written notice to the others and no Party shall be liable to the others for such termination SUBJECT TO the Parties having met at the next meeting referred to in clause 14.4(b) (or such earlier meeting which shall be arranged between the Parties) in good faith to determine if the Agreement should continue in varied form.

17 EXCLUSION OF OTHER TERMS

This Agreement sets out the entire agreement and understanding between the Parties. All Parties warrant and represent that in entering into this Agreement they have not relied upon any statement of fact or opinion made by another Party which has not been included expressly in this Agreement. Nothing in this clause 17 shall affect the liability of any Party in respect of any misrepresentation, warranty or condition that it makes fraudulently.

18 WAIVER

Failure by any Party to exercise or enforce any rights, or the giving of any forbearance, delay or indulgence, will not be construed as a waiver of its rights under this Agreement or otherwise.

19 AMENDMENT

This Agreement shall not be amended, modified, varied or supplemented except in writing signed by or on behalf of all Parties.

20 NOTICES

20.1 Any notice to be given under this Agreement shall be in writing and shall either be delivered personally sent by first class or be sent by electronic mail. The address for service of a Party shall be its address as stated above or any other address or electronic mail address notified to the other Parties in accordance with this paragraph. A notice shall be deemed to have been served as follows:

- (a) if during normal working hours if personally delivered or sent by electronic mail at the time of service, or if not during normal working hours the next working day;
- (b) if posted at the expiration of two days after the day of posting; and

in providing such service it shall be sufficient to prove that personal delivery was made or that the electronic mail was sent or that the envelope containing such posted notice was properly addressed.

21 SEVERANCE

If any provision of this Agreement is or becomes invalid or unenforceable it will be severed from the rest of this Agreement so that it is ineffective to the extent that it is invalid or unenforceable and no other provision of this Agreement shall be rendered invalid, unenforceable or be otherwise affected.

22 RELATIONSHIP

Nothing in this Agreement shall make any Party, the agent or partner of another, or give any Party the power to bind the other and the obligations set out in the Agreement are several between the Parties.

23 ASSIGNMENT

This Agreement is personal to the Parties and (save as provided in clause 12.1) may not be assigned or in any other way made over to any third Party, either in whole or in part, without the prior written consent of the other Parties.

24 FREEDOM OF INFORMATION

24.1 The Parties shall cooperate to facilitate the Executive's and the Council's compliance with its obligations under the Freedom of Information Act 2000

(FOIA), as amended, and the Environmental Information Regulations 2004 (EIR), as amended, together with any guidance and/or codes of practice issued from time to time by the Information Commissioner or the Secretary of State in the manner provided for in this clause, which shall apply whenever the Executive and/or the Council receives a request for information which in the Executive's and the Council's reasonable opinion is likely to involve the disclosure of the Operator's Confidential Information (an "RFCI").

- 24.2 As soon as possible and in any event within three (3) working days of receiving the RFCI, the Executive and/or the Council shall inform the Operator(s) and shall consult in good faith with the Operator(s) to ascertain whether disclosure of the Disclosed Information would be likely to prejudice the commercial interests of the Operator(s) for the purposes of section 43(2) of FOIA or regulation 12(5)(e) of EIR.
- 24.3 In determining its response to the RFCI the Executive and/or the Council shall take into account any representations made by the Operator(s) provided that they are received by the Executive and/or the Council within three (3) working days of the notification provided for in clause 24.2 but the Executive and/or the Council shall then determine its response in its absolute discretion.
- 24.4 If the Executive and/or the Council determines that it should disclose information in response to a RFCI and in order to do so the Executive and/or the Council reasonably requires information in the possession of the Operator(s) then the Operator(s) shall provide such information to the Executive and/or the Council as soon as reasonably practicable.
- 24.5 The Operator(s) shall provide all necessary assistance as reasonably requested by the Executive and/or the Council to enable the Executive and/or the Council to respond to a RFCI within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 24.6 In case of a request from the Executive and/or the Council under clause 24.4 or Clause 24.5, the Operator(s) shall as soon as reasonably practicable and in any event within five (5) working days of receipt of the request, inform the Executive and/or the Council of their estimated costs of complying with the request to the extent these would be recoverable if incurred by the Executive and/or the Council under section 12(1) of FOIA and the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations

2004 (the Fees Regulations). Where such costs (either on their own or in conjunction with the Executive's and/or the Council's own such costs in respect of such RFCI) will exceed the appropriate limit referred to in section 12(1) of FOIA and the Fees Regulations, the Executive and/or the Council shall inform the Operator(s) in writing whether or not it still requires the Operator(s) to comply with its request and, where it does require their compliance with its request, the period for compliance by the Operator(s) shall be extended by such a number of additional days as the Executive and/or the Council is entitled to under section 10 of FOIA. In such case, the Executive and/or the Council shall notify the Operator(s) of such additional days as soon as practicable and shall reimburse the Operator(s) for such costs as the Operator(s) incurs in complying with the request.

25 THIRD PARTY RIGHTS/PARTNERSHIP

25.1 Nothing in this Agreement shall confer on any third party any right or benefit under the provisions of the Contracts (Rights of Third Parties) Act 1999.

25.2 For the avoidance of doubt this Agreement is not intended to create a legal partnership between the Parties pursuant to the Partnership Act 1890, the Limited Partnerships Act 1907 the Limited Liability Partnership Act 2000 or otherwise.

26 JURISDICTION

This Agreement shall be governed by English law.

27 COUNTERPARTS

This Agreement may be entered into in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed and delivered at least one counterpart to the other. Each counterpart, when executed and delivered, shall constitute an original, but all counterparts shall together constitute one and the same instrument.

Signed by the Parties for the day and year first above written

Signed for and on behalf of the **SOUTH YORKSHIRE PASSENGER TRANSPORT EXECUTIVE** by:-

Authorised Signatory:

Printed Name: Stephen Edwards

Signed for and on behalf of **BARNSELY METROPOLITAN BOROUGH COUNCIL** by:-

Authorised Signatory:

Printed Name: Paul Castle

Signed for and on behalf of **ROSA HOLDINGS LTD** by:-

Authorised Signatory:

Printed Name: Scott Woolley

Signed for and on behalf of **RONALD WATERSON & SHEILA WATERSON LTD** by:-

Authorised Signatory:

Printed Name: Ronald Waterson

Signed for and on behalf of **THE YORKSHIRE TRACTION COMPANY LTD** by:-

Authorised Signatory:

Printed Name: Matthew Davies