

# INDEMNITY AGREEMENT

## Framework for Special Needs and Other Transport Services

### 1. Scope

This Agreement concerns the London Boroughs engaged in developing a collaborative Special Needs and other Transport Services with and without Passenger Assistants (Framework) which is to be led by LB Newham, with Project Support from the London Boroughs listed below (the Project).

The following local authorities and members of East London Solutions (ELS) have already given a formal expression of interest to be named and actively engaged in the development of this Framework (hereinafter shall be referred to as Participating Councils or Participants):

- London Borough of Barking & Dagenham
- London Borough of Havering
- London Borough of Newham
- London Borough of Redbridge, and
- London Borough of Tower Hamlets.

This Agreement sets out the overall vision, roles, responsibilities and accountabilities of the Participants, and is intended to act as a point of reference for all members of the Project Board.

The Project is driven by Newham Strategic Procurement and Passenger Transport and by invitation through Heads of Procurement for all other input.

The Heads of Procurement, Adults and Children's Services and Transport Management have, throughout the Project, been invited to input to the service specification and tender documentation.

### 2. Overall Vision

Establishing a cross borough framework arrangement is underpinned by the overall vision:

To create a Framework of competent companies capable of providing a managed service of transport for those with and without special needs where the service is provided on behalf of the local authority.

The procurement will ensure that local companies are enabled to tender for the provision of taxi, coach and special vehicle provision, all with drivers.

The providers must be capable of ensuring continuity of supply, including tight management of safety, vehicle and driver provision to ensure minimum disruption of supply to vulnerable members of the community. Separate lots

will ensure provision of special needs transport with appropriately qualified, vetted and trained passenger assistants.

The Framework will drive savings by joint working, economies of scale and by use of shared services where possible.

### **3. Responsibilities**

#### **3.1 General Responsibilities of Participants engaged with the Framework**

- Be open and honest with information relevant to the Framework
- Provide information when required by the Project Board in a timely manner
- Ensure full representation at the Project Board
- Ensure that all stakeholders are fully engaged within each authority, and that communication is ongoing
- Ensure that necessary sign off to be named in the Framework is in place at the appropriate level
- Ensure that they comply with all relevant timescales for any decision making processes under the Project (including compliance with their own decision making processes for approval of the invitation to tender and/or approvals for the award of contracts as may be required by each of them)
- Ensure that they take their own legal advice in relation to the Project and tender documents.
- Ensure they comply with their constitution, internal contract standing orders, and
- Take their own independent legal advice in relation to the procurement at each stage.

#### **3.2 General responsibilities of Framework Project Board members:**

- Attend, wherever possible, all Project Boards
- Give sufficient notice if unable to make any Project Board
- Arrange for a deputy to attend in substitute if unable to attend any Project Board
- Provide information when required by the Project Board in a timely manner

- Where needed, members of the Project Board will aim to provide appropriate advice, guidance, and resources to help the Project Board achieve its overall vision.

### 3.3 General responsibilities of the Newham member, as Lead Borough:

- To comply with all applicable legislation, formal guidance, and codes of practice
- To fully consult with engaged Participants on all aspects of the Procurement
- To direct the procurement process according to the project plan approved by the Project Board
- To coordinate and facilitate variations to the contract beyond those day to day contractual issues which will be managed by each Participant
- To ensure that all Participants have access to representation on the Project Board at all evaluation stages, and there is agreement with the chosen evaluation model.

## **4. Management and Accountability**

### 4.3 Management

The Procurement will be overseen by a Project Board. The Project Board will be Chaired by the lead procurement officer from the London Borough of Newham and Newham will report to ELS Procurement Board through the Shared Services Project Manager of East London Solutions. All Participants will have representation on the Project Board.

### 4.2 Performance management, Monitoring and Evaluation

The success of the Project Board will be based on the achievement of the overall vision.

Each member of the Project Board accepts that the achievement of the vision is the responsibility of the Project Board.

### 4.3 No Legal Advice

No act performed, thing done or said or document supplied by Newham (including through or by its employees, servants, agents and contractors) during the course of this project shall amount to the

provision of legal advice by or on behalf of Newham to any one or more of the Participating Councils or any other bodies taking part or seeking to take part in the procurement and each Council (or other body) shall be responsible for taking their own legal advice in relation to this Project.

- 4.4 Newham gives no guarantee or warranty as to the suitability of the proposed Framework for any individual Participant.
- 4.5 Where appropriate to do so, Newham may abandon the procurement of the Framework in consultation with the other Participants. Newham shall have no liability to the Participants if it decides to abandon the procurement.

## **5. Indemnities**

### **5.1 Indemnity from Newham:**

- 5.1.1 Newham will indemnify the other Participant Councils in relation to any negligent act or default wholly on the part of Newham (which shall include its employees, servants, agents and contractors) giving rise to any loss or expense pursuant to a cause of action whether against Newham or any/all of the Participant Councils.
- 5.1.2 Newham shall not be liable to any of the Participant Councils or other Participating bodies under 5.1.1 to the extent that any one or more of them have actively considered or approved of any process or document that is the cause (whether in whole or in part) of the relevant cause of action.
- 5.1.3 Newham shall have no liability where it acts in accordance with a course of action agreed by the Project Board.

### **5.2 The indemnity from each of the Participating Councils to each other:**

- 5.2.1 The Participants hereby jointly and severally indemnify each other in relation to all loss and expense arising from any negligent act or omission of theirs or breach of any of the terms of this Agreement (which shall include by their employees, servants, agents and contractors).

### **5.3 Indemnity to Newham from each other Participant:**

- 5.3.1 Each Participant (excluding Newham) hereby indemnifies Newham in relation to all costs, expenses, losses and damages (howsoever arising) incurred by Newham following the commencement of any legal challenge against Newham commenced by any person in relation to this procurement. For the purposes of this Agreement, "legal challenge" shall include not only the actual issue of legal proceedings but also the

submission of any correspondence threatening or contemplating the issue of any such proceedings.

- 5.3.2 Newham shall have sole conduct of proceedings issued solely against Newham in relation to this procurement, including the authority to settle any such action whether such decision includes the payment of damages or any sum in lieu of damages, notwithstanding the indemnity provided under 5.3.1 above to Newham by the other Participants.
- 5.3.3 In the event that a legal challenge is issued or threatened against Newham in connection with this procurement the Participating Councils shall provide all necessary information, documentation and co-operation as shall be required to defend the challenge or proposed challenge.
- 5.3.4 In the event that the Court makes an order requiring Newham to pay damages or if an out of court settlement is reached with the claimant then such costs shall be divided equally between (inclusive of Newham) the Participating Councils and each shall pay their share of the costs to Newham.
- 5.3.5 Newham shall have no liability to the other Participants in the event that it decides to abandon the procurement process, re-run it or take any other measures advised by its legal advisers in the event of a legal challenge or threatened legal challenge.

## Signatures

Organisation	Name	Signature	Capacity
L.B. Barking and Dagenham			
L.B. Havering			
L.B. Tower Hamlets			
L.B. Newham			
L.B. Redbridge			

June 2011